

FOOD SAFETY RECALL PROCEDURES

HEARING
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SUBCOMMITTEE OF THE
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WEDNESDAY, DECEMBER 11, 2002

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURE, RURAL
DEVELOPMENT, AND RELATED AGENCIES,
COMMITTEE ON APPROPRIATIONS,
Billings, Montana.

The subcommittee met at 3:02 p.m., in the Ballroom of the Student Union Building at Montana State University-Billings in Billings, Montana, Senator Conrad Burns presiding.

Present: Senator Burns.

OPENING STATEMENT OF SENATOR CONRAD BURNS

Senator BURNS. We'll call this subcommittee to order. This is a subcommittee of the Senate Appropriations Committee. This is Appropriations on Agriculture, and something we've been trying to schedule here for quite a while and—about what I think is a very important subject. It affects—even though we are going to talk about meat processors, and we are going to talk about health, and we're going to talk about reliability, and the public safety and all of this, but what it boils down to is if there's a link broken in the chain, it is the producers who pay for it.

And we are in the business right now where we can't afford to let what we think is a good product—the dollars invested and the kind of livestock that we like to present to the public—and after we're done with it, we lose, completely, control of it. We have no say. When that animal walks off of our truck, it is in the hands of somebody else. Even though we've spent millions and millions of dollars producing the kind of an animal that is acceptable to the public and acceptable to the meat-processing industry and the retailing industry, we lose control of it, and we pay the price for either irresponsibility or turning a blind eye to powerful interests that have the responsibility of presenting our product to the public.

We know we produce a good product. We try every way that we can as a producer to give the industry, on down the line, a product that's acceptable, is nutritious, and, when it leaves our gate, it's healthful. And so that's what we want to talk about today.

I appreciate—I want to thank Montana State University at Billings here for giving us this facility today, and I want to thank all the folks here that will testify.

And this is an official hearing. All your testimony that I have read today, and what you will give here today will be entered in the record.

This is a little bit better than the Authorizing Committee, because we get—we've got the purse strings. And so if we can see where we can help or hinder, we will make that judgment later on when the appropriations process happens.

I noticed that the order of testimony here today is Mr. Smith, who is deputy administrator of Food Safety and Inspection Service. We appreciate you being here today. Are you on any kind of a timeline?

Mr. SMITH. No, sir.

Senator BURNS. Well, I'll tell you what I'm going to do. I'm going to let the other three go ahead, and let you listen to what they have to say. I've done this two or three times in Washington, whenever we've had hearings, and usually the administrator—or the Administration shows up, gives their testimony and then they run away. And I don't want to do that today. I want to—I want the Administration to hear the problems and—or, well, problems—perceived problems that we have in this industry.

So I'm going to ask Mr. Munsell to lead off today. And he runs Montana Quality Foods over at Miles City, Montana. I've only known his dad since dirt. And he's here today. And it's good to see you here.

So, with that—and I want to apologize for being just a couple of minutes late. It seems like everything didn't fall together at the house like it was supposed to when I got there a little while ago. But nonetheless, thank you for coming today. And, Mr. Munsell, we'll hear from you as of this—now, you can either—you can consolidate your statement, or you can pick highlights of it and—or whatever you want to do, but we look forward to your testimony.

STATEMENT OF JOHN MUNSELL, MONTANA QUALITY FOODS

Mr. MUNSELL. Thank you, Senator Burns.

My name is John Munsell, and I operate a small, family-owned USDA-inspected slaughter and processing facility in Miles City, Montana.

In January and February of this year, USDA inspectors at our plant took several samples of our ground beef, four of which were *E. coli* positive. Oral and written statements from USDA field staff which took the samples documented that all four positives originated from coarse ground beef which we had purchased from big packers. Part of the USDA's documentation included a handwritten letter authored and signed by Dr. Daryl Burden and the plant inspector, whose name is Ronald Irvine.

This letter included the following statements, and I quote, "Review of the three consecutive *E. coli* 0157:H7 failures strongly suggests a common source of the contaminant—coarse ground product of a single identified lot received from establishment number 969, which is ConAgra in Greeley, Colorado. I recommend acceptance of establishment 7679, which is Montana Quality Foods—I recommend"—they recommended, "acceptance of our response and implemented measures and suggest a follow-up investigation of the source of the product considering the serious public health implications of other possible *E. coli* adulterated product from the same production lot," end quote.

In addition to the USDA's own documentation, our company staff copiously documented the exact origin of three of the four positives, including the preservation of labels which are taken from the very boxes of meat which produced the contaminated samples. In spite of the scientifically thorough trail of evidence compiled in these cases, USDA hierarchy in Minneapolis and Washington, D.C., have summarily rejected all this evidence. They refer to the letter authored by their own field staff as mere opinion. If the contents of this letter had coincided with what Washington, D.C., had wanted to hear, then the letter would have been accepted as conclusive evidence.

So some of USDA's unscientific policies include the following. Number one, when a USDA inspector takes a ground-beef sample for USDA lab analysis, the inspector is prohibited from documenting the origin of the meat which provided the sample. Number two, E. coli is considered an adulterant only in the form of ground beef. Therefore, if E. coli exists in boneless trimmings which are not yet ground, the USDA does not consider this deadly E. coli bacteria to be an adulterant at that point. This means that all responsibility for contaminated ground beef rests upon the establishment which performs the final grind. Of course, this prevents any meaningful corrective action from taking place, since no trace back to the source of the contamination ever took place.

The third policy problem I see is USDA Directive 10,010.1 was designed to reward large packers with several advantages, all of which imperil consumers. Those advantages are, number one, when a packer qualifies for this directive, then from that point on, only the packer performs in-plant sampling. Number two, simultaneously the USDA performs no sampling. Number three, USDA is denied access to the results of the in-plant sampling since the plant now claims such important data to be "proprietary." And I must say that just within the last month there has been a pronouncement from the USDA that says that no plants anymore will be excluded from sampling, which is certainly a step in the right direction.

An incident which occurred at our plant exposes USDA's lack of commitment towards promoting consumer food safety. After our firm experienced our first positive E. coli sample in January, we knew that the sample was taken from brand-X coarse ground beef purchased from outside packers. We had coarse ground beef in our plant from both of these packers, but we weren't sure which source was used for the positive sample. Inspector Dan Ellis also knew and made the statement in front of four witnesses that the sample originated from brand-X coarse ground beef, but he was prohibited from documenting this fact until the Office of Inspector General interviewed him in late August, a full 7 months after the incident occurred.

When Compliance Officer DuWayne Hansen investigated the details of this E. coli-positive sample, I offered Mr. Hansen unopened, intact tubes of coarse ground beef from both sources, which would have allowed the USDA lab to pinpoint the true origin of the contaminated meat. He refused our offer, replying that USDA policy didn't allow him to accept intact chubs of meat previously inspected and passed by the USDA.

It is interesting to note that this procedure was used at Galligans Wholesale Meats in Denver this summer, directly resulting in the 18.6 million-pound ConAgra recall. So you can see that this procedure of accepting intact samples directly benefits all meat consumers.

Now, months later we discovered the full truth why Officer Hansen was prohibited from accepting intact chubs of coarse ground beef. This truth was exposed on Thursday, August the 29th after the two OIG auditors—they were at our plant—the two auditors finished their review of our plant and departed.

Dr. Grady Skaggs, who was the USDA circuit supervisor, remained in our office for a while and visited. He voluntarily made the statement that Compliance Officer DuWayne Hansen wanted to accept our offer of intact chubs of brand-X coarse ground beef, but that John Hopperstad, who is the Minneapolis compliance officer, instructed DuWayne to reject our offer because the USDA was afraid that ConAgra would sue the USDA. Dr. Skaggs' statement shows that the USDA knew all along that ConAgra was the source of the contaminated meat, and that the USDA intentionally circumvented its duty to trace back to the origin because of the discomfort and potential legal liability it might experience for admitting the whole truth.

A similar situation occurred when I called Compliance Officer DuWayne Hansen and requested a copy of his interview with Inspector Dan Ellis in which Mr. Ellis would have identified coarse ground beef as the origin of the positive January sample. Officer Hansen replied that although he did interview Mr. Ellis, he, Mr. Hansen, did not ask or document information regarding the origin of the meat. Mr. Hansen then stated, and I quote, "If I had recorded such information, I would be walking down the street," end quote.

All consumers, as well as the entire cattle industry, deserve an explanation from the USDA as to why a compliance officer would lose his job if he was so audacious as to document the whole truth about the origin of contaminated meat.

This sordid scenario which occurred at our plant this year will undoubtedly be repeated many times across America until USDA willingly adopts major policy changes. The large volume of recalls will continue unabated for the same reasons.

