

UNITED STATES OF AMERICA  
DEPARTMENT OF AGRICULTURE  
FOOD SAFETY AND INSPECTION SERVICE  
NATIONAL ADVISORY COMMITTEE

on

MEAT AND POULTRY INSPECTION MEETING

The Washington Plaza  
National Hall  
10 Thomas Circle  
Washington, D.C.

Wednesday,  
November 14, 2001

The above captioned meeting convened at 7:04  
p.m.

Chairperson:

Daniel Lafontaine

Attendees:  
Daniel Lafontaine  
South Carolina Meat and  
Poultry Inspection Dept.

Charles Gioglio  
FSIS

Dr. Elsa Murano  
Under Secretary for Food Safety

John O'Connell  
Policy Staff, FSIS

Sandra Eskin

Michael Govro  
Food Safety Division Oregon  
Dept of Agriculture

Martin Holmes  
North American Meat Processors Association

John Neal  
Courseys Smoke Meats

ALSO PRESENT:

Deborah White  
Food Marketing Institute

Lynn Kosty  
American Meat Institute

Joe Harris

Joe Blair

Anne Hollingsworth

Bernie Shire

Lorraine Cannon  
FSIS

Sonya West  
FSIS

A G E N D A

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PRESENTATION:

PAGE:

Retail Exemption  
FSIS Current Thinking

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## P R O C E E D I N G S

1  
2 MR. LAFONTAINE: What I would like to do is  
3 briefly go around the room to and everyone introduce  
4 themselves and who they are representing. And then we  
5 will commence with the meeting. This is an opportunity  
6 for everyone to get to know who is in the audience, but  
7 also to help our audio/visual, I should say, audio,  
8 person find out who is present.

9 So, I will start with myself. I am Dan  
10 Lafontaine with the South Carolina Meat and Poultry  
11 Inspection Department. And I have been designated as  
12 chairman of this group, for this evening.

13 So, let's go ahead and go around. Sandra?

14 MS. ESKIN: I am Sandra Eskin and I do, I  
15 cover food and drug issues for AARP.

16 MR. GOVRO: I am Mike Govro, I am with the  
17 Good Safety Division of the Oregon Department of  
18 Agriculture.

19 MR. HOLMES: I am Marty Holmes. I am with the  
20 North American Meat Processors Association.

21 MR. O'CONNELL: I am John O'Connell. I am  
22 with FSIS.

23 MR. NEAL: I am John Neal.

24 MR. HARRIS: I am Joe Harris with Southwest  
25 Meat Association.

26 MR. BLAIR: I am Joe Blair with American  
27 Association of Food Hygiene --

1 MR. GIOGLIO: Charles Gioglio with FSIS.

2 MS. WHITE: Deborah White, Food Marketing  
3 Institute.

4 MS. HOLLINGSWORTH: Anne Hollingsworth, I am  
5 here representing the National Pork --

6 MR. LAFONTAINE: I am sorry?

7 MS. HOLLINGSWORTH: Anne Hollingsworth.

8 MR. LAFONTAINE: Okay.

9 MR. SHIRE: Bernie Shire, with the American  
10 Association Meat Processors.

11 MS. CANNON: Lorraine Cannon with FSIS.

12 MS. WEST: Sonya West, FSIS.

13 MR. LAFONTAINE: Okay. What I would like to  
14 do first is go over some ground rules that I will offer  
15 to the committee and if you agree that is the way we  
16 will conduct business.

17 The way I plan on running this meeting is,  
18 well, the first thing is that the committee members who  
19 are on this side of the table, plus John, the ones that  
20 are present now, have the primary voice in this  
21 discussion. However, those in the audience, I am  
22 certainly plan on giving you an opportunity to offer  
23 comments when you feel that you have something to  
24 offer. So, we will work it that way. And, of course,  
25 when we come to making our decisions on what will be in  
26 the report, the committee members are the only ones  
27 that actually have a vote in what is actually included.

1           The way I would like to approach this because  
2           on any topic, but if today's meeting is any indication,  
3           this could go on until midnight if we didn't put some  
4           boundaries on it. I would like to set up, up to one  
5           hour for open discussion, and it doesn't have to go an  
6           hour, but at that point, I think everyone will to have  
7           had a chance to make their comments. And then the plan  
8           would be for the committee members to try to condense  
9           what we want in the report and hopefully reach a  
10          consensus on what we say in the report. And we will  
11          play that a little bit by ear, but, we will probably  
12          pick out those major points and myself and other  
13          committee members will sit down a narrative and we will  
14          develop that narrative and have it put in writing, have  
15          a chance to critique it, and put our final touch on it.

16          Does that sound like a reasonable plan for the  
17          committee members? Marty?

18                 MR. HOLMES: Yes, sir.

19                 MR. LAFONTAINE: All right.

20                 If, per chance, there is not a consensus on  
21          something and there is a minority view, then we would  
22          certainly provide an opportunity for that member or  
23          members to put forth their thoughts as a minority view.

24          But, we may not have to do that.

25                 Now, to start this off, FSIS did give us four  
26          questions that they would like our comments on. So, we  
27          can use that as a starting point, but certainly

1 comments that are not related to this, these questions  
2 are certainly welcome also.

3 So, I will open the floor to Committee  
4 members first.

5 Oh, let me also mention, Lorraine is going to  
6 be trying to, as major points are made by anyone in the  
7 Committee or the audience, to capture the key words and  
8 then we will have that, that we can go back to an hour  
9 from now as a tickler to help us out.

10 And, Lorraine, I will try to help you a  
11 little bit if I think of it, say, get that down, you  
12 know. I may not always remember to do that.

13 All right, I will open the floor.

14 MR. NEAL: Marty, what is your current  
15 thinking?

16 MR. HOLMES: Well, I guess my thought here is  
17 that they quoted by regulation what currently is the  
18 situation and then their response, just to kind of get  
19 it started here, it says, "In response to  
20 recommendation by this Committee and based on its  
21 review of the situation, the Agency's new thinking is  
22 that it should eliminate the HRI policy explained  
23 above." So, basically, eliminate it in its current  
24 status. "Because this policy in their opinion does not  
25 advance the purpose of the Acts to ensure food safety.

26 Foods are prepared or processed for wholesale without  
27 the protections provided by inspection or consumer

1 observation. It is also troublesome because it creates  
2 in qualities for small wholesalers who bear the cost of  
3 inspection while competing large retailers do not." I  
4 guess my response to that in terms of what is my  
5 reaction to the Agency's new thinking is that I think  
6 it is sound.

7 If we are going to talk about a new phase of  
8 food safety and especially in light of the potential  
9 about security issues, one of the things we discussed  
10 last June, I guess it was, was that identifying gaps in  
11 the inspection system that need to be filled and this  
12 was one that we brought up, was one that RTI brought up  
13 many years ago. And I haven't seen, I have got it  
14 here, but I haven't, I apologize, I have not taken a  
15 look at that, but I did recall it, as a matter of fact,  
16 I was going to bring it up, but I think, Dan, you  
17 brought that up earlier this afternoon, this morning.

18 So, in general there, I think, I think that,  
19 I feel comfortable that they are heading in terms of  
20 tightening and closing some loops that exist. I did  
21 want, I did look at the Federal Meat Inspection Act and  
22 I wanted to read this, if I can for a second. It says,  
23 "Provisions of this Act and this --

24 MS. ESKIN: What are you reading? Where are  
25 you at?

26 MR. HOLMES: This is the Federal Meat  
27 Inspection Act.



1 MS. ESKIN: What provision are you reading?

2 MR. HOLMES: It says December '99.

3 MS. ESKIN: Okay.

4 MR. HOLMES: Page 25, Section 301.

5 MS. ESKIN: Thanks.

6 MR. HOLMES: Sorry. Section 301.

7 MS. ESKIN: And what subsection?

8 MR. HOLMES: Two.

9 MS. ESKIN: No, it would have to be A, B, or  
10 C? Is it C-2?

11 MR. HOLMES: It is going to be C-2.

12 MS. ESKIN: C-2. Okay.

13 MR. HOLMES: C-2.

14 (Pause.)

15 MR. HOLMES: It says, "The provisions of this  
16 Act requiring inspection of the slaughter of animals  
17 and preparation of caucuses, parts thereof, meat food  
18 products, shall not apply to operations of types  
19 traditionally and usually conducted at retail stores  
20 and restaurants, when conducted at any retail store or  
21 restaurant or similar retail type establishment for  
22 sale in normal retail quantities." So, there or  
23 service, let me continue.

24 MS. ESKIN: Right.

25 MR. HOLMES: "Retail quantities or service of  
26 such articles to consumers at such establishments, if  
27 such establishments are subject to such inspection

1 provisions only under this paragraph", and it goes on.

2 I think that what they are trying to make  
3 clear is that this is, if a wholesaler comes in and  
4 buys something from a retailer, they are going to buy  
5 it in a quantity that is not normally, okay. And so, I  
6 think we keep consistent with that verbiage of the Act,  
7 and keep that in the back of our mind, or as kind of a  
8 circling point as we think about, well, does this or  
9 doesn't this, or whatever, when we talk about normal  
10 retail quantities, I think of, you know, absence having  
11 a big party at your house during the holidays or  
12 something, you know, you are talking about, however  
13 many pounds that is, that, you know, you buy on a  
14 weekly, monthly, whatever basis. Maybe you go once a  
15 month, so it may be a substantial quantity, but it is  
16 not what a restaurant or a food service establishment  
17 or a hotel would be coming in or having "delivered" in  
18 many cases from a retail establishment.

19 MS. WHITE: May I point out that the  
20 regulation separately define in another place what a  
21 normal retail quantity is and that is a separate part  
22 of the regulation than the HRI exception. And if you  
23 are going to be looking at that --

24 MR. HOLMES: And where is that?

25 MS. WHITE: -- you might want to look at that  
26 particular regulatory --

27 MS. ESKIN: It is a regulation. It is in the

1 CFR.

2 MS. WHITE: Regulatory interpretation of that  
3 normal retail quantity language.

4 MR. HOLMES: All right.

5 MS. ESKIN: From the Statute, you are saying?

6 MR. O'CONNELL: It is in the regulations. And  
7 it is 303.1 for the meat.

8 MS. WHITE: It is D-2.

9 MR. O'CONNELL: Yes.

10 MS. ESKIN: But, the Statute, itself, doesn't  
11 define that.

12 MR. O'CONNELL: No.

13 MS. WHITE: No.

14 MR. O'CONNELL: No.

15 MR. LAFONTAINE: And what does it define?

16 MR. O'CONNELL: Well, what it does is with,  
17 for, it lists different classes, cattle, for example,  
18 it considers this a half caucus, so cattle, the limit  
19 is 300 pounds; calves, 37.5 pounds; sheep 27.5 pounds;  
20 swine 100 pounds and goats 25 pounds.

21 Now, with poultry it is done a different way.

22 For poultry a normal retail quantity is any quantity  
23 of poultry product purchased by a household consumer  
24 from a retail supplier that in the aggregate does not  
25 exceed 75 pounds.

26 And it is a little bit, and if you are non  
27 household consumer, it is higher, it is 150 pounds. I

1 am sorry.

