

Consumers Union
Comments to United States Department of Agriculture's Food Safety Inspection
Service on Docket No. 04-006P, Availability of Lists of Retail Consignees During
Meat or Poultry Product Recalls
April 28, 2006

Introduction/Summary

Consumers Union* (CU), the non-profit publisher of Consumer Reports magazine, appreciates the opportunity to comment on Docket No. 04-006P, "Availability of Lists of Retail Consignees During Meat or Poultry Product Recalls."

We commend the United States Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) for proposing to inform the public, via publication of a list on the internet, about the names and locations of stores where meat or poultry that have been voluntarily recalled have been sold. As with any recalled product, the consumer has an absolute right to know where such products are sold prior to the recall. As USDA notes, making such information public allows consumers to determine if they have purchased any of the recalled meat or poultry products, so that they can return the product to where they bought it or dispose of it.

While we applaud USDA for proposing this rule, we think USDA's proposal does not go far enough and is vague on certain crucial details. First, USDA should make available the names and locations not only of retail stores (referred to by USDA as "retail consignees") where meat and poultry products are sold, but also of hotels, restaurants and institutions—such as hospitals, nursing homes, schools, etc.—that have received recalled meat and poultry products that are later recalled. Consumers especially need to be notified if recalled meat and poultry products have been delivered to institutions (e.g. hospitals, nursing homes, schools, etc.) and are later recalled. Such places often have populations that cannot fully protect themselves. For example, if a mother knew that meat or poultry products that were later recalled had been delivered to the elementary school attended by her daughter, the mother could contact the school to find out how much recalled product was delivered and whether any of it remained at the school.

* Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finances; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is derived solely from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports*, with approximately 4.5 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

Secondly, CU believes that consumers should be informed *as soon as possible* about *all* the names and location(s) of the institutions and retail outlets to which any recalled meat and poultry products have been distributed that either sell or serve those products to consumers.

Disclosure Should Include Restaurants, Hotels and Institutions

CU strongly agrees with USDA that it has the authority to make available the distribution lists for recalled meat and poultry products and that making such lists available “would enhance the efficiency of recalls by helping consumers to identify and focus on the products that are recalled.”

Consumers overwhelmingly want information on which stores and restaurants have been sent recalled meat or poultry products. In January, 2004 Consumers Union conducted an online survey of a random sample of U.S. adults on meat safety issues. The survey was conducted from January 14-41, 2003 and included 1,085 people. Some 95% of the respondents agreed, of whom 78% strongly agreed, with the statement “In the event of recall, USDA should make public the names of stores/restaurants that sold contaminated meat.” Thus, the overwhelming majority of US consumers want to know where contaminated meat has been sent.

We are concerned, however, that FSIS is too restrictive in terms of the places/entities that received recalled meat or poultry products that would be disclosed to the public. At present, FSIS is proposing to make public only the names and addresses, of “retail consignees” that were shipped recalled meat or poultry products. The USDA does not define what it means by “retail consignees,” but elsewhere has indicated that it does not include hotels, restaurants and institutional consignees. We note that the proposed rule talks of “the level of product distribution (e.g., wholesale; retail) to which the recall is to extend.” We also note that the most recent FSIS Directive on recalls is FSIS Directive 8080.1, Revision 4, 5/24/04—“Recall of Meat and Poultry Products” (at <http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/8080.1Rev4.pdf>). FSIS Directive 8080.1, Revision 4 refers to four levels to which the “Depth of Recall” extends: 1. Consumer 2. Retail levels—This includes all retail sales of the recalled product. 3 User level—This includes hotels, restaurants, and other food service institutional consignees. 4. Wholesale level. In this Directive, FSIS distinguishes between “retail level” and “user level”, with the latter consisting of hotels, restaurants and other food service institutional consignees. It thus appears that hotels, restaurants and institutions like daycare centers, schools, and nursing homes are not covered by the proposed rule.

CU believes that USDA should make available the names and locations not only of grocery stores and supermarkets (referred to by USDA as “retail consignees”) to which recalled meat and poultry products were sent, but also of hotels, restaurants and institutions—such as hospitals, nursing homes, schools, etc.—that have received meat and poultry products that are later recalled. Consumers especially need to be notified if recalled meat and poultry products have been delivered to institutions (e.g. hospitals,

nursing homes, schools, etc.), as such places often have populations that cannot fully protect themselves. For example, if a mother knew that meat or poultry products that were later recalled had been delivered to the elementary school attended by her daughter, the mother could contact the school to find out how much recalled product was delivered and whether it had been returned as required and how much may have been served to her child. Also, if one knew that meat or poultry products that were later recalled were sent to a nursing home where one's parents or grandparents were housed, one could contact the nursing home to make sure they are returning or discarding the recalled products.

Posting

FSIS has proposed making the names and addresses of “retail consignees” available to the public by posting it on a website. We support this proposal.