Now is the time for consumers, the cattle industry, meat processors, and especially our elected officials to demand that USDA eliminate its woefully inadequate and ill-intentioned policies and establish safe food as its number one objective regardless of the discomfort that the USDA will experience as it requires big packers to accept sanitary procedures. A contemporary example of this is improvement is the slower chain speed recently implemented at the former ConAgra plant in Greeley, Colorado, which now operates under the Swift name.

In summary, not only does the existing policy imperil meat consumers and the viability of the final grinding plants or the processing industry, but it jeopardizes the cattle industry, which will have the most to lose as consumers lose confidence in beef, which diminishes not only demand, but also eventually diminishes cattle prices.

Thank you.

Senator BURNS. Thank you.

Let's go to John Swanz. John represents the Montana Stockgrowers Association, has been associated with the cattle industry since day one, and we look forward to hearing your testimony.

STATEMENT OF JOHN SWANZ, PRESIDENT, MONTANA STOCKGROWERS ASSOCIATION

Mr. SWANZ. Thank you. Thank you, Senator Burns. Thank you for the opportunity to testify here today.

My name is John Swanz. In addition to being the incoming president of the Montana Stockgrowers, which represents 2,500 cattle producers throughout the State of Montana, I am also a fourth-generation rancher of Judith Gap, which is in Central Montana.

As a producer of cattle, the raw commodity that ultimately passes through the beef production chain before reaching consumers, we have a vested interest in the beef inspection practice in place through the USDA FSIS. Food safety issues are of the utmost concern to us as producers because we are reliant on a strong market that is driven by consumer attitude and perception. If there is a perception, no matter how slight, that inspection practices are not adequately protecting U.S. beef supply, the market suffers irreparable damages and affects ranching families around the country, including mine. We cannot afford to take these risks.

The National Cattlemen's Beef Association, of which Montana Stockgrowers is a state affiliate, spends an average of \$2.5 million a year on food safety research and technology. Techniques resulting from this research include steam-vacuuming beef carcasses, which effectively removes *E. coli* 0157:H7 and other harmful bacteria. Thermal pasteurization, a rinse for beef carcasses with 180-degree water and a mild organic solution, have also proven to reduce pathogens.

More than 85 percent of the research projects beef producers, like me, have funded with their beef checkoff dollars have directly and immediately led to the implementation of technology and procedures that increase beef safety.

As a beef cattle producer, we know we have the responsibility to be part of the solution to the *E. coli* problem in the U.S. Current checkoff-funded *E. coli* 0157 safety research on live cattle centers is developing a testing and cattle-cleaning system, and experimenting with cattle feed additives to reduce pathogen incidence on the ranch and in the feed lots before the cattle are shipped for processing.

Additionally, beef safety research is working on an intervention system for subprimals and trimmings, finding more statistically valid ways to sample and test for our beef *E. coli* 0157:H7, examining the impact of environmental factors such as equipment, water, and air on *E. coli* and beef products, and reviewing beef-safety research on non-intact beef products.

But our concern as cattle producers is that these measures are meaningless if the infrastructure within USDA FSIS does not exist in the name of ensuring a safe, pathogen-free product to the consumer. I am pleased that John Munsell, of Montana Quality Foods

in Miles City, is here today to share his story. While we'd like to believe his experience with regard to USDA FSIS testing and recall procedures is an isolated incident, the fear remains that the bureaucracy in Washington, D.C., is not protecting the consumer by doing everything possible to ensure adequate food safety inspection and recall system.

In line with the Montana Stockgrowers Association's grassroots policy, we are calling for immediate approval of active steps to reduce the incidence of pathogen occurrences in meat, which includes ensuring that meat recall protocol within the USDA is not only swift and science-based, but holds all meat processors to similar standards, regardless of size. Our ultimate goal must be to reassure the beef consumer that we will not settle for anything less.

Thank you for the opportunity to testify.

Senator BURNS. Thank you, Mr. Swanz. I appreciate that very much.

We have with us today Bernard Shire, who is director of Legislative and Regulatory Affairs, American Association of Meat Processors. Mr. Shire, thank you for making the trip today, and we appreciate that very much. We look forward to your testimony.

STATEMENT OF BERNARD SHIRE, DIRECTOR, LEGISLATIVE AND REGULATORY AFFAIRS, AMERICAN ASSOCIATION OF MEAT PROCESSORS

Mr. SHIRE. Thank you. Thank you, Senator Burns.

My name is Bernard Shire. I am with the American Association of Meat Processors. We're a trade association with members across the United States and Canada and several foreign countries.

Our members are meat and poultry slaughterers, processors, wholesalers, retailers, caterers, home food-service companies, and suppliers and consultants to the meat and poultry industry. Most of our members are small, very small, and medium-sized businesses. Many of them are family-owned operations. And we have a number of members here in the State of Montana.

The small meat- and poultry-slaughtering and processing industry is impacted in a very negative way by product recalls conducted by USDA, for many reasons. These recalls are eroding the confidence of small meat-plant operators that they can survive, and I will detail some of these reasons for you.

As you know, there have been more and more recalls of ground beef for E. coli, a deadly pathogen. Many of our small members grind beef. In many cases, they buy the raw materials to use in grinding, such as trimmings, from the very largest meat packers in the country, the big slaughterers.

E. coli generally gets onto the meat, the carcasses, from fecal material. Some large plants may not be taking the time to do the evisceration properly, or the plant may fail to take other interventions to make sure, as much as possible, that there isn't any E. coli on the trimmings that go to the grinder.

But no one can guarantee 100 percent that all E. coli will be removed from the processing system. All the plants can really do is try to reduce it as much as possible. The large plant is the logical place to do this because most other processors, large and small, buy their materials from the large slaughter plants.

A major reason for the problems that do exist is the tremendously fast line speeds used in the huge meat-packing plants when they are killing the cattle and converting them to carcasses. Unfortunately, speeds sometimes don't allow a very good job of trimming or other interventions to make sure that no fecal material, the source of the E. coli, remains on the carcasses. But a major problem is that the bung breaks or is punctured rather than being removed in an intact state. That's one major problem.

The other major problem, we believe, is that there is a shortage of slaughter inspectors, so at the very high line speeds in the big packing plants, the fewer inspectors have a harder time seeing what's going on. That's the reason for USDA's experimental HACCP-based Inspection Models Project which would allow plant employees to do more of the inspection in plants where young animals are slaughtered. We think, instead, that FSIS needs to study ways to attract more slaughter inspectors to the agency.

What happens then is that the carcasses are cut into primal, subprimals, and trimmings and shipped to the grinder. If there is E. coli on those raw materials that come into a grinding plant, there is no way they can be removed because the grinding plant is basically a fresh-meat-in/fresh-meat-out operation. There is no "kill step" in the grinding plant to remove pathogens or bacteria.

So the grinder grinds the beef. But if USDA, through its random testing, finds E. coli in the grinding plant, or possibly in ground beef at the grocery store, the next step in the food chain, who is responsible for doing the recall? The grinder, not the supplier or the originating packing plant where the pathogen originated. So grinders, especially small ones, are being put in the position of being the regulators and accepting the blame for a problem that they did not create.

Why does this happen? Well, one reason is that USDA policy really discourages trace-back to the original large packing and slaughter plant. Even the new—USDA's new policy on E. coli encourages suppliers to look for the pathogens, but it doesn't require them to. Why not? Grinders will be forced to ask suppliers for a letter indicating that they have taken steps to remove E. coli from the raw materials they are grinding. But there is nothing requiring the big packers to provide assurances. What if they don't?

And that brings us to the next question, What does the USDA inspection mark mean? Does it mean anything anymore? The raw meat that is shipped from the big packers for further processing has already been inspected by USDA inspectors at the originating plant. The USDA "inspected and passed" mark of inspection has been put on it. Doesn't that mean that the meat is okay? Why does the small processor or grinder have to get additional assurances about the meat? When we asked the USDA people in Washington about this, they just shrugged their shoulders. If the USDA mark of inspection doesn't mean anything anymore, then why is our meat going through this extensive inspection process to begin with?

A major problem with recalls is uncertainty with USDA about what circumstances should or should not lead to a recall. There are often disagreements between people inside the USDA Recall Division about the necessity of a recall. And this results in USDA giving confusing information to a plant about the recall, not telling a

plant all the information that it should know, and a conflict between protecting the public health versus “let’s make sure we have all the facts right before we go ahead with this.”

What effect does this have on the small meat-processing business? Well, many of the small meat processors are becoming scared to death to make certain products, whether it’s ground beef or ready-to-eat products. The USDA attitude, “It may not be your fault, but it is your problem,” may result in more and more plants giving up grinding beef, or giving up making the ethnic and specialty products for which we—they are well-known, leaving more and more meat products—processing in the hands of the big meat packers. Are these recalls going to mean the end of the small meat-processing industry in the United States?