2 MR. LAFONTAINE: Let me comment on this caucus  
3 business. There is not a doubt in my mind this is,  
4 was intended for when families used to go in and say,  
5 can you cut me up a quarter or a half of beef, when it  
6 was delivered on the rail. And it was still for a  
7 household consumer. And it is no way could be, in my  
8 mind, be twisted to be met for a wholesale, for a  
9 wholesaler. And so --

10 MR. O'CONNELL: I am just saying that is what  
11 is in the regs.

12 MR. LAFONTAINE: I know. But, I just wanted  
13 to throw in the, that is the, that is where that came  
14 from back 30 years ago.

15 MR. O'CONNELL: Yes, sure.

16 MR. LAFONTAINE: And we still got beef and  
17 pork on the rail.

18 MR. O'CONNELL: Yes.

19 MR. HOLMES: Dan, I would agree with you, one  
20 of the questions I have written down is what are normal  
21 retail quantities and how monitored in today's terms.  
22 Because I think that is a many year ago term. Because  
23 when we used to, you know, well, let's go in together  
24 on a beef and you know, your family is going to take a  
25 part and I am going to take a part, and what have you.  
26 And so, in today's term, I don't, I don't think normal  
27 retail quantities are --

1 MR. LAFONTAINE: I want to go back, Marty, to  
2 your very first comments when you were quoting from the  
3 FSIS paper.

4 MR. HOLMES: Yes.

5 MR. LAFONTAINE: And I would like to caption  
6 the one or two main points you made, that you felt were  
7 right on target, so Lorraine can capture those. Do you  
8 want to capture the key, your key points on the paper  
9 for her?

10 MR. HOLMES: Sure.

11 (Pause.)

12 MR. HOLMES: Well, that, the retail  
13 establishments do not offer the food, the food, meat  
14 and poultry products produced in retail establishments  
15 do not have the same protections, inspection  
16 protections that federal inspected plants have. And  
17 that would be one.

18 There is a difference in consumer protection.

19 (Pause.)

20 MR. HOLMES: I mean that is their main, that  
21 is their main, main point in that whole paragraph.  
22 They do hit, they even hit on the economic issue, which  
23 is the, you know, the inequalities between those in  
24 inspections and those that are not.

25 MR. LAFONTAINE: Was that your main point or  
26 was your secondary point?

27 MR. HOLMES: I think it is another point. I

1 don't know that it is, you know, again, we are talking  
2 about protecting consumers. Obviously there, as John  
3 brought up today, you know, it is a sidebar that, you  
4 know, certainly doesn't need to be hidden because there  
5 is an inequality there. I think I would include it.

6 MR. LAFONTAINE: Other comments.

7 MR. GOVRO: Relative to that point, on the  
8 second page here, when it talks about the Agency's new  
9 thinking, it says that foods are prepared a process for  
10 wholesale without the protections provided by  
11 inspection or consumer observation. That is consumers  
12 can make determinations about the sanitary conditions  
13 and the processing practice in retail stores and  
14 restaurants they frequent. I think that that is an  
15 untrue statement. To a very small degree, a consumer  
16 can look in where meat is being cut and they can see if  
17 the grinder is rusty. But, they don't know the  
18 temperature of the water, they don't know if they are  
19 using sanitizers. They don't know the temperature of  
20 the cooler or what kind of monitoring takes place. And  
21 it is also untrue to say that there is no inspection.  
22 Obviously state programs, county programs, all the  
23 local programs that exist look at those things. Now, I  
24 am not going to argue the point that that is a lesser  
25 degree of scrutiny than one would get through USDA  
26 program. And, that there is variation between programs  
27 across the nation. But, I think that premise that the

1 consumer, that there is any kind of protection because  
2 the consumer can look in and see the meat market, is  
3 just false.

4 MR. NEAL: Well, there is also the tone set  
5 that why do meat markets have windows in there, to  
6 watch the butchers work. And if there were flies in  
7 there, I bet they wouldn't -- Also, I do believe that  
8 people on the average, I mean, there always exceptions,  
9 so, that is not, you know, not likely to occur, but  
10 there is always exceptions, but I truly believe that  
11 people walk in, people pull in your parking lot, if  
12 they see trash all over the lawn, they will have a  
13 negative concept. They walk in, and you have flies on  
14 the counter or you have dirty counters, you are most  
15 likely not going to make a sale or much of a sale. I  
16 think that the appearance of your store and outlet is a  
17 reflection on the product you put out. And I really  
18 believe that it does have a bearing on the household  
19 consumer. All in all it is an untalked, it is untold  
20 factor, but, I think from day one to day out, you know,  
21 you start from the inside in, you know, if there is  
22 bush growing around your store, and everything else,  
23 and I am not relating to USDA or anything else, it is a  
24 matter of pride, discipline, and having a business that  
25 you, if you have a crappy store on the outside, it is  
26 probably going to be crappy on the inside. And you can  
27 almost, I truly believe that.

1           MR. GOVRO: That is a good point from a sales  
2 standpoint. But, from the food safety standpoint and  
3 when you talk about the things that, the CDC risk  
4 factors, none of them have to do have with appearance.  
5       They have to do with --

6           MR. NEAL: Well, you know, what I was saying  
7 appearance, if you go that far, you are going wash your  
8 hands, take care of stuff like that, means your  
9 employees are doing a good job. And if your employees  
10 are doing a good job, it just goes with the territory.

11       I mean, you know, no, I really believe that. I truly  
12 believe that in my heart. I mean, I think that is a  
13 basis of, of educating for my purpose, my employees,  
14 and I am not saying just because I am aware and I know  
15 this, I just know. I know when I walk in a restaurant  
16 if it is clean. I know when it smells bad. A  
17 restaurant we walked in not too long ago, I don't know  
18 if I would have eaten there or not.

19           MR. HOLMES: I think you are right, I mean, I  
20 think if you, and commonsense, I think, would tell you,  
21 too, if you look, if you took a meat department in a  
22 retail grocery store and you set it up two weeks and  
23 the first week you had a bunch of bloody cardboard  
24 boxes behind the window and, you know, a guy in a messy  
25 froth, and you know, and shambles and the case is in  
26 disarray and what have you, and you look at the  
27 confidence based on the sales that week, versus the



1 next week, everything being nice, and clean and, you  
2 know, presentable, you would see a significant increase  
3 in sales. And so I think that is what they are saying  
4 that the consumer has some perception. They don't  
5 obviously, they are not necessarily going in  
6 specifically to analyze the cleanliness of the store,  
7 but it certainly registers with them if something looks  
8 out of kilter.

9 MR. NEAL: It goes right along with how many  
10 people read the safe handling sticker on the back of  
11 bacon. I mean, it is just assumed you cook it. If  
12 they don't, it is, that part is their own fault. You  
13 know, if they had the option, we have protected  
14 ourselves, and everything else, but I mean, it is just  
15 naturally assumed a piece of raw meat, if it has, any  
16 raw meat, has a safe handling sticker on it, people  
17 don't read that sticker, but they know.

18 MS. ESKIN: Marty, in response to what you  
19 said in talking about this loophole and closing the  
20 loophole. I mean, you like the approach that is  
21 proposed here. Does it close it enough? I mean, is  
22 there still, could, could, could the Agency go farther?  
23 I mean, obviously, you have got the statutory language  
24 here in terms of you need to have an exemption. Does  
25 it go far enough in the way they are interpreting it to  
26 close the loophole?

27 MR. HOLMES: If you, if you remove the retail

1 exemption --

2 MS. ESKIN: No, I am not suggesting to remove  
3 it. It is here. The issue is how narrowly can it be  
4 interpreted or how narrowly can it be presented to  
5 satisfy the statutory requirement and provide the  
6 maximum amount of protection to consumers. And that is  
7 ultimately the question here.

8 MR. NEAL: Do we go back to the risk  
9 assessment? I mean, I know that kind of opened things  
10 up, you know, with Carol this morning, and we kind of,  
11 you know, that is the purpose and I understood where  
12 she was coming from.

13 MR. HOLMES: Risk based inspection.

14 MR. NEAL: Right, risk based inspection,  
15 right. Is that part of what you are talking about?

16 MS. ESKIN: No, I am actually being very  
17 limited here in terms, it goes back to sort of how we  
18 define retailer, how do we define all of the  
19 terminology in the actual statute. What the Agency is  
20 proposing here is would limit relevant to the current  
21 interpretation, the number of establishments that would  
22 set, that wouldn't be subject, that could take  
23 advantage of this exemption, correct, I mean, that is a  
24 correct reading of it? And I am just asking, does it  
25 go far enough? Is there still, the way that it is  
26 being, the way that the retail exemption is being  
27 interpreted or at least proposed in this new

1 interpretation, does that go far enough to meet the  
2 goal of the statute?

3 MR. HOLMES: I don't know how much further it  
4 could go.

5 MS. ESKIN: Okay. Could it --

6 MR. HOLMES: You are not going to get federal  
7 inspection at retail grocery stores.

8 MS. ESKIN: No, I appreciate that.

9 MR. HOLMES: I mean that, you know, you are  
10 talking about closing the loop, well, okay, but that is  
11 not realistic.

12 MS. ESKIN: Right.

13 MR. HOLMES: Besides, and I don't disagree,  
14 there is some very good inspection programs, whether it  
15 be county wide, city wide, so don't misinterpret that,  
16 either, because, but, there is, you know, when you talk  
17 about mandatory HACCP and continuous oversight, you  
18 know, there are some, there are some retail grocery  
19 stores, I am sure that are much, much cleaner than a  
20 lot of federally inspected establishments.

21 MR. GOVRO: Dan, I might like to pose a  
22 question to the rest of the Committee. Why should, you  
23 know, we believe all this stuff that retail markets  
24 just don't get nearly an adequate level of oversight,  
25 why don't we just have USDA inspection for all retail  
26 meat handlers?

27 MR. HOLMES: All retail what?

1                   MR. GOVRO: All retail meat handlers? It  
2 doesn't affect everybody, but we are out protecting the  
3 consumer.

4                   MR. LAFONTAINE: Let me answer the question  
5 indirectly. And this is not a very good answer, but it  
6 is to the facts. There is statutory authority based on  
7 how you interpret the law that if you are in the  
8 wholesale business you will be under state or  
9 equivalent, I mean, federal or equivalent state  
10 inspection. Now, to answer your question, there is,  
11 you know, maybe that is what it should be eventually,  
12 but, there is certainly no, no statutory authority for  
13 that now.

14                   MR. GOVRO: I understand that. But, just as a  
15 concept, I am curious, does the group think that we  
16 should, because, you know, the minute you eliminate  
17 this retail exemption, the retailers, who are also  
18 wholesalers are then going to be under a competitive  
19 disadvantage and they will kind of want the rest of the  
20 retail industry to be subject to the same inspection  
21 that they are. I mean, it is kind of like where do you  
22 draw the line. If we really believe that meat, that is  
23 handled in the retail market is not safe, if it is not  
24 properly inspected, then.