In addition, FSIS should post the names and locations of retail stores, hotels, restaurants, and all other food service institutional consignees (such as hospitals, nursing homes, schools, day care centers, etc.) that were sent recalled meat or poultry products on the internet.

According to present FSIS procedure: “FSIS also lists those States to which recalled product was shipped if fewer than 13 States were involved in the recall. If the recall extends to more than 13 States, it is considered to be a nationwide recall.” Consumers Union believes that, unless all 50 States are involved in a recall, FSIS should list all the States. If a recall involves, say, 20 States, but the FSIS site refers to a “nationwide recall,” a consumer in one of the 30 States *not* involved in the recall may mistakenly believe that recalled product was sent to their State and that could cause them undue concern—they could needlessly worry that they may have purchased/consumed tainted meat. If FSIS had listed all 20 States, then residents of the 30 States not involved in the recall would not have to be concerned. Thus, **FSIS should list all the States, regardless of number, involved in a recall of meat and or poultry products.**

The FSIS proposal is vague as to exactly *when* it would post the names and addresses of the “retail consignees”. CU believes that USDA should post on the internet the names and locations of any entity (not including intermediate distributors) that received recalled meat and/or poultry products as soon as the USDA has received this information. (This includes retail stores, restaurants, hotels and other food service institutional consignees.) In the proposed rule, FSIS talks of “recall verification activities,” but there is no indication as to *when* in the recall verification process FSIS would make the distribution lists available. Posting the information immediately could actually aid in the recall process. If a recall involved hundreds or thousands of locations, it could potentially take government officials/employees quite a while to contact them all. If consumers had this information, they might contact the locations before overworked employees at USDA and help prevent recalled meat from being sold or served.

Posting information as soon as possible is crucial in order to recover as much of the meat or poultry products involved in a recall as possible. A General Accounting Office study of USDA's food recalls in 2003, found that only 38% of the recalled food was actually recovered; this means that 62% of the recalled food was most likely consumed by consumers (GAO, 2004). In recalls involving large amounts of meat products, the recovery rate can be even lower. The 2002 recall of 18 million pounds of ground beef contaminated with *E. coli* 0157:H7 by a ConAgra plant in Greeley, Colorado, one of the largest recalls in US history, only 17% of the recalled meat—or 3 million pounds—was recovered; thus, some 15 million pounds of recalled meat was consumed by the public (GAO, 2004). Perhaps if there were immediate posting of the names and locations of stores, restaurant, hotels and other institutions, the amount of recovered product would increase.

Another factor that leads to small recovery rates for recalled foods is that the USDA staff has not increased in size while the amount of recalled meat products has dramatically increased. The amount of recalled meat and poultry products has increased from 6 million pounds in 1998 to about 36 million pounds in 2003 (GAO, 2004). Since the size of USDA's staff involved in recalls has not grown, this suggests that the agency can take quite a while to start or finish a recall. In the case of ConAgra's 2002 recall of ground beef for contamination with *E. coli* 0157:H7, the expanded recall of 18 million pounds of beef began on July 18, some 3 months *after* the plant had been testing positive for *E. coli* 0157:H7 (from April 12 through July 11, 2002).

There was also a delay in the mad cow-related recall initiated on December 23, 2003 when USDA announced the first case of BSE in the U.S. This BSE-related recall involved some 38,000 pounds of beef and beef bones that were distributed to seven western states, including California. California's Department of Health Services (DHS) was not notified that any of the recalled meat might have been shipped to California grocery stores, restaurants and other institutions until December 29—almost a week later (Ortiz, 2004). According to USDA spokesman Steve Cohen, "California wasn't notified until December 29. It was around the holidays, and I don't think anybody was in their offices. We tried to reach them" (Ortiz, 2004). California DHS spokeswoman Lea Brooks retorted, "Not only were department staff in their offices over the holidays, the department has a duty officer who is available 24 hours a day, seven days a week." USDA gave California state officials the list of California businesses affected by the recall on December 30, 2003, but there was virtually no more information—such as whether the businesses were cooperating, how much beef had already been sold, how much had been returned. An investigation by California DHS found that the recall was not very effective (Ortiz, 2004). In Alameda County, the County Health Officer, Dr. Anthony Iton, noted that soup bones involved in the recall had been sold and consumed in five county restaurants before Dr. Iton or any of the restaurant owners were notified (Russell, 2004). If any of the restaurant owners, or one of their customers, had seen this information posted on the FSIS web site around December 23, 2003, then action could have been taken immediately so that any bones that had not already been served at the restaurant could be returned to the distributor.

Given these delays, if FSIS posted information on the internet, alert consumers could help by potentially contacting the locations that received meat and poultry products that have been recalled before overworked employees at USDA contact these locations, thereby minimizing the amount of recalled meat that is inadvertently consumed by the public.

FSIS should post the relevant names and locations of retail stores, hotels, restaurants, and all other food service institutional consignees (such as hospitals, nursing homes, schools, day care centers, etc.) on the internet as soon as FSIS receives this information from the distributor.

References

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