And there’s one other point I want to make. The closing of small meat and poultry processing plants poses a serious threat to the economy in the rural areas of the United States, in States like Montana. A plant shutdown would put many people out of work in these small, rural communities, places where it’s hard enough for their residents to find jobs. In many cases, a small processing plant is an important employer in a small rural town. Also, small livestock producers in rural areas, like Montana, are dependent on small local slaughterers and processors—are markets for their animals. If these plants go out of business, what will these—what will these producers and herdsmen do with their animals?

What is the answer to the recall situation? The meat-processing industry, especially the small industry, is looking for cooperative recalls as the most effective way to protect public health by removing product from the marketplace that may be harmful to the public, but not to punish the plant that inadvertently manufactured product that is carrying bacteria.

Thank you.

Senator BURNS. We thank you, Mr. Shire. I appreciate your making the trip all the way out here.

And we really appreciate William Smith, who is deputy administrator of Food Safety and Inspection Service. And we appreciate you making the trip, and we look forward to your testimony. And I hope you’ve heard we do an awfully good job of identifying the problem. Now maybe can—maybe we can hear some solutions and some steps that the USDA is taking, or should take. Thank you for coming.

STATEMENT OF WILLIAM C. SMITH, DEPUTY ADMINISTRATOR, FOOD SAFETY AND INSPECTION SERVICE DEPARTMENT OF AGRICULTURE

Mr. SMITH. Well, thank you for the opportunity to discuss food safety today.

I am Bill Smith, the Deputy Administrator for Field Operations at the U.S. Department of Agriculture’s Food Safety and Inspection Service, FSIS. As Deputy Administrator, I manage the regulatory activities carried out daily in meat, poultry, and egg product establishments by more than 7,600 food inspectors, consumer safety officers, and veterinarians. I have been with FSIS for more than 25 years, serving in many positions within the Agency, including in-plant food inspector in Pennsylvania, acting regional director of the Northeast region, executive director of District Inspection Oper-

ations, and, most recently, as the Associate Deputy Administrator for Inspection Operations.

FSIS' mission is to ensure meat, poultry, and egg products are safe, wholesome, and accurately labeled. This goal has not changed during my years at FSIS, though I have seen agency policies and procedures evolve to best address emerging public health issues and improve food safety. When Dr. Garry McKee arrived at FSIS this fall as the new administrator, he brought with him a clear vision of making FSIS the Nation's premier regulatory public health agency.

While great advancements have been made over the last century, the most dramatic evolutions have occurred in recent years with the implementation of the science-based Hazard Analysis and Critical Control Points, HACCP, inspection system. The HACCP system is a tool for preventing contamination before it occurs.

All slaughter and processing establishments are required to adopt a system of process controls designed to prevent food safety hazards. Under HACCP, plants identify critical control points during their processes where hazards such as microbial contamination can occur. They establish controls to prevent and reduce those hazards, and maintain records documenting that the controls are working as intended. HACCP is representative of FSIS' efforts to continually improve Agency programs and now serves as the cornerstone of the Agency's current inspection system.

The issue of *E. coli* 0157:H7 in ground beef emerged in the 1990s, and FSIS' microbiological testing program to detect *E. coli* 0157:H7 in raw ground beef began in October 1994. Since then, nearly 54,000 raw ground-beef samples have been analyzed. Each month, a random sample of approximately 1,700 establishments that produce ground beef under Federal inspection and 100,000 retail stores that grind beef on a regular basis are sampled for sample collection. So far in 2002, over 6,000 samples have been analyzed for *E. coli* 0157:H7. Since FSIS' *E. coli* 0157:H7 testing program began, it has been continuously amended to incorporate the most up-to-date data and technologies.

An outbreak of illness in Midwestern States this summer that was caused by *E. coli* 0157:H7 is one example of why our testing program is so critical in helping to keep contaminated products out of the marketplace. Our ultimate goal is to prevent outbreaks from happening in the first place. Testing ground beef samples to remove contaminated products from the marketplace helps to minimize cases of foodborne illness.

Now that I've explained our HACCP program and testing program for *E. coli* 0157:H7, let me specifically discuss recent events at Montana Quality.

On January 23rd, 2002, FSIS collected a routine, raw ground-beef monitoring sample for *E. coli* 0157:H7 from Montana Quality Foods and Processing in Miles City, Montana. The sample was analyzed in FSIS' laboratory and was confirmed positive for *E. coli* 0157:H7 on January 28th. As a result, the establishment initiated a Class 1 voluntary recall of approximately 270 pounds of fresh ground beef.

The purpose of a recall is to remove meat or poultry from commerce when there is a reason to believe it may be adulterated or

misbranded. All recalls are voluntary and may be initiated by the manufacturer or the distributor of the meat and poultry plants, or at the request of FSIS. A Class 1 recall indicates that there is a reasonable probability that the product will cause serious adverse health consequences. Contamination of product with pathogenic bacteria such as *Listeria monocytogenes* in ready-to-eat product or *E. coli* 0157:H7 in raw ground beef would be a Class 1 recall.

As a result of the positive *E. coli* 0157:H7 sample on January 28th, FSIS issued to Montana Quality Foods two non-compliance records. Non-compliance records are documentation produced by an inspector that the establishment has failed to meet HACCP requirements. As a standard practice following all product recalls, FSIS inspection program personnel conduct a set of 15 consecutive follow-up samples to verify that the establishment's corrective actions are effective.

FSIS initiated follow-up sampling at Montana Quality Foods on February 12th. Samples collected on February 19th, February 20th and 21st tested positive for *E. coli* 0157:H7. Since these samples were taken as follow-up samples, Montana Quality Foods was required to hold the product, pending test results. As a result, none of the product that tested positive for 0157 in follow-up sampling was released into commerce. FSIS advised the establishment that these positive results indicated that there was a problem with their food safety system, which required more corrective action.

On February 26th, FSIS issued a Notice of Intended Enforcement (NOIE) to Montana Quality Foods, notifying the establishment of the Agency's intent to suspend the assignment of inspectors for its raw ground processes. FSIS' actions were based on an inadequate HACCP system for the establishment's raw ground process and three positive *E. coli* 0157:H7 samples found in February.

Montana Quality Foods management contend that the source of the *E. coli* 0157:H7 problem did not originate in their establishment. Rather, they stated that the problem was coarse ground beef from one of Montana Quality Foods' suppliers, another federally-inspected establishment.

After the NOIE was issued on February 26th, FSIS compliance officers found that Montana Quality Foods had purchased frozen ConAgra coarse ground beef. And on March 4th, 2002, compliance officers attempted to locate additional intact samples of the ConAgra coarse ground beef that Montana Quality Foods had named as the source of the *E. coli* 0157:H7 contamination. However, since this lot of coarse ground product in question was produced on August 30th, 2001, no fresh or frozen coarse ground products remained for testing. As a result, FSIS could not confirm the link between Montana Quality Foods' product and the supplied product.

FSIS actions related to Montana Quality Foods were consistent with established policies and procedures. FSIS is a public health regulatory agency that must act when a regulatory sample tests positive for pathogens.

And as you well know, in the summer of 2002, an intensive investigation by numerous Federal and State agencies ultimately linked an outbreak of *E. coli* 0157:H7 illnesses to product from a ConAgra plant in Greeley, Colorado. As a result of this—the inves-

tigation, ConAgra recalled millions of pounds of ground-beef products and trimmings.

And as I said earlier, HACCP is not a static system. As information becomes available, we adjust. For instance, information from the ConAgra investigation combined with data from the Agricultural Research Service and the Centers for Disease Control and Prevention, as well as FSIS' draft risk assessment of *E. coli* 0157:H7, indicates the *E. coli* 0157:H7 is more prevalent than previously believed. The combination of these events led FSIS to further strengthen its *E. coli* 0157:H7 policies and implement additional safeguards to increase food safety.

In July 2002, FSIS initiated a new policy regarding supplier notification of *E. coli* 0157-positive samples. Under the new policy, if a sample taken from a grinding facility is found to be positive, the grinding facility's suppliers will be notified both orally and in writing. This policy will allow FSIS and those involved in the meat distribution chain to respond more quickly to indicators of potential problems.

Additionally, in October of 2002, we published a Federal Register notice with a series of new measures designed to reduce the incidence of *E. coli* 0157 contamination in raw ground beef. All facilities handling raw ground beef will now have to consider *E. coli* 0157:H7 in their HACCP plans as a pathogen reasonably likely to occur.