25                   MR. NEAL: Well, I will tell you what, if they  
26 are going to continue wholesaling, then, they are  
27 running a volume of meat, and I have a couple of

1 questions to go with that, if they are going to  
2 continue wholesaling, they are still running that  
3 volume of meat, they just have to develop a plan. They  
4 have to change their tactics just a little bit, their  
5 sanitary tactics. They have to document where they  
6 haven't had the document in the past.

7 I have a question to go along with that.  
8 These people that are, that are wholesaling this meat,  
9 are they loading that up and going across state line  
10 with it, a big truck or are they just running around  
11 town? What is the, nobody ever talked about this.

12 MR. HOLMES: Well, if they are retail exempt,  
13 they can go across state lines, without an inspection.

14 MR. NEAL: If they are wholesaling meat, they  
15 can take a whole truck load, can't they?

16 MR. HOLMES: They could.

17 MR. GOVRO: But, we are still only talking  
18 about 44,900 dollars worth of product a year, right,  
19 per establishment?

20 MS. ESKIN: Per establishment, yes.

21 MR. GOVRO: Or per retail store.

22 MR. HOLMES: But, that is a process product,  
23 not the, not the, you know, case in case out tonnage  
24 that is significant for meat processors to make, to  
25 make the process work, they need pounds on the truck  
26 whether it is pounds they processed or pounds that is  
27 just passed through.

1           MR. GOVRO: Okay. If the pass through was  
2 included in the retail exemption, would you care about  
3 it?

4           MR. HOLMES: I would still care about it.

5           I think, taking your, your thought process of  
6 where do you stop the line going this way, let's think  
7 a second point forward. If I can invite everyone of my  
8 customers to come into my plant, so that they can see  
9 it, just like me as a customer going into retail  
10 grocery store and have a window where I can see it, so,  
11 therefore, if you are, if it is based on this provision  
12 of being able, customers, consumers being able to make  
13 determinations about sanitary conditions, and I invite  
14 customers, if I sign a new customer, I have invite him  
15 into my plant, and he looks through the plant and I  
16 tell him, you can come into my plant any time you want.

17          I should be retail exempt.

18          MR. GOVRO: I don't believe.

19          MR. HOLMES: I don't believe that either. I  
20 am just saying, if you go that way, you know, it  
21 doesn't, I --

22          MR. GOVRO: No, I am saying that that is not a  
23 valid place to hang your hat. Because the customer  
24 doesn't know anything by looking through the window.  
25 Doesn't know anything important.

26          MR. LAFONTAINE: Let me kind of switch gears  
27 here for a minute.

1           What I did is I made some, we have gone, we,  
2           the Federal Government, has gone through rulemaking  
3           over a period of years to decide what are the basic  
4           parameters, if you going to sell meat or poultry in  
5           wholesale sales. And the list I made of those  
6           requirements that are applied to establishments that  
7           are under inspection, that do not apply to retail  
8           stores now, is very significant. And I am going to run  
9           through them here real quick for the benefit of  
10          everyone. But, my point is that these are food safety  
11          related requirements that for better or worse, no pun  
12          intended, through rulemaking these were decided that  
13          they needed to be put in place. So, Lorraine, if you  
14          would bear with me. HACCP, SSOPs, sanitation  
15          performance standards, bear with me. I made some notes  
16          here.

17                 MR. NEAL: Okay. Mike is the one getting  
18          upset here.

19                 MR. LAFONTAINE: Pathogen reduction, that is  
20          salmonella performance standards that have to be met  
21          for raw grounded products. Sorry, going too fast.  
22          Daily inspection, in some cases overtime inspection, if  
23          you are doing wholesaling on the weekend or holidays.

24                 MR. NEAL: You are talking E.Coli, too, aren't  
25          we?

26                 MR. LAFONTAINE: That is not, that is food  
27          safety related.

1 MR. NEAL: Okay.

2 MR. LAFONTAINE: But, it is an inspection  
3 issue.

4 MR. NEAL: Right.

5 MR. LAFONTAINE: Labeling, now, there is no  
6 longer prior proof labeling, but there is very specific  
7 labeling requirements that have to be met by the  
8 inspected establishments, to include under that,  
9 standards of identity for certain products. So I will  
10 stop there. Those are my quick list. It speaks for  
11 itself.

12 MR. HOLMES: What about sampling?

13 MR. LAFONTAINE: And I emphasize these are not  
14 dreamt up overnight. This is an accumulation of years  
15 of rulemaking by FSIS as far as what they feel are  
16 things that have to be in place in order to be, have  
17 minimum food safety in an establishment that sells  
18 wholesale.

19 MR. HOLMES: What about sampling?

20 MR. LAFONTAINE: What?

21 MR. HOLMES: Sampling?

22 MR. LAFONTAINE: Well, salmonella standard is  
23 sampling.

24 MR. HOLMES: Okay.

25 MR. LAFONTAINE: There is a -- I offer that as  
26 pertinent information in this decision making.

27 Let me let the audience have the floor unless



1 there are any issues that you want to discuss before we  
2 do that. Sir, do you have anything?

3 MS. WHITE: You can go around the room. You  
4 can come back to me, let everybody else go.

5 MR. LAFONTAINE: All right.

6 MS. WHITE: I do have a number of points I  
7 would like to make in response to that.

8 MR. LAFONTAINE: Bernie?

9 MR. SHIRE: Yeah, I have a few things, but if  
10 you want to go ahead. I was just saying, if you want  
11 to respond to points that were made, mine may be  
12 different, I don't know.

13 MS. WHITE: Oh, I am sure it will be.

14 MR. SHIRE: Okay.

15 MS. WHITE: It takes me awhile, I don't want  
16 to --

17 MR. SHIRE: I am speaking from the standpoint  
18 of representing a -- that has a lot of small meat and  
19 poultry processors. We are kind of a mixed bag. Most  
20 of our members are under inspection, either USDA  
21 inspection or equal to state inspection. We also have  
22 some people though that are custom exempt and so, we  
23 are, but most of our members are small. And looking at  
24 this issue, and people talking about it, we really come  
25 to the conclusion that this issue that USDA is talking  
26 about, the HRI part of it, is really kind of narrow in  
27 a sense. That the whole, the whole question of retail

1 and inspection, itself, really, really needs to be  
2 looked at in a way. And what was said this morning is  
3 basically where we pretty much are on the issue that  
4 inspection really needs to be based on the risk of the  
5 processes involved. And in order to do this, we think  
6 that and when, when that happens, that is how  
7 inspections should be carried out, based on the risks  
8 that are involved and whether the process or the  
9 product is being made in a retail store or a plant  
10 under USDA inspection or a plant under equal to state  
11 inspection, if the risks are the same in making that,  
12 that risks to public health are the same in making  
13 those products and carrying out that process, that  
14 should be where, that should be the thing that guides  
15 the inspection.

16 So, for example, we think that USDA really  
17 needs to come up with a database to determine if a  
18 problem exists here. And there are basically two  
19 concerns we have been talking about, food safety and  
20 economics. There are plants and retail stores that do  
21 the same kind of processing. The plants operate under  
22 a constant inspection, if you want to use that word.  
23 The retail stores don't. They operate under a more  
24 limited kind of inspection. Is there a problem that  
25 exists in either of these two settings? Does it mean,  
26 for example, that maybe the retail stores need to  
27 operate under some kind of more stringent program?

1 Maybe not day to day inspection the way USDA plants  
2 are, but do they need to operate under an SSOP program,  
3 for example? Or some kind of HACCP program, that would  
4 be adopted to those setting? That is what our folks  
5 think should exist. Because you can make the, because  
6 you can make the opposite argument, if you have, if you  
7 have plants under inspection that are doing the same  
8 kind of processes, you can make the argument, does that  
9 signal maybe that we are requiring too much of  
10 inspected plants, if they are doing the same thing that  
11 retail stores are doing. I am not saying we should do  
12 that, I am not saying we should drop the level at  
13 inspected plants, but, you see where it takes you  
14 logically.

15 So, that is an important part, point of how  
16 we feel about it. Should there be SSOP, some kind of  
17 SSOP program or HACCP plan at retail stores if they are  
18 doing pretty much the same thing that a lot of  
19 inspected plants are doing?

20 The economic issue is really more complex in  
21 a sense. Most of our plants operate under inspection.

22 Some of them have retail fronts as part of their  
23 business, but, that is really a minor part of what they  
24 do. For most of them it is really the inspection that  
25 is the important part. So, in some cases, in some of  
26 the cases our members would have split opinions because  
27 they are involved in both of those things. But, they

1 also have, I think they also have a lot of concerns  
2 about the volume that, the volume of business that  
3 exempt operations handle. The large buying clubs like  
4 Sam's Club and Costco and Bjs, some of them used to be  
5 under inspection, but now virtually none of them are  
6 under inspection at all. Yet, they send out mailings  
7 to their "business customers" saying that they have  
8 special hours for them. Now, is that retailing or is  
9 that wholesaling? What are they doing there? Many,  
10 many of the smaller plants under inspection end up  
11 losing some of their employees to these large  
12 operations and many of the small plants they can buy,  
13 they can buy product much less expensively from these  
14 kinds of operations than they can make it on their own.

15 And that is, that is not a level playing field.

16 I think you have to justify, as members of  
17 the Committee, what kind of changes is warranted here.

18 And, and if you look at the history of exemptions, you  
19 know why this whole retail exemption was set up, this  
20 burden was set, or to ease a burden, especially in  
21 rural areas. Does that, does that problem still exist  
22 today with the large numbers of distributors and that  
23 are set up across the country and things shipped from  
24 here to there in very small times? Does that problem  
25 still exist and so does that justify the retailers  
26 having this window, if you want to call it that, that  
27 they can act? How does the case ready situation, you

1 know, affect? And that was discussed a little bit  
2 this morning, too, the whole situation. So, it is  
3 hard for me to sit here and give you, it is hard for me  
4 to sit here and give you opinion, say do this or do  
5 that. We have concerns and we have problems with  
6 these, with the retail exemption for the issues that I  
7 have outlined. As I say, one of the concerns is that  
8 you can, the unfair playing, the fact that these  
9 retailers can just blow the small people out of the  
10 water. There is no, that are under state inspection  
11 and the fact that they have all these extra burdens on  
12 them.

13 So, I think those are the things you need to  
14 look at. But, I think, I guess the main point I would  
15 make is that inspection needs to be carried out on a  
16 risk basis. That is the main thing. And if something  
17 is risky here, and another place is doing the same  
18 thing, then the same risk exists there. And to me, or  
19 to our members, the fact that you have a statute that  
20 says this can be done, but it can't be done over there,  
21 is no excuse. Maybe if there is a problem there, then  
22 maybe the statute has to be changed. I don't think you  
23 can fall back on your argument and say, well, this is  
24 what the statute says, we just have to go with that.  
25 Because that is what caused, I am sorry, that is what  
26 has caused all the problems with, you know, with retail  
27 exemption over the years, because of basically falling

1 back on that.

2 MS. ESKIN: Are you saying, again, the way  
3 that the current regulation is, that you don't support  
4 the current regulation?

5 MR. SHIRE: No.

6 MS. ESKIN: You don't. And how do you view  
7 the proposed revision? Is it, does it go far enough or  
8 it is enough of --

9 MR. SHIRE: Well, no, we look at it  
10 positively, but, we are not sure that it goes far  
11 enough.

12 MS. ESKIN: And are you saying perhaps that in  
13 order to go where you want it to go, the statutory  
14 provision arguably needs to be changed?

