

Introduction

On July 25, 1996, FSIS published a final rule in the **Federal Register** entitled, "Pathogen Reduction; Hazard Analysis and Critical Control Point (PR/HACCP) Systems" (61 FR 38806). This rule established, among other things, pathogen reduction performance standards for *Salmonella* that establishments slaughtering livestock and poultry and producing raw ground meat and poultry products must meet. FSIS conducts an ongoing testing program to determine compliance with these *Salmonella* performance standards for classes of livestock and poultry products.

FSIS has received a petition from the Center for Science in the Public Interest (CSPI) requesting that FSIS post on its website all plant-specific test results for *Salmonella* in carcasses and raw ground meat and poultry products, and that FSIS post such test results in a timely and relevant manner as they become available. CSPI contends that consumers could use plant-specific *Salmonella* results posted on the FSIS website to determine whether individual establishments are meeting the *Salmonella* performance standard and could make informed purchasing decisions on the basis of that information.

In addition, numerous establishments and industry associations have advised the Agency that it would be very valuable for them to receive the results of each sample as the Agency finishes its analysis during the course of a *Salmonella* set. Timely receipt of this information, the establishments say, will enable them to more readily associate the results with the conditions in their plants at the time the samples were taken and will facilitate corrections and improvements in their operations.

FSIS has determined that, if it makes the results available to establishments on a sample-by-sample basis, the agency will not be able to protect the confidentiality of the results until the conclusion of the collection and testing of full sample sets, as is currently the case. The industry representatives have stated that the opportunities created by having the results available on a timely basis outweigh any disadvantages of the information being publicly available. The NACMCF has expressed similar views.

Based on its consideration of the petition, the NACMCF's recommendation, and its contacts with industry, FSIS is announcing its intention to modify its handling of

Salmonella testing results. The Agency requests comment on its plans.

Background

The Salmonella Performance Standards for Raw Meat and Poultry

In 9 CFR 310.25(b) and 381.94(b), FSIS has set out performance standards for the prevalence of *Salmonella* in livestock and poultry carcasses and raw ground meat and poultry products. FSIS samples and tests raw meat and poultry products in individual establishments to determine the prevalence of *Salmonella* in the products and to determine compliance with the *Salmonella* performance standards.

Prior to December 2001, FSIS used the sample results to directly enforce the performance standards in 9 CFR 310.25(b)(iii)(3) and 381.94(b)(iii)(3). These regulations state that failure to meet the performance standard in three consecutive tests "constitutes failure to maintain sanitary conditions and failure to maintain an adequate HACCP plan." The Agency stated that it would suspend inspection as a result of such a failure because it would not be able to find that the product of an establishment that had failed three sets in a row was not adulterated.

A decision in early December 2001 by the U.S. Court of Appeals for the Fifth Circuit in *Supreme Beef Processors, Inc. v. USDA*, however, limited FSIS' ability to directly enforce the *Salmonella* performance standards in grinding operations. Based on the court's decision, a grinding operation's failure to meet a *Salmonella* performance standard is not in and of itself a noncompliance. However, the failure may be an indicator of noncompliances in aspects of the establishment's total food safety program, such as Sanitation Standard Operating Procedures (Sanitation SOPs) and HACCP plans. Thus, FSIS now uses sample set failures as an indication that there is something wrong in the establishment's HACCP system, and that the system needs to be carefully evaluated by the Agency. However, FSIS does not initiate enforcement actions based on individual *Salmonella* testing results. In addition to the *Salmonella* set failures, FSIS uses other pertinent information in its evaluation of an establishment's HACCP system. This information includes, but is not limited to, summary reports compiled from the evaluations of reviews of the establishment's SSOPs, prerequisite and good manufacturing programs, and HACCP plans by the consumer safety officer or food safety assessment team; documentation of observations and verification activities

of in-plant inspection personnel; and generic *E. coli* and other microbial test results.

Public Release of Test Results and the Freedom of Information Act

The Agency held public meetings on March 6 and December 16, 1997, to inform industry constituents and consumer advocates that FSIS would send individual establishments the results of testing on their own product upon completion of the full sample sets, and that plant-specific results would be released to the public in accordance with the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. § 552).¹ At the December 16, 1997, public meeting, FSIS presented an issue paper entitled, "Public Release of *Salmonella* Testing Results," which outlined the Agency's position.² On April 2, 1998, FSIS published this issue paper in the **Federal Register** (63 FR 16245).³ In this paper, FSIS stated that it planned to "publish annually a report on the *Salmonella* testing program." Since then, FSIS has made the Agency's *Salmonella* test results available on the Web site through a progress report: <http://www.fsis.usda.gov/FOIA/popular.htm>. In this report, FSIS provides *Salmonella* testing results on an aggregate basis for large, small, and very small plants; the percent of products that have tested positive for *Salmonella*; and the prevalence of *Salmonella* with each product category. Prevalence, for the purposes of the FSIS HACCP verification activity, is not a statistical representation of the true presence of *Salmonella* in product. FSIS conducts statistically-based baseline

¹ Transcript of Proceedings, HACCP Implementation Meeting; Washington, DC, December 16, 1997, page 152-153. This document is available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. The document may also be accessed via the World Wide Web at www.fsis.usda.gov/FOIA/popular.htm as a related document under the Notices and Directives, and Federal Register Publications section. Transcript of Proceedings, Publication of Salmonella Testing Data; Washington, DC, March 6, 1997, page 3. This document is also available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. This document may also be accessed via the World Wide Web at www.fsis.usda.gov/FOIA/popular.htm as a related document under the Notices and Directives, and Federal Register Publications section.

² Transcript of Proceedings, HACCP Implementation Meeting; December 16, 1997, Washington, DC, page 151-153.

³ Notice, Pathogen Reduction Performance Standards: Salmonella Testing Data, 63 FR 16243-16245, April 2, 1998. This document is available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. This document may also be accessed via the World Wide Web at www.fsis.usda.gov/FOIA/popular.htm under the Notices and Directives, and Federal Register Publications section.