Our new policy also addresses some of the concerns of grinders such as Montana Quality Foods. Establishments that receive product for grinding may determine that no additional steps are necessary at grinding facilities to address *E. coli* 0157 if appropriate purchase specifications are built into their food safety systems. These specifications must require that all suppliers have one or more validated critical control points to eliminate or reduce *E. coli* 0157 below detectable sampling levels, and some means to ensure that these specifications are met. For example, grinders may choose to have a third-party audit done to ensure that their suppliers are complying with FSIS regulations.

FSIS has provided guidance materials along with the Federal Register notice to assist the industry in implementing the effective control steps. The FSIS guidance is based on three points. First, grinders and suppliers should address hazards such as *E. coli* 0157:H7 in their raw materials. They are responsible under HACCP to identify and address all hazards reasonably likely to occur. Second, grinders and their suppliers should realize that they are in an excellent position to implement process and distribution controls that address public health hazards associated with ground beef. And third, there must be an emphasis throughout the production and distribution chain on maintaining the records that are necessary to identify, trace, and retrieve from commerce any ground-beef products that may pose a public health problem.

To ensure compliance with the Federal Register notice, FSIS inspection program personnel have begun determining whether reassessments are being conducted. They are also assuring that establishments that have not yet reassessed their HACCP plans do so by agency deadlines. Large plants, those with 500 or more employees, were required to comply by December 6th, 2002. We now have

consumer safety officers throughout the Nation beginning to verify in those reassessments. Small plants need to comply—and those are plants with less than 500 or more than ten employees—will be required to comply by February 4th. Very small plants—those fewer than ten employees or annual sales of less than \$2.5 million—will be required to comply by April 7th, 2003.

FSIS is also modifying its current *E. coli* 0157 sampling and testing programs to include all plants. In the past, FSIS did not typically collect raw ground-beef samples at establishments that conduct their own *E. coli* 0157:H7 tests. However, FSIS has recently found, in spite of this testing, some of these establishments have had problems with *E. coli* 0157 contamination. In response, FSIS is revising its current directive to discontinue exemptions from FSIS sampling and testing for *E. coli* 0157:H7.

FSIS is also developing a risk-based verification program that takes into account factors such as volume of production, effectiveness of interventions in determining testing frequencies. In addition to continuing to test for *E. coli* 0157 in ground beef, FSIS is considering testing *E. coli* 0157:H7 testing in trimmings and other intact materials used to make ground beef, and beef carcasses and parts that will be processed in the ground beef. We believe the controls that reduce the risk of 0157 on intact product may be one of the most effective ways to control the hazard overall. We believe that these changes are critical to protecting public health.

As our Administrator, Dr. Garry McKee has made clear, protecting the public health is the Agency's highest priority. He has repeatedly stated that FSIS will strictly enforce HACCP, holding the industry and ourselves responsible. Industry is responsible for fully implementing HACCP, and for validating the effectiveness of HACCP plans. FSIS is responsible for making sure that this is done. We each play a role in ensuring that meat and poultry products are produced safely.

For its part, FSIS has recently strengthened its internal program and policy review capacity. This allows for an ongoing, more timely assessment of how effectively program improvements are working. This will also allow managers to recognize where changes need to be made.

At FSIS, employee training is a key priority for improving food safety. We will be providing more adequate and thorough field training. This effort with our inspectors will help us to more consistently and effectively implement science-based policies and programs within FSIS by increasing the scientific knowledge available to our front-line workers.

While the Agency is holding industry accountable for producing safe products, we are also holding ourselves accountable for improving and safeguarding public health.

Ensuring food safety is an ever-evolving process. For this reason, we constantly reassess our policies and procedures to ensure that strong prevention and enforcement programs are in place to best protect consumers from potential adulterants such as *E. coli* 0157. Protecting the public health is FSIS' number one priority. Therefore, the Agency will continue to work to ensure a strong food-safety system and to thoroughly examine ways to enhance its programs

through the best available scientific resources, and the implementation of sound policies.

Thank you for the opportunity to testify, and I welcome your questions.

Senator BURNS. Thank you.

I think we'll go back to our little dialogue at the table today. And it seems like that's when I learn more than me asking questions and you responding.

I would say, though, in your changes, the points that Mr. Munsell brought up in his testimony regarding the unscientific policies, and the points that he made in his testimony, have you looked at those questions? And can you respond—can you respond to this? “When a USDA inspector takes a ground-beef sample for the USDA lab analysis, the inspector is prohibited from documenting the origin of the meat which provided the sample.” Can you—is there—in your changes—and can you respond to that and why that has to happen?

Mr. SMITH. Well, I don't believe it does happen. The regulations—and these particular regulations have been in effect for well over 50 years—require the plant to maintain those records. I can supply those regulations for the record.

[The information follows:]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

CHAPTER III—FOOD SAFETY AND INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 320—RECORDS, REGISTRATION, AND REPORTS—TABLE OF CONTENTS

Sec. 320.1 Records required to be kept.

(a) Every person (including every firm or corporation) within any of the classes specified in paragraph (a) (1), (2), or (3) of this section is required by the Act to keep records which will fully and correctly disclose all transactions involved in his or its business subject to the Act:

(1) Any person that engages, for commerce, in the business of slaughtering any cattle, sheep, swine, goats, horses, mules, or other equines, or preparing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any such animals, for use as human food or animal food;

(2) Any person that engages in the business of buying or selling (as a meat broker, wholesaler, or otherwise), or transporting in commerce, or storing in or for commerce, or importing, any carcasses, or parts or products of carcasses, of any such animals;

(3) Any person that engages in business, in or for commerce, as a renderer, or engages in the business of buying, selling, or transporting in commerce, or importing, any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules, or other equines, or parts of the carcasses of any such animals that died otherwise than by slaughter.

(b) The required records are:

(1) Records, such as bills of sale, invoices, bills of lading, and receiving and shipping papers, giving the following information with respect to each transaction in which any livestock or carcass, part thereof, meat or meat food product is purchased, sold, shipped, received, transported, or otherwise handled by said person in connection with any business subject to the Act:

(i) The name or description of the livestock or article;

(ii) The net weight of the livestock or article;

(iii) The number of outside containers (if any);

(iv) The name and address of the buyer of livestock or article sold by such person, and the name and address of the seller of livestock or articles purchased by such person;

(v) The name and address of the consignee or receiver (if other than the buyer);

- (vi) The method of shipment;
- (vii) The date of shipment; and
- (viii) The name and address of the carrier.
- (ix) In the case of a person belonging to the class specified in paragraph (a)(1), and engaged, for commerce, in the business of slaughtering any swine for use as human or animal food, the name and address (including the city and state, or the township, county, and state) of each person from whom the person belonging to the class so specified purchased or otherwise obtained each swine, and the telephone number, if available, of the person from whom the swine were purchased or otherwise obtained, and all serial numbers and other approved means of identification appearing on all test swine selected at antemortem inspection by FSIS representatives for residue testing.
- (2) Shipper's certificates and permits required to be kept by shippers and carriers of articles under part 325 of this subchapter.
- (3) A record of seal numbers required to be kept by consignees of inedible products shipped under unofficial seals under Sec. 325.11(b) or (e) of this subchapter, and a record of new consignees of inedible products diverted under Sec. 325.11(e) of this subchapter.
- (4) [Reserved]
- (5) Guaranties provided by suppliers of packaging materials under SEC. 317.20.
- (6) Records of canning as required by subpart G of this subchapter A, 9 CFR chapter III.
- (7) Sample results and calculation results as required by processing procedures to destroy trichinae in Sec. 318.10(c)(3)(iv) (Methods 5 and 6).
- (8) Records of nutrition labeling as required by subpart B, part 317, of this subchapter.
- (9) Records as required in Sec. 318.23(b) and (c).
- (10) Records of calcium content in meat derived from advanced meat/ bone separation machinery and meat recovery systems as required by Sec. 318.24 of this subchapter.
- (11) Records of all labeling, along with the product formulation and processing procedures, as prescribed in Sec. 317.4 and Sec. 317.5.

(Approved by the Office of Management and Budget under control number 0583-0015)

[35 FR 15603, Oct. 3, 1970, as amended at 36 FR 12004, June 24, 1971; 37 FR 1229, Jan. 27, 1972; 43 FR 30793, July 18, 1978; 47 FR 746, Jan. 7, 1982; 47 FR 17274, Apr. 22, 1982; 49 FR 2235, Jan. 19, 1984; 51 FR 45633, Dec. 19, 1986; 53 FR 40387, Oct. 14, 1988; 57 FR 27877, June 22, 1992; 58 FR 675, Jan. 6, 1993; 58 FR 41152, Aug. 2, 1993; 59 FR 6897, Feb. 14, 1994; 59 FR 62562, Dec. 6, 1994; 60 FR 67456, Dec. 29, 1995; 64 FR 745, Jan. 6, 1999]

Sec. 320.2 Place of maintenance of records.