15 MR. SHIRE: Well, it may be, I am not a  
16 lawyer, but I think it may be, because I mean, what I  
17 am saying is that you have this situation where you are  
18 trying to fix inspections somehow. USDA has been  
19 trying to fix this inspection process for years and in  
20 order to fix it, I think you have to look at the whole  
21 system and say, what are we inspecting, and that is why  
22 they are doing all these risk management studies, isn't  
23 it?

24 MS. ESKIN: Yes.

25 MR. SHIRE: To come up with a better idea of  
26 what the risks are. And then look at this whole system  
27 and say, you know, this is, these are the products that

1 are being made, I mean, obviously, when you are talking  
2 about canning and slaughter, that is different than  
3 processing. So, let's just put those aside and talk  
4 about processing. And when you do that, you have to  
5 look at the risks of all the products that are being  
6 made and where they are being made and say, oh, we are  
7 going to have a consistent inspection system that makes  
8 some kind of sense, you know, based on dangers and the  
9 risks to the consumer, to the buying public rather than  
10 just something that has been, that we are operating  
11 under because back in 1906 and 1968, these, these laws  
12 were passed.

13 MR. LAFONTAINE: Let me interrupt, are you  
14 finished, Bernie?

15 MR. SHIRE: Yes, I am.

16 MR. LAFONTAINE: Let me try to put some  
17 boundaries on this, which I have to do. What we are  
18 dealing with in this subcommittee is a piece of the  
19 pie. And the piece of pie is the current retail  
20 exemption for wholesale sales. So, as far as our  
21 report, that is what we have to deal with. But, I  
22 think it is also, if the Committee agrees, it is also  
23 appropriate to say that there were folks in the  
24 audience that felt that we needed to look beyond this,  
25 such as the processes that are done at retail level.  
26 So, we are making note of it, but we are not actually  
27 taking an action on it. Is that a fair statement,

1 Committee members?

2 MS. ESKIN: Yes.

3 MR. LAFONTAINE: Because you made that similar  
4 comment, does this go far enough, and --

5 MS. ESKIN: Right and yes. And certainly we  
6 can talk about it being in the statute, the way it is.

7 MR. LAFONTAINE: Right.

8 MS. ESKIN: That is what we are doing.

9 MR. SHIRE: I understand operating under the,  
10 you know, basically --

11 MR. LAFONTAINE: And the other thing I wanted  
12 to make, you know, you are talking about the risks of  
13 different kind of products, not to beat it to death,  
14 but this is a very comprehensive study by some very  
15 highly qualified folks. And I will just mention one  
16 name, Mike Doyle, from the University of Georgia, who  
17 is one of the Committee members and there are many  
18 others you would recognize, that looked, you know, did,  
19 sat down, obviously over a period of time and looked at  
20 the risks for various kind of products. All the way  
21 from canning through simple slicing. So, my point is  
22 that that study has already been done and if you want  
23 to answers to that, then, it is in there so to speak.

24 MR. SHIRE: But, to answer the question that  
25 was asked about our feelings about the RTI and the  
26 answer is yes, we need, we think that needs to be  
27 changed, HRI, I am sorry.



1 MS. WHITE: I will start. I think, I will  
2 start some of my comments. I would agree that you need  
3 to have a risk based system for evaluating where the  
4 resources should be placed to make sure the food is as  
5 safe as possible when it gets to the consumer or the  
6 consumer gets it. One of our concerns, I think, with  
7 the approach that is being taken here, is that there  
8 has no been showing, there may be an RTI report, I  
9 haven't seen it being considered by the Committee.  
10 There has been no showing that getting rid of the HRI  
11 prong, which is one prong of six criteria within a  
12 regulatory exemption, which is an interpretation of two  
13 statutory provisions, there has been no showing that  
14 getting rid of that is going to improve food safety in  
15 any way.

16 You came up with this list of the different  
17 things that are required at wholesale, these I guess  
18 are things, additional things that are required of  
19 wholesale, that are not required at retailer. That is  
20 the allegation. The labeling regulations clearly  
21 apply. Food is misbranded based on the same standards  
22 be it sold at retail or whether it comes out of  
23 processing. Food is adulterated for the same reasons,  
24 be it if it comes out of retail or if it comes out of  
25 processing. The Agency in its wisdom decided that all  
26 of these things were necessary components in  
27 interpreting Section 606 and imposing continuous

1 inspection on the establishments that are listed in the  
2 statute that do certain types of processes. I mean, to  
3 say that because that is done at wholesale, means the  
4 absence of it at retail in food that comes out retail  
5 is any less safe, is, is absurd. The same standards  
6 still applies in both situations. The same standard  
7 being that the food can't be adulterated. That is the  
8 bottom line standard. And, I mean, I have also heard,  
9 I mean, I keep hearing --

10 MR. LAFONTAINE: Deborah, Debbie, let me try  
11 to answer your first statement.

12 MS. WHITE: Deborah and I would be happy to  
13 finish.

14 MR. LAFONTAINE: The first thing we need to  
15 clarify is these are not FSIS standards were set in  
16 vacuum. All of these over the years went through  
17 formal rulemaking and in a very torturous path with  
18 several years in the case of the mega reg to be  
19 developed. And I will just use one example that HACCP  
20 is considered worldwide as the standard on how to make  
21 sure that the big ticket food safety items are  
22 controlled. And I am making a very general statement.

23 So, I come back to you and say, the proof of the  
24 pudding is that in the rulemaking and in the experts  
25 that enter into this dialogue, the final decisions were  
26 that these are things that are needed as baseline  
27 requirements to ensure that meat, poultry entering the

1 marketplace and the wholesale environment is as safe as  
2 possible.

3 So, you know, we can go on back and forth  
4 all, all day, but this is not something that was dreamt  
5 up by the Government. This is a lot of very torturous  
6 rulemaking in a final decision.

7 MS. WHITE: Clearly. And I am familiar and I  
8 understand that. But, that is what the Government and  
9 the experts decided was necessary to ensure the safety  
10 of the meat products in a certain point in the chain.  
11 But, there hasn't been a showing to my knowledge that  
12 food that comes out of retail is inherently unsafe. I  
13 sort of feel like I keep hearing that. Marty has  
14 alluded to a study that they have coming out, but to my  
15 knowledge nobody around this table has seen any of that  
16 data. And there doesn't seem, I have yet to see any  
17 evidence that, I mean, and I think it should be done on  
18 a risk basis, any showing that the food that comes out  
19 of retail is unsafe, any, any showing that there is any  
20 need to make a change to the retail exemption.

21 MR. NEAL: The exception here, what you have  
22 to understand is you are looking at people right here  
23 that deal in the processing area all the time. We deal  
24 in scientific facts, scientific data, concerning time,  
25 temp, water activity. We deal with sanitation issues.  
26 I understand your position and what you are here to  
27 do, but at the same time, you have to be there to

1 understand. That is why we are on this committee. You  
2 have to be there to understand that part, I know what  
3 you are saying, but, you have to be there to understand  
4 the stuff. You know, you are saying you are not seeing  
5 any facts, well, there is, I have got microbiology book  
6 that I can sit down and show you, you know, and Sandra  
7 has it and she has it.

8 MS. WHITE: Are you telling me retail is less  
9 safe than --

10 MR. NEAL: No, no, no, no. Wait a minute.

11 MS. WHITE: Okay.

12 MR. NEAL: But, what I am saying, the  
13 standards are for sanitation, sanitation performance  
14 standards are not the same and you are allowing meat in  
15 bulk or cut in bulk, or whatever you want to do, to go  
16 out. And we never did answer the question, that may be  
17 going across interstate lines, and, and a lot of plants  
18 I know, especially small plants, are sitting there,  
19 sitting there performing all these systems here and  
20 make sure that their products is right, but yet they,  
21 they are USDA inspected, because they have to be, even  
22 though they will tell you that they are making it safe  
23 because a small business doesn't last very long if it  
24 makes someone sick. I mean, it is instantaneous, you  
25 are out of business that next day. And you have to be  
26 there to really understand that.

27 And there is scientific data. It doesn't

1 have to be a study. Scientific data, we know what  
2 bacteria grows at. We know if you don't wash that  
3 grinder, that you are going to have pathogen growth.  
4 You know if you don't have good SSOPs, that you are  
5 going to have it. Now, you can be naive in thinking  
6 that anybody that doesn't have some form of control on  
7 them, and especially if they are wholesaling, doing  
8 large volumes of meat, the situation will deteriorate  
9 over period of time, to a certain level, it will stop,  
10 but there will be that gap and it will hurt us. It  
11 will hurt you, it will catch you and it is like playing  
12 roulette. Sooner or later you are going to get burned  
13 and you know what, big companies can suck it up, but it  
14 is going to have, but, there is scientific data. It  
15 doesn't have to be a study. There is a difference  
16 between data and study.

17 MS. WHITE: Right.

18 MR. NEAL: Okay. And that is fine. That is  
19 all I wanted to say, because I am very hot on that, you  
20 know.

21 MS. WHITE: Well, okay. Standards, food  
22 standards apply, I mean, retailers put in GMPs and  
23 they, you know, take great pride in the processes that  
24 they do in order to make the food safer. What I am  
25 saying is there, you know, we agree, that it should be  
26 on a risk basis.

27 MR. NEAL: Right.

1 MS. WHITE: And there is a greater risk and  
2 greater things need to be put to --

3 MR. NEAL: Right.

4 MS. WHITE: The Agency should be looking at  
5 the full system, all the way across the board as far as  
6 their jurisdiction will extend. Figure out where the  
7 risks are at each point and assign the resources  
8 accordingly. What I haven't seen is any showing that  
9 there is, that there is a new risk or a greater risk or  
10 the risks of retail haven't been adequately addressed  
11 under the current system. I am not saying that that  
12 isn't necessarily true, but I haven't seen any showing.

13 You said there doesn't have to be a study, that there  
14 is data out there. I think what you are saying that  
15 there are data, right, that is a plural, there are data  
16 out there that show that these systems are good and are  
17 effective in reducing microbiological contamination.  
18 What I don't see is any showing, any data that says  
19 that what is happening at retail is ineffective or what  
20 is being done is causing a greater risk, or what isn't  
21 being done creates a risk to the public that needs to  
22 be addressed.

23 MR. NEAL: The Health and Safety Standards are  
24 set, Ms. Murano. Ms. Murano, I believe you talked  
25 about a scientific, we base our whole concept on  
26 scientific data.

27 DR. MURANO: That is right.

1           MR. NEAL: And that is fine. There can be  
2 studies matter, but only for -- they don't matter,  
3 scientific data is what this based on. Those people  
4 are following something like that, that is the ultimate  
5 scientific data, you know, we are not, the scientific  
6 data is the ultimate. If it is proven with more  
7 scientific data, that is fine. And that is the way it  
8 changes. But, it is cut down to a pretty fine art,  
9 such as Dan said, goes way back where there has been a  
10 lot of tedious hard work to develop these standards.  
11 And I would say probably the last 10 years, it has  
12 probably been the biggest growth in it and really  
13 getting them rock solid, you know. And there will be  
14 some new bug come up someday, listeria is the latest  
15 thing in our, I believe, in our repertoire of things to  
16 look for. But, it is true, it can happen. So, you  
17 know, those things are set and scientific data is what  
18 this, what the food safety is based on.

