

**American Association of Meat Processors
Eastern Meat Packers Association\
National Cattlemen's Beef Association
National Meat Association
National Turkey Association
North American Meat Processors Association
Southwest Meat Association**

June 11, 2008

Dr. Richard Raymond
Under Secretary for Food Safety
Jamie L. Whitten Building, Rm 227-E
U.S. Department of Agriculture
Washington, DC 20250

Dear Dr. Raymond:

The undersigned associations wish to convey our views on the potential Food Safety and Inspection Service (FSIS) policy to mandate that companies hold or control product pending receipt of agency test results for adulterants. We only just learned of the potential policy by means of the recent American Meat Institute submission.

Mandating product holding pending FSIS sample results has been a controversial issue for many years. We note that it was extensively discussed at the agency's public meeting on the recall process in December 2002 as well as at meetings of the National Advisory Committee for Meat and Poultry Inspection (NACMPI) in 2004 and 2005. At these meetings, various viewpoints were raised, including practical concerns and the impact on small and very small establishments. The 2005 NACMPI recommendation was to continue to encourage voluntary programs.

Regrettably, we have not seen this new potential policy and thus are unable to comment on any specifics. We do, however, have a variety of questions which heretofore have been unanswerable in discussing this issue. We would trust FSIS would not act precipitously while questions, such as those below, are not yet answered.

How has FSIS addressed the issue of products with a shelf life less than the amount of time required to conduct the analysis? If this issue has not been addressed, we question how FSIS can justify mandating the destruction of an entire day's production.

How has FSIS addressed the issue of small and very small establishments which produce product exclusively for same day delivery to local customers for immediate use? If this issue has not been addressed, we

question how FSIS can justify the interruption to the business and the possible loss of customers.

How has FSIS addressed the issue of ensuring that all product which should have been held has indeed been held? We lack complete information as to all recalls over the past several years. However, we know of at least one dozen occasions when the recall was not caused by the failure to hold product, but by the failure to hold all product the agency deemed implicated by the sample. We fail to see how the potential policy will prevent these recalls and thus would be an incomplete solution to the perceived problem.

How has FSIS addressed the issue of non-compliance, whether accidental or intentional? Under the existing Rules of Practice, if the failure to hold is treated as a violation of a regulatory control action, failure to comply with the potential policy will justify an immediate suspension of inspection at the establishment without prior notice. 9 CFR § 500.2(a)(5).

How has FSIS addressed the issue of its regulatory authority to mandate such control programs? We do note that FSIS has required an establishment to hold product pending the company's analysis under the *Listeria monocytogenes* regulation, but this requirement is only applicable when there were previous positive findings which provided a basis to hold. The potential policy here goes far beyond existing policy in that it would require holding when there is no evidence whatsoever as to whether the product may or may not test positive for an adulterant. In the past, FSIS has asserted that it could require the holding of products because, in the absence of the agency test results, the inspector could not make the determination that the sampled product is not adulterated.

If FSIS supports mandating the holding (or controlling) of product in the absence of agency laboratory results, has FSIS considered and addressed the implications this potential policy would raise? Could FSIS use the justification to mandate 100% testing at establishments that do not currently test but receive tested trim, such as raw ground beef at grinders?

We would trust that, given the significant impact such a substantive policy would have on establishments' rights and privileges, and the likelihood of irreparable harm, the agency will proceed in a deliberate and transparent manner before mandating holding of products pending FSIS sample results.

We look forward to continuing our working relationship with you and FSIS on this and other matters of interest.

Letter to Dr. Richard Raymond

Page 3 of 3

Sincerely,

Dr. Jay Wenther, for American Association of Meat Processors

Robert Hibbert, for Eastern Meat Packers Association

Dr. Elizabeth Parker, for National Cattlemen's Beef Association

Ken Mastracchio, for National Meat Association

Dr. Michael Rybolt, for National Turkey Federation

Philip Kimball, for North American Meat Processors Association

Dr. Joe Harris, for Southwest Meat Association