Every person engaged in any business described in Sec. 320.1 and required by this part to keep records shall maintain such records at the place where such business is conducted except that if such person conducts such business at multiple locations, he may maintain such records at his headquarters' office. When not in actual use, all such records shall be kept in a safe place at the prescribed location in accordance with good commercial practices.

Sec. 320.3 Record retention period.

(a) Every record required to be maintained under this part shall be retained for a period of 2 years after December 31 of the year in which the transaction to which the record relates has occurred and for such further period as the Administrator may require for purposes of any investigation or litigation under the Act, by written notice to the person required to keep such records under this part.

(b) Records of canning as required in subpart G of this subchapter A, 9 CFR chapter III, shall be retained as required in Sec. 318.307(e); except that records required by 4Sec. 318.302 (b) and (c) shall be retained as required by those sections. [35 FR 15603, Oct. 3, 1970, as amended at 51 FR 45633, Dec. 19, 1986]

Sec. 320.4 Access to and inspection of records, facilities and inventory; copying and sampling.

Every person (including every firm or corporation) within any of the classes specified in Sec. 320.1 shall upon the presentation of official credentials by any duly authorized representative of the Secretary, during ordinary business hours, permit such representative to enter his or its place of business and examine the records required to be kept by Sec. 320.1 and the process schedules, facilities and inventory

pertaining to the business of such person subject to the Act, and to copy all such records and to take reasonable samples of the inventory upon payment of the fair market value therefor. Any necessary facilities (other than reproduction equipment) for such examination and copying of records and for such examination and sampling of inventory shall be afforded to such authorized representative of the Secretary.

[35 FR 15603, Oct. 3, 1970, as amended at 64 FR 745, Jan. 6, 1999]

Mr. SMITH. As I have said, now—and starting—not now, but on July 15th, 2002, what we were doing is, when we take a sample, if we have a presumptive sample result—and when you say, “That’s not confirmed, only presumptive,” because 80 to 90 percent of those sample results that are presumptive aren’t confirmed positive—we notify the suppliers and then start collecting the distribution information. So if there is recall, we can move into action quickly. We can also then—on a positive, notify the suppliers both verbally, and in writing that their product—and they’re not always the only ones—there’s usually a combination of products that are made in to ground beef. So we will notify them so they can start checking their products and their programs. And our people would be verifying, upon that notification, those plants that the systems are producing safe product. And that, we put in place in July 2002.

We have a database of all the suppliers that we’ve notified, and we’re constantly watching that database also to make sure that we have supplier names that have frequent entries, that we have conducted a food-safety investigation in those facilities. And we have a number of those that we have done through this also.

Senator BURNS. Upon notification—in other words, there’s documentation that we’ve got a problem here—and you notify the supplier—

Mr. SMITH. Yes.

Senator BURNS [continuing]. In other words, it’s been determined that it’s—the problem is coming from that particular lot of whatever is to be ground—

Mr. SMITH. We don’t specifically know—sorry—we don’t specifically know that it came from that plant, typically. They, a plant, uses a mixture of ground beef; more than a single source. And so we notify all the suppliers that their product that a particular grind has been associated with an *E. coli* 0157 positive.

Senator BURNS. Okay, now what about—now, let me ask it in another way—what if the grinder has proof perfect and documented that it came from this lot, can you call that supplier? You can’t do that?

Mr. SMITH. We have a policy of trace-back on a sole-source single supplier, and have been doing that since—I can think of numerous instances in 1998 and 1999 when we did that. When we have the ability to trace back to a single supplier, we will do that.

Senator BURNS. Then what?

Mr. SMITH. In the case here, again, on the January sample—the recall division also reports to my office—and we filed a recall worksheet. The ConAgra supplier—or ConAgra product was not identified on that worksheet in that information supplied by the manufacturer as the source of material in the January positive.

In the February positive, as I said, on March 4th, we initiated an investigation—a trace-back because of the statements from the company at our headquarters. What we have to do is coordinate that, because that’s another district. And so we coordinated the in-

investigation and compliance officers going to the distribution facility in ConAgra. And so in that scenario, we had a single. We had that information, we did trace back that product. We couldn't find them in common to do a follow-up sample.

Senator BURNS. Then what happens if—you say you go back, and it's been documented, and you find a problem at ConAgra. Then what happens?

Mr. SMITH. Well, we had a real-life scenario of that this year in our plant—that very scenario, similar condition. We had a random sample, with the suppliers who initiated our random sample not associated with ConAgra, and the follow-up sampling through the documentation and having product on-site intact, unopened, we then took those samples contained in that product, sent it to the lab, found it was positive, initiated the recall. And, at the same time, I led a food-safety investigation team into ConAgra in Greeley, Colorado. And, from that, we took enforcement action and we expanded the recall based on that.

Senator BURNS. Give me the time-line. How long did it take you? From the time that—the time that you—from the time you collected it, how much time in the lab—give me some kind of a—of how much time was involved.

Mr. SMITH. I believe we found product to contain—on the 20th. We shipped off on the 24th. You have 5 days. You can certainly have 5 days until we can confirm the positive. I believe the recall was on the 30th of June. We initiated a recall. That was when the first recall occurred. At the same time, we were working with State and other Federal agencies, because we had outbreak information. The week of July 10th, I assembled a team. And when I assembled the team, I had to get microbiologists, epidemiologists, compliance officers. And we were there at ConAgra on July 15th.

Senator BURNS. In other words, there are, what—10 plus 15–25 days elapsed.

Mr. SMITH. June 30th, the sample was determined to be positive. We were there 2 weeks later.

Senator BURNS. But 5 days in the lab work.

Mr. SMITH. No. The sample was taken on the—submitted on the 24th.

Senator BURNS. Okay.

Mr. SMITH. It takes 5 days. We had to overnight ship it to go out for culture to perform the methodology, but to confirmation, it's a 5-day process, yes.

Senator BURNS. Correct me if I'm wrong on this, but I think that involved, what, around 16 million pounds? Is that correct?

Mr. SMITH. The initial recall was 350,000 pounds, based on that sample. After the food safety investigation, it was expanded another 15 million, yes. After we went there and collected our information and did our assessment, yes, it was expanded.

Senator BURNS. Can you tell me, or—you may not have this information—but could you tell me, of the amount of pounds that were involved, how many pounds of those made it back to the packer?

Mr. SMITH. I wouldn't want to guess on that, but I can get you that information. I can submit it to you.

[The information follows:]

FSIS' focus during a voluntary recall is to provide oversight to ensure that customers receiving the recalled product have been notified. FSIS field compliance officers conduct effectiveness checks to ensure that the establishment is making all reasonable efforts to retrieve the recalled product. Upon compliance, the firm is officially notified by letter that the recall is completed and no further action is expected. The ConAgra recall from July 19, 2002 has not been completed and the total amount of recalled product recovered has not been supplied by the establishment.

Senator BURNS. Because it seems like, in that—in that amount of time, you didn't—you couldn't stop the consumption. It was already out there. I would imagine they move this meat pretty rapidly. And I'd just like to know, on—that amount of time.

Tell me about your—Mr. Shire made the point that more inspectors are needed. Can you respond to that?

Mr. SMITH. I sure can. The staffing of slaughter plants in this country is defined by line speed. And the line speed then dictates how many FSIS inspectors are on the line. The establishment cannot work unless we have our full complement of people there. So, in some plants—if there's not a full complement, then they either have to slow the line down, or they wouldn't work. So they have to have the full complement of on-line inspectors in order to be able to slaughter. A shortage of inspectors would not result in a plant—in a daily shortage—let's say, a snow storm, traffic, and people—if they don't have the full complement there—they cannot run at full speed until we have a full complement in place. And those line speeds and those inspector configurations associated with those line speeds are in the regulations, and we can provide those, also.

[The information follows:]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

CHAPTER III—FOOD SAFETY AND INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 310—POST-MORTEM INSPECTION—TABLE OF CONTENTS

Sec. 310.1 Extent and time of post-mortem inspection; post-mortem inspection staffing standards.

(a) A careful post-mortem examination and inspection shall be made of the carcasses and parts thereof of all livestock slaughtered at official establishments. Such inspection and examination shall be made at the time of slaughter unless, because of unusual circumstances, prior arrangements acceptable to the Administrator have been made in specific cases by the circuit supervisor for making such inspection and examination at a later time.

(b)(1) The staffing standards on the basis of the number of carcasses to be inspected per hour are outlined in the following tables. Standards for multiple inspector lines are based on inspectors rotating through the different types of inspection stations during each shift to equalize the workload. The inspector in charge shall have the authority to require the establishment to reduce slaughter line speeds where, in his judgment, the inspection procedure cannot be adequately performed at the current line speed because of particular deficiencies in carcass preparation and presentation by the plant at the higher speed, or because the health condition of the particular animals indicates a need for more extensive inspection.