19           MS. WHITE: And we would agree. We would just  
20 like to see a scientific basis for claiming that  
21 anything needs to be done in the retail exemption.

22           MR. LAFONTAINE: Let me offer and this is not,  
23 this is an indirect answer, but it is pertinent  
24 information. In 1996, back when a lot of these new  
25 requirements are going into effect, CDC, FDA, and FSIS  
26 started Foodnet, which is a proactive, seeking out of  
27 food borne illness for certain pathogens. And starting

1 with the original six sites, and now it has expanded to  
2 approximately 10 sites, but, looking at the original  
3 six sites, so that you have got a common base, and  
4 looking at the major pathogens for meat and poultry,  
5 that is salmonella, E.Coli 0157:H7, and listeria, and  
6 Kepl Bacter, the trend has been down. Now, who gets  
7 the credit for that? I think everybody gets the credit  
8 for it. The meat and poultry industry, to a certain  
9 extent the retail industry and the consumer. But, my  
10 point is that it is not a cause, effect relationship  
11 directly. But, I shouldn't say, FSIS has used it that  
12 way, and maybe it is valid that putting these  
13 additional tools in place, these food safety tools, has  
14 had an impact on the, on food borne outbreaks.

15 So, I offer that as, as somewhat soft  
16 scientific information that it is making a difference  
17 with these additional.

18 MS. WHITE: And that could very well be, but  
19 if there is no showing that putting those additional  
20 systems in place at retail, is going to do anything  
21 further. They may be the best systems in the world, it  
22 may be the best thing, it may be the ultimate in what  
23 you need in the processing plant, but there has been no  
24 showing that I have seen, that putting them in retail,  
25 first of all, there has been no showing that there is a  
26 problem in retail. But, even if you assume that there  
27 is some unstated problem in retail, this may not even,



1 it may not even be the answer to the problem.

2 But, I did have a couple, I know we are  
3 beating one of the points that I brought up to death.  
4 And I know there are a lot of things that you want to  
5 cover, but, another issue that I would like to raise is  
6 the scope of what is being looked at. And I think  
7 Sandra brought that up as well. What we are talking  
8 about here, and I tried to -- a little bit earlier, is  
9 we are looking at one half of one criteria. There are  
10 six regulatory criteria and what constitutes retail,  
11 that are set out in Section 303.1 correspondingly in  
12 the poultry regulations. And that is one, I mean, that  
13 is one interpretation of an overall statutory  
14 exemption, retail exemption. And I think if you are  
15 really serious about saying, you know, what are the  
16 problems with the exemptions and how do we fix them, I  
17 think to look at that sort of a little -- with one of  
18 them, rather than to look at all of the exemptions that  
19 the Agency is faced at, is a little shortsighted. I  
20 mean, if you are really serious about fixing the  
21 system, again, look at the whole thing, look at the  
22 whole picture, look at the whole system, soup to nuts.  
23 Look at all of the exemptions and look at them in  
24 their entirety and see, you know, how do they work, how  
25 do they affect, where should the resources be put, how  
26 can they make it better. I think just looking at this  
27 one little piece is, is, you know, it is not really

1 taking good advantage.

2 MR. LAFONTAINE: Well, it is the same answer I  
3 gave, Bernie and it may not satisfy you, but, this is  
4 the piece of the big puzzle we have been asked to deal  
5 with. And so --

6 MS. WHITE: My response back, this isn't, you  
7 know, this is real interesting, but can we really look  
8 at this in a vacuum, can we really analyze the effect  
9 of changing the HRI portion of the retail definition  
10 and determine whether that is going to make it  
11 sufficient or any impact on food safety?

12 MR. GOVRO: I agree. You call that the piece  
13 of the pie that we were given. I think we ought to  
14 send the piece of pie back and say, we want a different  
15 kind and sent us the whole thing, because this is a  
16 much bigger issue. And everything that I read and hear  
17 about in food safety and integrated food safety system,  
18 is that we are going to risk based, science based  
19 systems. And, and we are not doing that here. And I  
20 think it is the wrong question to ask and I think,  
21 everybody around the table is seeming to say risk base,  
22 that is what we need to do and take a look at the whole  
23 system. That is my recommendation.

24 MR. NEAL: Excuse me, go ahead, go ahead, Dan.

25 MR. LAFONTAINE: Other comments?

26 MR. NEAL: Well, I appreciate, you know what,  
27 and I don't care, Michael and I had this conversation

1 before, I don't care if the state does it, or the  
2 Federal Government does it, but it needs a change and  
3 they need to come under some guidelines. They need to  
4 come under some sanitation standards.

5 MS. ESKIN: The retailers.

6 MR. NEAL: Retailers.

7 MS. ESKIN: Retailers.

8 MR. NEAL: Retailers do. Yeah, and I don't  
9 care if the state does it. They both don't need to go  
10 in there, one or the other take it. That, you know, I  
11 really agree with you on that. That is ridiculous, you  
12 know, we are wasting time and spinning our wheels, but,  
13 but, it needs to be, we may have just part of the pie,  
14 but it is the only part we have here, and we are trying  
15 to deal with it. I mean, the gap here is awful big.  
16 There is a lot of product going out without any  
17 regulation on it at all. And it is not the economic  
18 regulation.

19 MR. LAFONTAINE: Sir?

20 MR. HARRIS: Joe Harris. I think, we  
21 represent primarily both state and federal inspected  
22 plants, although, kind of like Bernie, some of our guys  
23 do have retail operations as well. And I think the  
24 point that we would like to make in this discussion is  
25 that we are dealing with an issue here, we are trying  
26 to use a science based approach to tweak a --

27 MS. ESKIN: A non science list.

1 MR. HARRIS: A non science, there is 99  
2 percent economic in its nature. And we see no food  
3 safety benefit, whatsoever, to the proposed changes to  
4 the retail exemption.

5 Now, from an economic perspective, and an  
6 equality and all that.

7 MS. ESKIN: Fairness.

8 MR. HARRIS: Our members would definitely have  
9 an issue with that, but, we, you know, we don't see a  
10 science based reason to even have a retail exemption,  
11 but that is water under the bridge and no need to worry  
12 about that at this point. Our point would be that what  
13 is being proposed about changing it is not a safe,  
14 would not have a major impact one way or the other on  
15 food safety. It is more of an economic issue to our  
16 members.

17 MR. HOLMES: But, support --

18 MR. HARRIS: Pardon me?

19 MR. HOLMES: But, what is your reaction to the  
20 new thinking?

21 MS. ESKIN: Is it better than what it is right  
22 now, given that it is limited?

23 MR. HARRIS: I haven't talked with all my  
24 members on this, I am going to speak for me at this  
25 point and not for all my members. My reaction to the  
26 new thinking is we are chasing our tail in a circle  
27 that we gain nothing by it.

1           MR. LAFONTAINE: Well, as a committee member,  
2 I take my chairman hat off for a minute, I disagree  
3 with you. I think that this is a food safety issue for  
4 the reasons I mentioned, that in the rulemaking in this  
5 country we have decided there are certain things that  
6 are essential elements to put out safe meat and poultry  
7 products.

8           And the second point is as I pointed out this  
9 morning, under this retail exemption, it is not a small  
10 issue. It is up to 45,000 dollars worth a year per  
11 establishment. And with a little arithmetic, that  
12 turns out to be a 140,000 meals from one establishment.

13          So, I, I disagree that this is a small issue. It is a  
14 big issue when you take that number of servings and  
15 multiple that across the country with the  
16 establishments that are doing this.

17          MR. HARRIS: I don't believe ever indicated it  
18 was a small issue. And what I said was I see no basis  
19 in food safety to even have a retail exemption. So, I  
20 do think it is a food safety issue, but the problem is  
21 that the changes we are proposing, don't really deal  
22 with the safety of it. I mean, we are changing maybe  
23 how we define some of the definitions in retail  
24 exemption, but, we are really not still addressing the  
25 safety of the product with these changes that are being  
26 suggested.

27          MR. LAFONTAINE: Well, once again --

1           MR. HARRIS: I agree with you that it is a big  
2 issue, though.

3           MR. LAFONTAINE: Once again, I disagree with  
4 you, because if you change that definition, then those  
5 establishments that want to do wholesaling, as  
6 retailers want to do wholesaling, will have to be under  
7 inspection and they will have to have these food safety  
8 elements as part of their operation.

9           MR. NEAL: And I will agree one thing, I think  
10 that we probably don't have, like Michael said, we  
11 don't have all the pieces of the puzzle, even though  
12 this is what we are dealing with now, this is part of  
13 it and it is, we don't have all the pieces of the  
14 puzzle and, but we can work around that, I think.  
15 Because I think it brings up, this does bring up, I  
16 agree with him, it does bring up food safety issues.

17           MR. HOLMES: Dan, I would concur with what you  
18 said. I think in, although they are removing an  
19 exemption, the way it addresses food safety is that if  
20 you still want to apply, you either have to play by  
21 these rules, or you get out of the game and it is  
22 picked up by somebody that is playing by these rules.  
23 Therefore, those 144,000 meals or whatever, are now  
24 under a HACCP science based inspection process before  
25 it goes to the final consumer, that it is not under  
26 this. So, in that aspect, it does reach food safety,  
27 but they are not addressing food safety by the way they

1 are going about it. It is kind of a way to get there,  
2 but they do get there.

3 MR. NEAL: We don't have all it, you are  
4 right.

5 MR. LAFONTAINE: Okay. Its past nine o'clock.

6 MS. ESKIN: Eight o'clock.

7 MR. LAFONTAINE: I see a couple of hands. Did  
8 you want to -- I want to take a tally who wants, do you  
9 want to make a comment?

10 MS. KOSTY: Just briefly.

11 MR. LAFONTAINE: And do you, also? So, I will  
12 take two more comments.

13 MS. WHITE: One final remark.

14 MR. LAFONTAINE: Okay. Three final comments.  
15 And please be as brief as you can and so we can  
16 finalize the discussion and try to get to our report.  
17 So, Ma'am, identify yourself, please.

18 MS. KOSTY: I am Lynn Kosty, I am with the  
19 American Meat Institute. I just wanted to make one  
20 brief comment. I think this has been touched on pretty  
21 well. But, this is an issue of fairness. And everyone  
22 here feels like they have been slighted by the system,  
23 you know, it is not fair to me, you know, I hear it  
24 from our members all the time. And this isn't an issue  
25 of fairness. It is not. It is an issue about consumer  
26 safety and what is best for consumers. And overall in  
27 that regard, what is best for our industry. And I

1 think that that needs to be the foremost thing in  
2 everybody's mind.

3 In addition to that, how many of us have sat  
4 around the table before and have said, there isn't  
5 enough scientific evidence, you, guys, are creating  
6 regulations and you are changing things without giving  
7 us an adequate chance. Well, I think the same in this  
8 particular circumstance, should go to the benefit of  
9 the retailers and the fact that we don't have all the  
10 facts. And I think that it is, it is pretty unfair of  
11 us to suddenly change the rules for them without giving  
12 them the adequate information they need.

