

studies to determine the true prevalence of microorganisms, including *Salmonella*.

FSIS has considered the *Salmonella* test results as information for use by the Agency in its deliberative process on how best to proceed with respect to the establishment involved. Predecisional information can be exempted from disclosure under the FOIA (5 U.S.C. 552(b)(5)). Accordingly, FSIS has not disclosed plant-specific testing results until the set was complete.

The FOIA requires that federal agencies make certain information that is released under the FOIA available to the public in electronic format and by computer telecommunications (5 U.S.C. 552(a)(2)). In response to legislative amendments to the FOIA (E-FOIA), on July 28, 2000, the U.S. Department of Agriculture published a final rule, "USDA Freedom of Information Act Regulations" (65 FR 46335), in which the Department adopted regulations governing the electronic release of information requested under FOIA. Significant in consideration of the CSPI petition is that these regulations provide that one reason to release information requested under FOIA electronically is that "it has become or is likely to become the subject of subsequent requests for substantially the same records." *Salmonella* testing results have been, and continue to be, requested in significant numbers.

Recommendations From the National Advisory Committee on Microbiological Criteria for Foods

On October 8, 2002, the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) made final a report that recommended that the data from the *Salmonella* performance standard program be made public, so as to provide guidance to industry in order that commercial operations may assess their process control.⁴ The Committee points out that, when HACCP systems and other prerequisite programs in ground beef operations are adequate and verified, the measurement of *Salmonella* reflects the total process control, particularly the microbial conditions of raw material. The report also states that the information would be helpful in meeting the *Salmonella* performance standards. In addition, the report

recommends that the *Salmonella* test results be made available to each establishment as they become available to facilitate Continuous Improvement Programs. Finally, the report states that making *Salmonella* data that is suitably codified to protect proprietary information available to the public, to the extent possible, should lead to generation of additional data and increased knowledge of the many facets influencing control of enteric pathogens on raw meat and poultry.

The CSPI Petition

As mentioned above, FSIS received a petition dated October 1, 2001, from 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 continue to post such test results in a timely and relevant manner as they become available. According to CSPI, 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.

The petition states that the presence of *Salmonella* positives above the performance standard is an indication that the plant's system for controlling contamination is not working. Therefore, according to CSPI, posting the individual establishment test results on the web would encourage establishments to improve their sanitation procedures because consumers would be less likely to purchase products made by facilities that repeatedly exceed standards. Additionally, the petition states that posting test results on the FSIS Web site could benefit Federal and state health officials in their efforts to track the cause of food poisoning outbreaks and to identify contamination trends based on product type, plant geographical location, and seasonality. The petition also states that posting plant-specific *Salmonella* test results on the FSIS Web site would be consistent with the USDA's implementing regulations for FOIA. Quoting a House of Representatives report, the petitioner states that one of the purposes of the FOIA provisions requiring electronic release of information is to improve public access to agency records and information.

Industry and Consumer Advocate Comments and Concerns

Before and during the March 6, 1997, public meeting referred to above, many

industry representatives raised concerns regarding posting *Salmonella* testing results on the World Wide Web. Some of their concerns were based on the assumption that foreign countries who do not monitor their own products, nor have equivalent process controls established to determine whether *Salmonella* is present on meat and poultry products, could use the *Salmonella* data to discriminate against U.S. product. They argued that use of the data could lead to the following results: (1) A negative impact on U.S. companies' efforts to secure markets and fair prices internationally; (2) use of the data by foreign governments as a pretext for imposing non-tariff barriers against U.S. product and to protect their own domestic industry; and (3) discrimination against specific U.S. products and establishments by foreign buyers if an establishment received positive *Salmonella* test results. In addition, they stated that the context in which the *Salmonella* testing results would be presented would also have an impact on the aforementioned effects.

At the same public meeting, consumer advocates favored publication of plant-specific *Salmonella* data along with the plant name, location, and product line.⁵ They stated that progressive companies would want the results of their *Salmonella* tests known, and that the public is sophisticated enough to accept the fact that there are going to be positive *Salmonella* test results on some raw product.⁶

On the other hand, during the December 16, 1997, meeting, an industry representative opined that, "it would be beneficial for plants to have the *Salmonella* data as it was collected so if a trend was developing, the plant could take some corrective action before the whole series was out."⁷

In the five years that have followed, the concerns expressed by industry about foreign reaction to specific *Salmonella* results have not materialized. However, through numerous informal communications and at scheduled meetings, the Agency has received industry input that correlates with the last comment cited and with the NACMCF's recommendations.

⁵ Transcript of Proceedings, Publication of *Salmonella* Testing Data; Washington, DC, March 6, 1997, page 75.

⁶ Transcript of Proceedings, Publication of *Salmonella* Testing Data; Washington, DC, March 6, 1997, pages 70–72.

⁷ Transcript of Proceedings, HACCP Implementation Meeting; December 16, 1997, Washington, DC, page 153.

⁴ Final Response, NACMCF Final Response to the Questions Posed by FSIS regarding Performance Standards with Particular Reference to Ground Beef Products, Washington, DC, October 8, 2002. 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.