(2) CATTLE INSPECTION.—For all cattle staffing standards, an "a" in the "Number of Inspectors by Stations" column means that one inspector performs the entire inspection procedure and a "b" means that one inspector performs the head and lower carcass inspection and a second inspector performs the viscera and upper carcass inspection.¹

¹The "Maximum Slaughter Rates" figures listed in paragraph (b)(2)(i) of this section for one (a) and two (b) inspector kills are overstated because the time required to walk from one inspection station to another is not included. To determine the proper adjusted maximum slaughter

Continued

(i) INSPECTION USING THE VISCERA TRUCK.—

STEERS AND HEIFERS

Maximum slaughter rates (head per hour)	Number of inspectors by stations		
	Head	Viscera	Carcass
1 to 27	a	a	a
28 to 56	b	b	b
57 to 84	1	1	1
85 to 86	1	2	1
87 to 143	2	2	1

COWS AND BULLS

Maximum slaughter rates (head per hour)	Number of inspectors by stations		
	Head	Viscera	Carcass
1 to 27	a	a	a
28 to 55	b	b	b
56 to 77	1	1	1
78 to 81	1	2	1
82 to 134	2	2	1

(A) Rules for determining adjusted maximum slaughter rates for single-inspector kills considering walking distance according to the table in this subdivision: Determine the distances the inspector actually walks between the points shown in columns 2 through 14 of the following table. For each column, determine the deduction figure opposite the appropriate number of feet in column 1. Compute the total of the deduction figures for columns 2 through 14. The adjusted maximum rate is the maximum rate in paragraph (b)(2)(i) of this section minus total of the deduction figures. If the resultant number is not a whole number, it must be rounded off to the next lowest whole number.

line speed, paragraph (b)(2)(i)(A) of this section for one inspector kills or paragraph (b)(2)(i)(B) of this section for two inspector kills must be used along with their accompanying rules.

One-Inspector Cattle Kill--Viscera Truck

[Table of deductions from maximum slaughter rates for each 2 feet between points (in tenths of cattle per hour)]

Number of feet between points	2 Head rack and high rail and low rail rack		3 Viscera		4 Low rail rack		5 Head rack and carcass		6 Carcass and washbasin		7 Tags-- low rail and washbasin		8 Viscera and washbasin		9 Viscera and high rail		10 Low rail and high rail		11 Head rack and closest wagon		12 Washbasin and high rail		13 Head rack and washbasin		14 Viscera and tags-- brands	
	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.	Stns. Hrs.	Cows Hrs.
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
13	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
15	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
17	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
19	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
21	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
23	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
25	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
27	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
29	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
31	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
33	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
35	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
37	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
39	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
41	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4
43	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4
45	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4
47	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4
49	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4
51	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
53	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
55	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
57	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
59	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

\\ The washbasin referred to here is the one the inspector uses while encircling from the head rack to high rail inspection.
 \\ This refers to the carcass in the bleeding area.

(B) Rules for determining adjusted maximum slaughter rates for two-inspector kills considering walking distance according to the table in this subdivision: Determine the distances the inspectors actually walk between the points shown in columns 2 through 9 of the following table. Column 9 is used only if the condemned brands and tags the viscera inspector uses are kept at a location other than at the washbasin-sterilizer. For each column, determine the deduction figure opposite the appropriate number of feet in column 1. Compute the total of the deduction figures for columns 2 through 9. Divide this total by 2. The adjusted maximum rate is the maximum rate in paragraph (b)(2)(i) of this section minus the number calculated above. If the resultant number is not a whole number, it must be rounded off to the next lowest whole number.

Two-Inspector Cattle Kill--Viscera Truck
 [Table of deductions from maximum slaughter rates for each 2 feet between points (in tenths of cattle per hour)]

Number of feet between points	1		2		3		4		5		6		7		8		9 \(\)		
	Stns. Hfcs.	Cows Bulls																	
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.8	0.7	0.4	0.5	0.5	0	0	0	0.1	0.2	0.3
5	0.1	0.1	0.1	0.1	0.1	0.1	0.1	1.5	1.4	0.7	0.9	1.0	0.9	0.5	0.3	0.3	0.2	0.3	0.4
7	0.1	0.2	0.1	0.1	0.1	0.1	0.1	2.2	2.0	1.1	1.3	1.5	1.3	0.9	0.3	0.4	0.5	0.4	0.5
9	0.2	0.3	0.1	0.2	0.2	0.2	0.2	2.8	2.7	1.4	1.7	1.9	1.8	0.5	0.6	0.4	0.5	0.6	0.6
11	0.2	0.4	0.1	0.3	0.2	0.2	0.2	3.5	3.3	2.0	2.5	2.7	2.6	0.7	0.7	0.5	0.8	0.8	0.9
13	0.3	0.4	0.1	0.3	0.2	0.2	0.3	4.1	3.9	2.0	2.5	2.9	2.8	0.7	0.9	0.6	0.9	0.9	1.0
15	0.3	0.5	0.1	0.4	0.2	0.3	0.4	4.8	4.5	2.9	3.3	3.0	3.0	0.8	1.0	0.7	1.0	1.0	1.2
17	0.3	0.6	0.2	0.4	0.3	0.4	0.4	5.4	5.1	2.7	3.3	3.7	3.4	0.9	1.2	0.7	1.2	1.2	1.4
19	0.3	0.6	0.2	0.4	0.3	0.4	0.5	6.0	5.7	3.0	3.7	4.2	3.7	1.0	1.3	0.8	1.3	1.3	1.4
21	0.3	0.6	0.2	0.4	0.3	0.4	0.5	6.6	6.3	3.3	4.0	4.6	4.1	1.2	1.4	0.9	1.4	1.4	1.6
23	0.4	0.7	0.2	0.5	0.3	0.5	0.5	7.2	6.8	3.6	4.4	5.0	4.5	1.3	1.6	1.0	1.6	1.6	1.7
25	0.4	0.8	0.2	0.5	0.3	0.5	0.5	7.8	7.4	3.9	4.7	5.4	4.9	1.4	1.7	1.0	1.7	1.7	1.8
27	0.4	0.8	0.2	0.6	0.4	0.5	0.6	8.3	7.9	4.2	5.1	5.8	5.2	1.5	1.8	1.1	1.8	1.1	1.8
29	0.5	0.9	0.2	0.6	0.4	0.5	0.6	8.9	8.5	4.5	5.4	6.2	5.6	1.6	2.0	1.2	2.0	1.2	2.0
31	0.5	0.9	0.2	0.7	0.4	0.5	0.7	9.4	9.0	4.8	5.8	6.5	5.9	1.7	2.1	1.3	2.1	1.3	2.1
33	0.5	1.0	0.2	0.7	0.4	0.7	0.7	10.0	9.5	5.0	6.1	6.9	6.3	1.8	2.2	1.3	2.2	1.3	2.3
35	0.6	1.1	0.3	0.8	0.5	0.7	0.8	10.5	10.0	5.3	6.4	7.3	6.6	1.9	2.4	1.4	2.4	1.4	2.4
37	0.6	1.2	0.3	0.8	0.5	0.7	0.8	11.0	10.5	5.6	6.8	7.6	6.9	2.0	2.5	1.5	2.5	1.5	2.5
39	0.6	1.2	0.3	0.9	0.5	0.8	0.8	11.5	11.0	5.9	7.1	8.0	7.2	2.1	2.6	1.6	2.6	1.6	2.6
41	0.7	1.2	0.3	0.9	0.6	0.8	0.9	12.0	11.4	6.1	7.4	8.3	7.6	2.2	2.8	1.6	2.8	1.6	2.8
43	0.7	1.3	0.3	0.9	0.6	0.9	0.9	12.5	11.9	6.4	7.7	8.7	7.9	2.4	2.9	1.7	2.9	1.7	2.9
45	0.7	1.4	0.3	1.0	0.6	0.9	1.0	13.0	12.4	6.7	8.0	9.0	8.2	2.5	3.0	1.8	3.0	1.8	3.0
47	0.8	1.4	0.3	1.0	0.7	1.0	0.7	13.4	12.8	6.9	8.3	9.4	8.6	2.6	3.2	1.8	3.1	1.9	3.3
49	0.8	1.5	0.3	1.1	0.7	1.0	0.7	13.9	13.3	7.2	8.6	9.7	8.8	2.7	3.3	1.9	3.3	1.9	3.3
51	0.8	1.6	0.3	1.1	0.7	1.1	0.7	14.4	13.7	7.4	8.9	10.0	9.1	2.8	3.4	2.0	3.4	2.0	3.4
53	0.9	1.6	0.4	1.2	0.7	1.1	0.7	14.8	14.1	7.7	9.2	10.3	9.4	2.9	3.5	2.0	3.5	2.0	3.5
55	0.9	1.7	0.4	1.2	0.7	1.1	0.8	15.2	14.6	7.9	9.5	10.6	9.7	3.0	3.7	2.1	3.6	2.1	3.6
57	0.9	1.7	0.4	1.3	0.8	1.2	0.8	15.7	15.0	8.2	9.7	10.9	9.9	3.1	3.8	2.2	3.8	2.2	3.8
59	0.9	1.8	0.4	1.3	0.8	1.2	0.8	16.2	15.5	8.5	10.0	11.2	10.1	3.2	3.9	2.3	3.9	2.3	3.9

\1 This column to be used only if brands and tags are not located at the washbasin.
 \2 This refers to the carcasses in the bleeding area.