13 And finally, in addition to that, I would  
14 also say that there has been mention of all of these  
15 things listed over here and the impact that it has it  
16 had on public health. I would challenge anyone in this  
17 room to come back and show me exactly how anyone of  
18 those things is related to a decrease in illness in the  
19 public health sector.

20 MR. NEAL: It is a way of life.

21 MS. KOSTY: It is a way of life.

22 MR. NEAL: It is an attitude, it is a system,  
23 it is a trading tool.

24 MS. KOSTY: And it is --

25 MR. NEAL: And I believe that, I believe that  
26 and I will believe that to my grave, and believe me,  
27 probably 10 years ago, I would say USDA can kiss my



1 butt, but no, serious, you know what I am saying. All  
2 of sudden you come up with these changes. I am  
3 serious. And that is just a short comment, but, you  
4 know, we were clean, but I am sorry, I am off the  
5 committee, I can see it now. But, I really do, and I  
6 believe that and I think it becomes an attitude.

7 MR. HOLMES: What you are saying you are a  
8 better plant now because of it, though?

9 MR. NEAL: That is exactly right, and I have  
10 said this, haven't I? You know, it may not be the  
11 greatest system in the world, but you know what, we do  
12 it better and cleaner and we were always clean. We just  
13 do a few more things that we never did before. My  
14 employees have a better attitude. They don't, they  
15 don't drop the ball occasionally. I say, this is the  
16 way it is done, this is the way we do it. We have a  
17 basic operation, so I can judge this. A lot of  
18 companies, plants and things, it takes longer, they are  
19 big. They are bulky. They have hundreds of thousands  
20 of yards of plant. We don't. So, I can watch this  
21 with 10 employees and I can watch, we wear hair nets in  
22 the cooler. No, we spray it down with bleach. No, we  
23 do this, we never used to do that. Okay, we would wipe  
24 it, wash it with soap and water, but we are better. It  
25 is an attitude. And I don't know if that was the  
26 concept originally, but it is an attitude to be safer.

27 MR. GOVRO: But, John, how often do you think

1 you need to have a USDA inspection?

2 MR. NEAL: Oh, but, I truly believe this,  
3 because I think it is a waste of dollars because we are  
4 following this guideline, we have gotten that attitude,  
5 and I don't think you should have one come out maybe  
6 every quarter, in my risk, risk, in my case. Now, if  
7 you have chicken plant running every day, you need some  
8 inspectors there. Okay. But, I am not saying you need  
9 as many and they need to have the guidelines and let  
10 you run your operation like this was set up to run.

11 MR. GOVRO: Unless you do less than 20,000  
12 birds.

13 MS. ESKIN: Question, just a response. The  
14 bottom line is you don't want us to change. There are  
15 lots of clauses and --

16 MS. KOSTY: Well, I think that the bottom line  
17 is, I think that it is too, I don't think we have good  
18 enough handle right now on where we are and what kind  
19 of effect we have had on public health to be requiring  
20 changes further in the system.

21 MS. ESKIN: Meaning this particular exemption.

22 MS. KOSTY: And not particular --

23 MS. ESKIN: -- just state awareness in your  
24 view.

25 MS. KOSTY: I think that until there is more  
26 research done as to what kind of effect and until you  
27 can actually pinpoint things and I mean, you are going

1 to hear from OMB, too, show us exactly what are you  
2 going to get from this. What is the exact output you  
3 are going to get? What kind of savings? What kind of  
4 outcome on public health? And until you have that, you  
5 know, I just, I think that this is dead in the water,  
6 especially with the kind of resources you are talking  
7 about, to put together a system like this. I mean, it  
8 is just, it is a huge undertaking, and I just --

9 MS. ESKIN: To limit the exception, you are  
10 saying?

11 MS. KOSTY: Yes. To have these other  
12 wholesalers come under federal inspection, if you are  
13 going to carry it out the way it is being carried out  
14 in plants today. And that is, I mean, I would just  
15 caution you and just some things to think about.

16 MR. LAFONTAINE: Ma'am?

17 MS. HOLLINGSWORTH: I came in here not knowing  
18 exactly where I fell on this, but as I have listened to  
19 the discussion and I have listened to your comments,  
20 Deborah, you are right, there is no scientific basis  
21 that I have heard even that says that retail products  
22 are less safe than wholesale products. However, logic  
23 tells you that case regged products that are abundant  
24 in the marketplace today, are there because they have  
25 improved safety procedures that make them. And they  
26 last in the grocery store longer than the stuff,  
27 generally speaking, that stuff is grounded or packaged

1 in the back room of the grocery store.

2 If we want to go and get the data, I think we  
3 can get it and I think it will prove that there  
4 probably is a safety difference. The question is do we  
5 want our consuming public to have that piece of  
6 information. And I don't think as an industry and I am  
7 talking of the total food industry, I am not sure that  
8 is in our best interest.

9 MS. ESKIN: So, which piece of information,  
10 you are saying that --

11 MS. HOLLINGSWORTH: That if, indeed, what I  
12 said logically comes back, that the federally inspected  
13 processes have cleaner products, safer products.

14 MS. ESKIN: Safer.

15 MS. HOLLINGSWORTH: Do you want the general  
16 public to know that?

17 MR. HOLMES: But, the point is, though, and  
18 Deborah is correct, it is not adulterated.

19 MS. HOLLINGSWORTH: Yes.

20 MR. HOLMES: And that is, so, I would concur  
21 with you, Anne, I think we can get the data and get it  
22 relatively quickly and easily, if, if that is something  
23 that this Committee feels needs to be done, to say,  
24 hey, this is a great idea, but, you know, we think it  
25 makes sense, but, let's make sure that, you know, so I  
26 think you can do that and I agree with you, it may not  
27 be good for our industry to have that data plastered on

1 the front page of, I am telling you. But, I caution if  
2 we ask, if we ask the Agency to either get the data  
3 that is already available, if it is available, or go  
4 find the data, you have got to be careful because  
5 number one it is not adulterated product. Is it more  
6 safe, if it is from a federal plant, well, if it is  
7 cooked properly, no. So, you know, you -- it is a  
8 difficult issue.

9 MS. HOLLINGSWORTH: And I would concur with,  
10 to finish my comments, I would concur that I am not  
11 sure you can look at this in a vacuum, that, that you  
12 really need to look at the whole picture. And I am  
13 just very concerned and I would like to caution the  
14 Committee to think about, Deborah is actually correct  
15 in asking for the data. But, the question I have is do  
16 we really want to know that answer and do we want to  
17 run the risk of letting the consumer, public see the  
18 answers to those questions. No matter which way it  
19 goes.

20 MS. WHITE: I would say yes. But, and like I  
21 said before, I think it should be risk based, we should  
22 have the data. But, the one, I promise not to go on  
23 and on, but, the one point I did need to respond to was  
24 John's statement. I think you said that there are a  
25 lot of retailers that are uninspected. That there is  
26 no inspection. That is not true. State and local are  
27 everywhere.

1 MR. NEAL: Well, Mike and Dan, both, that goes  
2 without saying. I fully know that is true.

3 MS. WHITE: Okay. I just wanted to make sure  
4 the record shows --

5 MR. NEAL: No, I am friends with these  
6 gentlemen and we have discussions about and I am fully,  
7 no, my state inspector comes in, he doesn't have much  
8 to do, he checks my monitors and looks at my retail  
9 area. That is it. But, he does a good job. He is a  
10 nice fellow and he is a smart guy. I understand that.

11 MS. WHITE: Thank you.

12 MR. LAFONTAINE: Okay. We need to, I think we  
13 have given a fair amount of time to air everybody's  
14 concerns, so, Committee members, if it is okay with  
15 you, we will try to wrap this up.

16 John, and prepare our report.

17 I guess, the first thing we do, we didn't  
18 answer any of the FSIS' questions. Maybe the first one  
19 we certainly dealt with it, but --

20 MR. HOLMES: I think we support the Agency's  
21 thinking from an economic standpoint, but we are not  
22 sure whether or not there is enough information to  
23 show, although, commonsense would tell you if you were  
24 under this, you would have a safer product, but we  
25 don't have the data "to show it per se".

26 MR. LAFONTAINE: I think you can flip that  
27 around and say, is there data to show that what we are

1 doing now is safer than if we did, if we put it under  
2 inspection? And you don't have that either way. My  
3 point is that the wisdom of this country has been that  
4 to produce safe meat and poultry. There are certain  
5 essential elements that need to be in place. And that  
6 is list that I put forth. And using that as a basis,  
7 that is my justification for saying that for anyone  
8 that is wholesaling product, that the standards should  
9 be the same. That is based on food safety issues.

10 MR. HOLMES: We can say, we concur with the  
11 Agency's thinking. We don't have the data, but because  
12 of the years gone in putting together these things, it  
13 would make, it would lead to the conclusion or the  
14 assumption or whatever you want to call it, that this  
15 would increase food safety in those establishments  
16 selling wholesale.

17 MR. LAFONTAINE: Right.

18 MR. HOLMES: I mean, that is basically the  
19 answer to bullet one, I think.

20 MR. NEAL: You can say at best we don't have  
21 all we need.

22 MR. HOLMES: Well, I think we do tell them  
23 that, hey, you know, you have only given us a portion  
24 of something to wrap our hands around, and really there  
25 is a much bigger --

26 MS. ESKIN: We can address that, generally,  
27 but we have to start with this particular --

1           MR. HOLMES: We are going to do what you asked  
2 us to do, however.

3           MS. ESKIN: Which is economically, it seems to  
4 make sense.

5           MR. GOVRO: I think what you are getting at,  
6 Marty, gets to really the question two, additional  
7 factors, risk based systems, do we have the data, you  
8 know.

9           MR. LAFONTAINE: All right.

10          MR. GOVRO: And my issue is in the --

11          MR. HOLMES: We talked briefly about mail  
12 order, where it falls into this.

13          MR. NEAL: Shipping.

14          MR. HOLMES: And that is certainly additional  
15 factor.

16          MR. NEAL: Shipping, I didn't get an answer on  
17 that. I mean, are these, let me ask someone, are these  
18 people, all sell meat and take it across interstate  
19 lines.

20          MR. LAFONTAINE: They can, yes.

21          MR. NEAL: They can.

22          MS. ESKIN: And if they are exempt, they are  
23 exempt, right.

24          MR. LAFONTAINE: It makes no sense, but, they  
25 can.

26                 I will just give you a quick example, In  
27 Sheraw, South Carolina, which sets on the North



1 Carolina's borders, there is a federal plant there that  
2 we cover, that cannot ship his product, well, he used  
3 to, he had to go federal to be shipping across, but he  
4 was a state plant. But, there are, there is a grocery  
5 store that does under HRI, that is shipped all the time  
6 across. So, that makes no sense.

7 MR. HOLMES: There are additional factors.

8 MR. LAFONTAINE: Let me, before we go to two.

9 I am going to volunteer to write a few sentences on  
10 the answer to number one, if that is okay. And then we  
11 will get those in writing and circulate it to the  
12 Committee and reach a consensus.