(ii) INSPECTION USING VISCERA TABLE, TONGUE-IN PRESENTATION OF HEADS.—

STEERS AND HEIFERS

Maximum slaughter rates (head per hour)	Number of inspectors by station		
	Head	Viscera	Carcass
1 to 32	a	a	a
33 to 58	b	b	b
59 to 84	1	1	1
85 to 86	1	2	1
87 to 143	2	2	1
144 to 171	3	2	1
172 to 198	3	3	1
199 to 226	3	3	2
227 to 253	4	3	2
254 to 280	4	4	2
281 to 306	5	4	2
307 to 333	5	5	2

COWS AND BULLS

Maximum slaughter rates (head per hour)	Number of inspectors by station		
	Head	Viscera	Carcass
1 to 29	a	a	a
30 to 56	b	b	b
57 to 77	1	1	1
78 to 81	1	2	1
82 to 134	2	2	1
135 to 159	2	3	1
160 to 187	3	3	1
188 to 213	3	4	1
214 to 234	3	4	2
235 to 264	4	4	2
265 to 289	5	4	2
290 to 314	5	5	2

(iii) INSPECTION USING VISCERA TABLE, TONGUE-OUT PRESENTATION OF HEADS.—

STEERS AND HEIFERS

Maximum slaughter rates (head per hour)	Number of inspectors by station		
	Head	Viscera	Carcass
1 to 32	a	a	a
33 to 58	b	b	b
59 to 86	1	1	1
87 to 103	1	2	1
104 to 156	2	2	1
157 to 186	2	3	1
187 to 216	3	3	1
217 to 246	3	3	2
247 to 275	3	4	2
276 to 304	4	4	2
305 to 333	4	5	2
334 to 362	5	5	2
363 to 390	5	6	2

COWS AND BULLS

Maximum slaughter rates (head per hour)	Number of inspectors by station		
	Head	Viscera	Carcass
1 to 29	a	a	a
30 to 56	b	b	b
57 to 79	1	1	1
80 to 98	1	2	1
99 to 147	2	2	1
148 to 174	2	3	1
175 to 205	3	3	1
206 to 233	3	4	1
234 to 256	3	4	2
257 to 288	4	4	2
289 to 316	5	4	2
317 to 343	5	5	2

(3) SWINE INSPECTION.—The following inspection staffing standards are applicable to swine slaughter configurations. The inspection standards for all slaughter lines are based upon the observation rather than palpation, at the viscera inspection station, of the spleen, liver, heart, lungs, and mediastinal lymph nodes. In addition, for one-and two-inspector lines, the standards are based upon the distance walked (in feet) by the inspector between work stations; and for three or more inspector slaughter lines, upon the use of a mirror, as described in Sec. 307.2(m)(6), at the carcass inspection station. Although not required in a one-or two-inspector slaughter configuration, except in certain cases as determined by the inspection service, if a mirror is used, it must comply with the requirements of Sec. 307.2(m)(6).

TABLE 1.—ONE INSPECTOR—STAFFING STANDARDS FOR SWINE

Distance walked ¹ in feet is	Maximum inspection rates (head per hour)			
	Market hogs (heads attached (heads detached)		Sows and boars (heads detached)	
	Without mirror	With mirror	Without mirror	With mirror
0 to 5	140	150	131	143
6 to 10	134	144	126	137
11 to 15	129	137	122	132
16 to 20	124	132	117	127
21 to 35	120	127	113	122
26 to 30	116	122	110	118
31 to 35	112	118	106	114
36 to 40	108	114	103	110
41 to 45	105	110	100	106
46 to 50	101	107	97	103
51 to 55	98	103	94	100
56 to 60	96	100	91	97
61 to 65	93	97	89	94
66 to 70	90	95	87	92
71 to 75	88	92	85	89
76 to 80	86	89	82	87
81 to 85	84	87	80	85
86 to 90	82	85	79	83
91 to 95	80	83	77	81
96 to 100	78	81	75	79

¹Distance walked is the total distance that the inspector will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, head, and wash-basin).

TABLE 2—TWO INSPECTORS—STAFFING STANDARDS FOR MARKET HOGS

Distance walked ¹ in feet by inspector B is	Maximum inspection rates (head per hour with heads attached or detached)		
	Line configuration		
	Carcus, ² head viscera ³	Viscera, ² head carcass ³	Head, ² Head carcass ³
Without Mirror			
0 to 5	151–253	151–271	151–296
6 to 10	151–239	151–255	151–277
11 to 15	151–226	151–240	151–260
16 to 20	151–214	151–227	151–244
21 to 25	151–204	151–215	151–231
With Mirror			
0 to 5	151–253	151–303	151–318
6 to 10	151–239	151–283	151–304
11 to 15	151–226	151–265	151–289
16 to 20	151–214	151–249	151–270
21 to 25	151–204	151–235	151–254

¹ Distance walked is the total distance that Inspector B will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, and washbasin).

² Inspector A.

³ Inspector B.

Note: In multiple-inspector plants, the inspectors must rotate between all inspection positions during each shift to equalize the workload.

TABLE 3.—TWO INSPECTORS—STAFFING STANDARDS FOR SOWS AND BOARS

Distance walked ¹ in feet by inspector B is	Maximum inspection rates (head per hour)			
	Line Configuration			
	Carcass, ² head Viscera, ³ heads detached	Viscera, ² head carcass, ³ heads detached	Head, ² viscera carcass, ³ heads detached	Head, ² viscera carcass, ³ heads attached
Without Mirror				
0 to 5	144–248	144–254	144–267	144–267
6 to 10	144–235	144–240	144–253	144–253
11 to 15	144–222	144–227	144–239	144–239
16 to 20	144–211	144–215	144–226	144–226
21 to 25	144–201	144–205	144–214	144–214
With Mirror				
0 to 5	144–248	144–292	144–305	144–292
6 to 10	144–235	144–273	144–291	144–280
11 to 15	144–222	144–256	144–272	144–268
16 to 20	144–211	144–241	144–255	144–255
21 to 25	144–201	144–228	144–240	144–240

¹ Distance walked is the total distance that Inspector B will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, and washbasin).

² Inspector A.

³ Inspector B.

Note: In multiple-inspector plants, the inspectors must rotate between all inspection positions during each shift to equalize the workload.

TABLE 4.—THREE INSPECTORS OR MORE—STAFFING STANDARDS FOR SWINE

Maximum inspection rates (head per hour with heads attached)	Number of inspectors by station			
	Head	Viscera	Carcass	Total
Market hogs:				
319 to 506	1	1	1	3
507 to 540	1	2	1	4
541 to 859	2	2	1	5
860 to 1,022	2	3	1	6
1,023 to 1,106	3	3	1	7

TABLE 4.—THREE INSPECTORS OR MORE—STAFFING STANDARDS FOR SWINE—Continued

Maximum inspection rates (head per hour with heads attached)	Number of inspectors by station			
	Head	Viscera	Carcass	Total
Sows and boars:				
306 to 439	1	1	1	3
¹ 306 to 462	1	1	1	3
440 to 475	2	1	1	4
476 to 752	2	2	1	5
753 to 895	3	2	1	6
896 to 964	3	3	1	7

¹This rate applies if the heads of sows and boars are detached from the carcasses at the time of inspection.

Note: In multiple-inspector plants, the inspectors must rotate between all inspection positions during each shift to equalize the workload.

[35 FR 15567, Oct. 3, 1970, as amended at 47 FR 33676, Aug. 4, 1982; 50 FR 19903, May 13, 1985]

Senator BURNS. In other words, on that—say your line speed is hampered some way or other, can you shut a line down?