13 MS. ESKIN: Okay.

14 MR. LAFONTAINE: Marty, on number two, what  
15 were you about to say?

16 MR. HOLMES: I was just saying, I mean, there  
17 are, once we get to number two, there are additional  
18 factors or concerns that should be considered by the  
19 Agency.

20 MS. ESKIN: Yeah, but it is not simply, those  
21 factors don't simply go to this particular policy.  
22 They got to much larger and you can draw lots of  
23 circles. They go to the whole, all the exemptions  
24 dealing with retail, and then you can keep going and  
25 going. So, as far as this particular policy, there is  
26 a question that we are asking, that we were asked to  
27 looked at, and I am not sure we have more --

1           MR. LAFONTAINE: What, I think what I hear you  
2 are saying, is you would like to rephrase that question  
3 and say, should be considered by the Agency in looking  
4 at exemptions in general or words to that effect. Is  
5 that what you are saying, Sandra?

6           MS. ESKIN: Well, yeah, we could go as large  
7 as we want here.

8           MR. LAFONTAINE: Yes.

9           MS. ESKIN: But, you know, again, this is just  
10 such a small piece, you can look at exemptions, you can  
11 look at the whole system.

12          MR. LAFONTAINE: Yeah, well, one that was  
13 briefly brought up today, which I am glad we stayed  
14 away from, is product exemptions, you know.

15          MS. ESKIN: Right.

16          MR. LAFONTAINE: What is exempted from  
17 inspection, what isn't? That is a whole other issue.

18          MS. ESKIN: At the very least, you are looking  
19 at -- in number two, other factors not simply --

20          MR. LAFONTAINE: Marty, do you feel you have  
21 enough on that one that you can write a sentence or two  
22 or three on what you think needs to be looked up beyond  
23 the, are you comfortable with that?

24          MR. HOLMES: In what the additional factors  
25 are?

26          MR. LAFONTAINE: Let me rephrase the question  
27 and then see if you are comfortable with answering it.

1           Are there additional factors or concern that  
2 should be considered by the Agency in evaluating  
3 exemption policies? In other words, rather than  
4 revising this policy, I have expanded it to exemptions  
5 in general. In other words, you would be writing a  
6 paragraph that deals with concerns beyond this retail  
7 exemption that need to be looked at. Are you  
8 comfortable with writing that?

9           MR. HOLMES: With everybody's help, sure.

10          MR. LAFONTAINE: Say again?

11          MS. ESKIN: With everyone's help.

12          MR. LAFONTAINE: Yes, well, we are, I am  
13 trying to get some, you know --

14          MR. NEAL: Just four sentences. Just four  
15 sentences. I am sure you can put four together.

16          MR. HOLMES: Four words together?

17          MR. LAFONTAINE: On item, Question 3 --

18          MR. NEAL: I don't think we can answer that.

19          MS. ESKIN: No, we can't, the Agency has to.

20          MR. NEAL: We don't have any, we would have to  
21 have lots of data and how many have you got, I mean,  
22 you don't.

23          MR. LAFONTAINE: That is about what I was  
24 going to say, so, I think our answer there is that  
25 there is insufficient information to answer that.

26          MS. ESKIN: Do we want to say anything to the  
27 effect of that the Agency should make the

1 determination? That they have to find out -- a change  
2 in the policy.

3 MR. LAFONTAINE: Yes, I think that is a fair  
4 statement. And this goes back to rulemaking, because  
5 this is a change to a rule, would be a change to a  
6 rule. So, it would have to go through those kind of  
7 widgets. Do you want to write that?

8 MR. O'CONNELL: Dan?

9 MR. LAFONTAINE: Yes.

10 MR. GIOGLIO: Can I just go back there to  
11 that Question number, number three? Certainly the  
12 reason we asked that question is because we don't have  
13 the hard data.

14 MR. LAFONTAINE: Right.

15 MR. GIOGLIO: And I think we are rarely  
16 admitting that. Can I ask the Committee, though, for  
17 their sense of, based on your own experiences with, you  
18 know, within your area, and within your states, and so  
19 forth and associations and so forth, what, what do you  
20 think would be the effect? I mean, what we are really  
21 asking for is --

22 MR. HOLMES: You have a big number in the  
23 first answer, and a smaller number in the second.

24 MR. O'CONNELL: And I am not asking you --

25 MR. HOLMES: What that number would be, I  
26 don't --

27 MR. GIOGLIO: -- a hard number on that, but,

1 you know, what are your assumptions and it will help  
2 then guide us in whatever further actions we are going  
3 to take, in, you know, even in the way of how we would  
4 go about collecting this data.

5 And John, I don't know if you have anything  
6 to add there, but, that is, if you can there, but that  
7 is, if you can --

8 MR. O'CONNELL: Your sense would help, would  
9 help us, even think about how we would go about  
10 collecting that sort of data.

11 MR. NEAL: Well, I would say your district,  
12 district supervisors would be the best way.

13 MR. HOLMES: Talk to FMI.

14 MR. GOVRO: I have a question about the  
15 question. How many exempted firms would be placed  
16 under inspection as a result of this revision? First  
17 of all, we don't know what the revision is. And second  
18 of all, are you asking how many firms that are doing  
19 this now would have the inspection or how many do we  
20 think would stay in the wholesale business and go under  
21 inspection? I think that would be a very small number.  
22 I think everybody would get out except a handful.

23 MR. GIOGLIO: To get out of the --

24 MR. GOVRO: They would get out of the  
25 wholesale, you would drive them out. It could happen.  
26 Yes, the little local butcher boy shop.

27 MR. NEAL: It would put a burden on the state.

1 If they got out, they would coming to the state.

2 MR. GOVRO: Well, that is the handful that I  
3 think would, that might stay in.

4 MS. ESKIN: A handful of --

5 MR. LAFONTAINE: I think he is right that, if  
6 you put a level playing field out there as far as, a  
7 lot of the folks that are in it, would say, I am just  
8 not going to do that.

9 MR. GOVRO: But, even if you took, I am sorry,  
10 Charles, go ahead.

11 MR. GIOGLIO: I guess simply what we are  
12 asking, if you, if you -- Don't have the 25 percent,  
13 right now, what we are simply trying to do here, okay,  
14 is to draw that line between what really is wholesale  
15 and what really is retail. And right now we are saying  
16 we know they are selling wholesale, but we allow up to  
17 25 percent of their total processing sales to be  
18 wholesale sales and we sort of say, okay, we are not  
19 going to, you know, enforce that, for practical  
20 reasons, and all the reasons that you stated, you know,  
21 earlier on. If, if we were now to draw the line in the  
22 way we are describing it here --

23 MS. ESKIN: But where? It is not 25 percent?

24 MR. GIOGLIO: Right, not 25 percent.

25 MS. ESKIN: Well, is it 10 percent, five  
26 percent?

27 MR. GIOGLIO: No, nothing. No percent.

1 MS. ESKIN: None at all.

2 MR. GIOGLIO: As, in other words, state that  
3 if a company is selling wholesale.

4 MS. ESKIN: Any amount.

5 MR. GIOGLIO: They would, in fact, any amount,  
6 they would in fact then be under inspection, would be,  
7 you know, expected to be under inspection. We are not  
8 moving the line to 15 percent, or 10 percent. This  
9 would more radically go back to saying, okay, if you  
10 are selling wholesale, you are selling wholesale. Now,  
11 how are we are going to measure selling wholesale is  
12 the same terms, price, you know, conditions of sale.

13 MR. HOLMES: I think, I think you are right in  
14 this discussion that many people will say, I don't want  
15 that gain. But, you have got, if you look at the  
16 number of wholesale clubs in this country, that will  
17 be, have a significant impact on FSIS if they had to  
18 start covering those plants. So, when I say a big  
19 number, I don't think every retail grocery store is  
20 going, that is selling wholesale would continue, but I  
21 think you do have some people that that is a  
22 significant piece of their business.

23 MR. LAFONTAINE: Yeah, but I offer this, that  
24 until the rules were changed or the interpretation was  
25 changed last January as far as pass through, those  
26 wholesale clubs, the Sam's clubs, Price's, whatever,  
27 are across the country, were under inspection. So, it

1 is inspection work load that was lost in January and it  
2 would come back. So, we have been there already in  
3 South Carolina, overnight we lost six plants because of  
4 that change in the, so, yes, it will be an increase but  
5 it is a work load that we were covering before. And,  
6 you know, it is no free lunch, but, still it is not  
7 totally a new work load.

8 MS. ESKIN: Can I ask a question? A  
9 follow-up.

10 MR. NEAL: If I went retail, I mean, retail  
11 exempt, I have no reason to be USDA inspected, pay  
12 overtime, things like that. I mean, really, logically,  
13 dah, you know, nothing personal, it is just a dah  
14 situation. You have to commend as a state inspector,  
15 as it is right now, state inspector comes in my store,  
16 he covers retail up front, that is all he has got,  
17 right there. Processing room, cooler, shipping area,  
18 bathrooms, is all USDA.

19 MR. GOVRO: But, for every one of you that we  
20 would gain, there would be 10 Costco and Sam Clubs.

21 MR. NEAL: Well, well, no, I am just saying  
22 that you would gain a little more, every state would  
23 probably a little bit. You would just have more to  
24 inspect at our plant, more areas to watch.

25 MS. ESKIN: Can I just ask just some final  
26 question, back to FSIS? Obviously this is not the  
27 first time when you proposed to a rule change of policy



1 that you have to gauge the impact on industry. You  
2 have to figure out where things fall. Where do you get  
3 this data normally or in a situation, where would you  
4 get this data? Trade associations, do you have your  
5 own --

6 MR. GIOGLIO: I am going to let John answer  
7 that.

8 MR. O'CONNELL: It depends. It depends on the  
9 rule. Sometimes we can go through trade associations.  
10 Some of it is past information we have. Sometimes the  
11 economists use raw, raw meat data about meat, poultry  
12 industry that we have and their own. So, it is  
13 different. One of the things we have been trying to do  
14 in the, in FSIS, and OPPD is to improve the quality of  
15 the data we use for our economic analysis that we have  
16 to use with rulemaking.

17 MS. ESKIN: Are you concerned that it is going  
18 to be difficult to find this data? This breakdown  
19 between whose --

20 MR. O'CONNELL: I haven't thought that much  
21 about it. It maybe -- There may be some difficulties  
22 in obtaining this data. The practical difficulties, if  
23 we need to go through OMB, but --

24 MR. LAFONTAINE: If I may mention a key item,  
25 is that at a retail establishment that is operating  
26 under retail exemption, is required to keep records of  
27 the sales, wholesale sales that they make under that.

1 Now, that is not a perfect world, but I can tell you in  
2 South Carolina, because we have got an aggressive  
3 compliance program, we can tell you exactly how many  
4 are operating under that now.

5 MS. ESKIN: And you can get to that data?

6 MR. LAFONTAINE: Yeah, for our state.

7 MR. O'CONNELL: I also understand that --

8 MR. LAFONTAINE: But, that is not true  
9 everywhere.

10 MR. O'CONNELL: That is right. Not every  
11 state is on the ball as South Carolina, as I understand  
12 it. But, that is a possible venue.

13 MR. LAFONTAINE: I am not trying to -- There  
14 are probably some out there operating, we don't know  
15 about, that are not keeping records, but.

16 MR. O'CONNELL: That is a good suggestion.

17 MR. LAFONTAINE: But, we have, in some states  
18 you would have a good start. I go back to what I said  
19 earlier, or someone said earlier, that when push comes  
20 to shove, that some would stay and many would not, if  
21 the standards were the same.

22 On this last question, number four, it is  
23 really very similar to Question number three. In other  
24 words, the impact on state programs would similar to  
25 federal because it depends on how many stay and how  
26 many don't.

27 MR. GOVRO: Well, there are other issues.

1 MR. LAFONTAINE: Say again?

2 MR. GOVRO: Well, there are other issues.

3 MS. ESKIN: Other issues.

4 MR. LAFONTAINE: Are you talking about state  
5 inspection in general and to include Department of  
6 Agriculture, I mean, the meat markets?

7 MR. GOVRO: Having two inspectors come in, to  
8 any given establishment, you know, USDA guys over here  
9 and the state guys over here, doing the bakery and the  
10 deli and that is not a popular except and if we have to  
11 go forward with that, we will take a lot of heat from  
12 the legislative and from industry. So, in the system  
13 it works real well, so, that is not good.

14 MR. LAFONTAINE: Well, as I mentioned to Mike,  
15 once again, I used my state as an example, for those,  
16 we have in South Carolina about six retail markets, not  
17 Sam Clubs, but, that are under state inspection because  
18 they are over the limit. And we have an MOU with our  
19 Department of Health that if we are inspecting the meat  
20 market, they defer to us. So, that is one, it can be  
21 worked out on a state by state basis that you don't  
22 duplicate the inspection.

23 MR. GOVRO: No, no, because then we would have  
24 to ask USDA, we don't have a state meat program, so,  
25 USDA would be going into the meat market and we would  
26 have to give them the inspection and the rest of the  
27 store, in order to eliminate that duplication and they

1 are not going to do that.

2 MR. LAFONTAINE: Yeah, well, Mike I am not  
3 saying it is, that that is the solution across the  
4 board. I am saying that, I am giving one example of  
5 how it can be worked out.

6 MR. GOVRO: There could be some instances  
7 where that would work. There are others and speaking  
8 on behalf of AFTO and we haven't discussed this in  
9 particular, but, as a member there, I know that the  
10 state programs in general are very much opposed to USDA  
11 making inspections at retailers.

12 MR. LAFONTAINE: Okay. So, I have got folks  
13 who are going to work on the first three. I am not  
14 sure how to handle this fourth one.

15 MR. HOLMES: Mike, you are the man.

16 MR. LAFONTAINE: Okay. Let's do that then.

17 MR. NEAL: I didn't get one.

18 MR. LAFONTAINE: I am going to make up a  
19 different question.

20 MR. NEAL: I wish somebody would turn the heat  
21 up.

22 MR. HOLMES: Did anybody, even in the audience  
23 have some input on this number three?

24 MS. WHITE: Yes.

25 MR. HOLMES: Deborah, I thought you might. I  
26 mean, on number two, excuse me, on number two, number  
27 two.

1 MS. WHITE: Additional factors?

2 MR. NEAL: Actually we have rephrased to say  
3 there are additional factors or concerns that should be  
4 considered by the Agency in revising and evaluating  
5 exemption policies in general.

6 MS. ESKIN: Yeah, food safety, data.

7 MR. NEAL: All right, I have got that one.

8 MS. WHITE: -- continue, the statute, what  
9 the statute says, what the statutory limitations that  
10 are currently in place are, not just --

11 MS. ESKIN: Again, those factors would only be  
12 considered for this itty bitty exemption.

13 MS. WHITE: Right.

14 MS. ESKIN: And in a way it is somewhat, for  
15 lack of a better word, unfair, to subject this little  
16 thing, this little interpretation of a provision to all  
17 of those factors, the whole system.

18 MS. WHITE: Well, the tail wagging.

19 MS. ESKIN: I know, I know, but, right, right.

20 MS. WHITE: Right.

21 MS. ESKIN: But, then you come down those  
22 questions, is the burden on the Government, that wants  
23 to change the policy to show that the change is going  
24 to result in safer food? Or, or is the burden on the  
25 currently exempted industry, entities to show why they  
26 think that --

27 MS. WHITE: I think the burden generally in

1 the laws is on the movement, it is on the one who wants  
2 to make the change.

3 MS. ESKIN: Well, I shouldn't use a legal  
4 context. This isn't like a trial. I mean, the  
5 Government has, the Government is making a policy  
6 change, the Government is --

7 MS. WHITE: But, they should have a reason for  
8 making the change.

9 MS. ESKIN: No question, but the reason has to  
10 be rational.

11 MS. WHITE: Right.

12 MS. ESKIN: I mean, it is a very loose, but,  
13 but, you know, it is a very, depending on the court, it  
14 could be a very discretionary standard.

15 MS. WHITE: Right.

16 MS. ESKIN: As long as there is a reasonable  
17 basis.

18 MS. WHITE: Well, it can be arbitrary and  
19 capricious.

20 MS. ESKIN: Yeah, but the Government could say  
21 here, okay, we don't have the food safety data, but  
22 this is the system that it is right now or we are going  
23 to look at this in the narrow economic issue of, you  
24 know, you have got a situation where you got certain  
25 entities subject to inspection, keeping with other  
26 entities that aren't.

27 MS. WHITE: I don't think the statute, FMIA

1 and PPAA do not envision USDA equalizing the  
2 marketplace.

3 MS. ESKIN: Then what was the original goal of  
4 this particular exemption, except for it to be  
5 economic? Right.

6 MS. WHITE: The goal of the exemption and I  
7 haven't looked at the legislative history in a very  
8 long time, but my understanding that the purpose of the  
9 statutory exemption was recognizing that there are  
10 certain operations that are conducted in retail, that  
11 don't have the same impact on food safety as other  
12 things. I mean, this comes out of a determination  
13 that, first of all, the standard across the board is  
14 going to be the same. Everybody has to meet the same  
15 adulteration.

16 MS. ESKIN: Right, adulteration and branding,  
17 right.

18 MS. WHITE: Branding. In addition, Congress  
19 in its wisdom imposed an additional requirement on what  
20 happens in establishments that do salting, curing,  
21 slaughtering, and that, and in that sense, they said in  
22 addition to these general standards, we need to impose  
23 continuous inspection on these particular facilities.

24 MS. ESKIN: Right.

25 MS. WHITE: So, to then, to now say the  
26 Congress should also impose continuous inspection on  
27 retail, if the retail exemption should be there, that

1 retail should be added to the list. I think there  
2 needs to be a basis for saying that a change --

3 MS. ESKIN: But, we are not getting rid of the  
4 retail exemption. I think what we --

5 MS. WHITE: Well, certainly this body --

6 MR. BLAIR: I think they are reassigning,  
7 retail --

8 MS. ESKIN: Yes, exactly. I mean --

9 MR. BLAIR: Some of the items to, I am  
10 probably the only one in the room that was here when we  
11 implemented that law without any regulations and all we  
12 had were the statutes, the '67 and '68 and the  
13 legislative history. And what has evolved in the, in  
14 the exemption area, the retail exemption area is far  
15 beyond what we imposed the provision at that particular  
16 time. It was dealing with little plants that had off,  
17 a deli across the street and that was my son-in-law,  
18 so, I would be able to supply them. There is nobody  
19 else that will supply them. The conditions were  
20 extremely different than what they are now. Extremely  
21 different.

22 MS. WHITE: Okay. Then maybe a showing, maybe  
23 a comparison of how the conditions have changed and  
24 what the impact is on food safety. But, to --

25 MR. BLAIR: And what has happened is that  
26 there is a loophole created and they were a lot of  
27 people that used that loophole in order to expand and



1 base their business upon that loophole. And now you  
2 come back and say, because that exists there, I mean,  
3 it is, you have got to go back to the original intent,  
4 if you are going to look at the law. And we were  
5 taking over the inspections in North Dakota before any  
6 regulation was written. All we had to go by was a list  
7 that I drew up on an airplane, flying back from  
8 Washington to Minnesota. It says retailers can do  
9 this, can't do that. But, there, just based on my, my  
10 interpretation of what I understood of the law and the,  
11 what went on in Congress in the past as to those laws.  
12 But, you had to have something to tell the operators.  
13 They deserved to know what they could and could not  
14 do.

15 MS. ESKIN: So, again, you are saying, again,  
16 that as conceived of 30 plus years ago, retailer was a  
17 very, was a smaller group of entities than what  
18 currently could be or is defined as retailer under  
19 this.

20 MR. BLAIR: They didn't exist in anything like  
21 what exists now.

22 MS. ESKIN: Right.

23 MS. WHITE: As far as the operations are  
24 concerned, though, it is little bit taken care of in  
25 the language of the statute, which limits operations  
26 that could be conducted to those that were  
27 traditionally or usually conducted at retails, though

1 it may --

2 MR. BLAIR: And at that point in history,  
3 large wholesale operations out of a retail front was  
4 not usual and traditional. So, it depends on the, the  
5 definition changes because the industry changed. You  
6 go back, you have to go back and look at what existed  
7 at that time to know what really the intent was.

8 MR. SHIRE: The thing is retail, retail is not  
9 the same. Any retail -- has changed a great deal in  
10 the last 30, 40 years. And that has to be taken into  
11 account. It is not a situation you refer to. It is  
12 different today.

13 MR. BLAIR: A lot of it gets back to the  
14 burden you talk about, the measures of adulteration,  
15 misbranding, you kind of compare that to the speed  
16 limit. You have a speed limit that applies to  
17 everybody in the state, but this county hires a bunch  
18 of officers and they get, and they really enforce and  
19 they control speed in that county and do a real good  
20 job of it. The other ones doesn't do that, and but,  
21 they have got the same lawyer, you are still breaking  
22 the law if you go over that speed limit.

23 MS. WHITE: Right, that is a argument for  
24 better enforcement, but, it doesn't mean your speed  
25 limit needs to be changed.

26 MR. BLAIR: No, but --

27 MS. WHITE: Because even if you lowered it

1 from 30 to 25, if you have got lousy enforcement --

2 MR. BLAIR: I think it is the, I think it is  
3 the argument of, of burden and level playing field.

4 MS. WHITE: All right, but that doesn't  
5 really, I mean, if the enforcement needs to be better,  
6 than enforcement should be better, but changing the  
7 speed limit isn't going to get you any better  
8 compliance in an area where you don't have aggressive  
9 enforcement. And the speed limit would remain  
10 unchanged.

11 MR. BLAIR: My point is that because retailers  
12 are subject to the adulteration and misbranding  
13 provision, doesn't mean that the same applying, the  
14 same degree of inspected establishment.

15 MS. WHITE: Well, enforcement and compliance  
16 needs to be better. That is not a change though, just  
17 because -- just because you change the requirements.  
18 You have to change your --

19 (Pause.)

20 (Whereupon, at 8:47 p.m., the hearing was  
21 concluded.)