Mr. SMITH. Absolutely. For sanitary dressing procedures, direct product contamination, environmental contamination—the online people at each of their stations have that ability, and then we have alternating people—usually in a beef plant, a high-speed beef plant, we have head inspectors, we have eviscera inspectors, and we have slaughter inspectors. And we have off-line people, off-line inspectors, that are verifying the fabrication, the grinding, and also are looking at the final rail product. And then we have a veterinarian there who's in charge of the supervision. And he is—he or she is also there to do the disposition of carcasses, because inspectors cannot condemn an animal. Only veterinarians can do that.

Senator BURNS. Mr. Shire, would you like to respond to that?

Mr. SHIRE. Well, I—our understanding is that—in situations that have existed, that the high line speed has contributed to some of the problems in the plant. Recently, the problems with trim at Swift have been—have been put to that very—for that particular reason.

The other thing about the line speeds is that—what Mr. Smith says, that in cases where the inspectors have been taken and put on the line in large plants, what—in small plants, they've ended up being—well, they've been ended up pulling off of the lines in small plants, and small plants are facing situations then where they can't do as much slaughter as they would like to do. If they have a normal course of 2 or 3 or 4 days a week of slaughter when the—there have been instances where a lot—where the inspectors have been taken and put onto the line in larger plants, and then the small plants have to cut back on the amount of slaughter that they're doing, or they have to shut down.

Senator BURNS. Mr. Munsell, would you like to comment?

Mr. MUNSELL. I have several comments, if I may.

Senator BURNS. You may.

Mr. MUNSELL. Okay. First of all, you asked Mr. Smith a question about when does the USDA inspector document information regarding the source of meat-based sampling for an *E. coli* analysis. I argued with the USDA for many, many months about this, that they should be documenting that on the day that the sample was taken. HACCP is supposedly scientific, and that—to me, that's the only scientific way to do it. However, that was not proper procedure

for them to document the information on the day the sample was taken.

But on July 29th, they sent out—the USDA sent out a three-paragraph memo to all their field staff explaining that starting in their—the field staff were to start documenting that information on the day the sample was taken. A great step forward.

I think it was in September that improvement, that new policy, was rescinded. The new policy now says that when the—when the sample is determined to be a presumptive positive, then at that point in time the inspectors must go back to the plant management and say, “What was the origin of that meat?”

I attended a meeting in Great Falls in early October that was hosted by Dr. Nathaniel Clark, who is the district office manager of the Minneapolis USDA office. So I asked him that question in front of everyone else who was in that room, so they could document whether I’m telling the truth or not. I said, “What—what is the current status? Is the inspector to document the origin when he takes the sample, or 3 days later?” Because that’s—it takes 3 days before that presumptive positive is made. Dr. Nathaniel Clark gave me the comment, and I quote, “For legal reasons, it has been decided to wait until the presumptive positive determination has been made,” so—end quote. So I asked, “For legal reasons, who would possibly legally challenge the USDA if they instructed their inspectors to document the origin of meat when they took the sample?” Well, I need for you to fill in the blanks on that one. It had to be someone who had something to lose.

Now, it’s my contention that it should be done jointly, that—the day that the sample is taken, it is my contention that both the inspector and the plant management should work together and fully document all that information so that, in the future, 3 days later, if it is presumptive-positive, there can be no question. The plant can’t lie and say, “Well, nope, it came from somebody else,” nor can the USDA make false accusations to the plant, saying, “Well, it was your meat.”

In our case, February 19th and 20th, 21st, as Mr. Smith said, we fully documented all that information. It was observed by the inspector. He knew that all that documentation was correct. And for that reason, both he and his supervisor, the veterinarian, signed that letter that was seen on NBC Nightly News in which they identified ConAgra as the source.

Well, I’d just ask everybody in this room, even if the USDA did go back to the policy of instructing that all that documentation be prepared on the day the sample is taken, that documentation means nothing, whether we take it or whether the inspector takes it, yet the hierarchy in Washington, D.C. has the authority to summarily reject it all and call it mere “opinion.”

Senator BURNS. Mr. Smith, do you want to respond to that?

Mr. SMITH. Again, I’m not sure what we’re saying was that we rejected any opinions. What I do know is the regulations that required plants, for decades, to be responsible for documenting product coming into the plant and where it goes out of their plant. So, therefore, it is a matter of when we need to collect this information, we go to the plant to ask them for those required records.

We—as I said, we do 54,000 samples to this point. We’ve already done 6,000 this year. The number of positive 0157:H7s is less than 10 percent of those ever confirmed. We’d be collecting an awful lot of information when we could have inspectors doing more important things.

We also know that those records are available to us, because they’re required by regulation. Plants need to document their incoming products, what they make—that’s required by regulation; I can give you the regulations sites—and where they distribute them to. Those records are available to us, and those are the records we would then use to make those determinations.

What we are doing with the supplier notification process is—because I said we had a high probability on presumptive positives, that it seems, would get a jump upon getting those distribution records together. But what does that mean? That means we go to the plant owner and ask him for those records that he or she must maintain in order to get that information so we can send a notification out, should it become positive.

We can be much clearer. I mean, we’re happy to make that clearer for our inspectors if we need to, but those are the regulations, those are the records, and those are the way I’ve been operating, as far as I know, since I’ve been in this agency for 25 years.

Mr. MUNSELL. But why—but why can’t—once you accept a sample and—why can’t you put on that sample the documentation of where that meat comes from at that time rather than waiting 2 or 3 days or whatever before your determine—presumptive determination?

Mr. SMITH. Again, I think that’s something that we can look at. I think that needs to be vetted in a public process, because a number of packers would also be very upset about us collecting information on negative findings. And so I just think, in fairness to everybody, that we should do a meeting. We should discuss that. We have meetings every month with industry and the consumer groups, and that’s certainly a topic that Mr. Shire could bring up, and we could certainly vet that in a public process.

Right now, we feel we have sufficient record-keeping requirements to be able to get that information. And to this point, it has been very effective both for *Salmonella* testing, for red meat. All our testing programs are the same way.

Senator BURNS. All right. Well, I would say that—maybe the large packer may have some complaints about that, but that’s tough.

Mr. Munsell?

Mr. MUNSELL. Mr. Smith says that, “in all fairness to all the packers”—and, you know, the system has to be fair to all the packers—it also has to be common sense. The Wholesome Meat Act, the primary recipient—the primary beneficiary of the Wholesome Meat Act is the consumer. To me, every decision that—every policy that the USDA makes, I believe, should have, as its primary goal, safe food for consumers. So instead of saying, “Let’s be fair to all packers,” I say, “Let’s be fair to consumers.” If food safety is our number one goal, every policy that the USDA and that plant management follows must be geared toward safe food, not protecting the big packers.

Mr. SMITH. May I respond to that?

Senator BURNS. Yes.

Mr. SMITH. I agree that our number one priority is food safety. And when I said “packers,” I didn’t just say “large packers.” I said “all packers.”

And I also know—and so maybe this will help clarify—that we extensively train our compliance officers to do record investigations and trace-back. We send them to Justice Department training in New Mexico. We have further training for them in that we have contracted with Sam Houston University in law enforcement. Our people are well-trained and able to have assess records, trace-back records, just so when an outbreak or an incident occurs, we can quickly protect the consuming public.

Senator BURNS. Tell me about the inspector’s mark. What is it, what’s it look like, and when it is applied?

Mr. SMITH. The mark of inspection is a shield. It says, “Inspected for wholesomeness”——

Senator BURNS. Whenever you roll the carcass? Is that when you——

Mr. SMITH. No—it goes on the carcass. It also is a required labeling feature on every label of meat and poultry product, and egg products, also.

What does the mark of inspection mean? It means—my version of what it means, and I believe it’s the Agency’s version of what it means, is that those products have been produced in facilities that are safe, constructed a safe environment for producing product, that the equipment is designed to not adulterate the product, that the water supply coming into that product—that plant is potable, that the sewage systems in that plant cannot cross-contaminate. It means that the plant has sanitation operating procedures which are required to ensure the products are not directly contaminated or adulterated. It means that the products are produced under process-control systems, HACCP, so that microbiological, chemical, and physical hazards are either controlled, reduced, or eliminated. It means that products are verified that they’re not economically adulterated, and that when they go out the door, they are properly labeled as to net weight and content.

Senator BURNS. Now, I’ve forgotten exactly what it says on that roll. I guess it says, “USDA inspected.” And also, is the grade put—applied at the same time with regard to the carcass? Not in regard to the trimmings or——

Mr. SMITH. Grading is a voluntary service. Any marketing service is responsible for that. We do not apply the grade marks. We only apply the mark of inspection.

Senator BURNS. Okay. I—there’s another mark here somewhere. I’ve got a terrific memory, but it’s short.

I think—Mr. Munsell, do you have anymore questions of USDA here, while we’ve got him here——

Mr. MUNSELL. I may.

Senator BURNS [continuing]. That we should make part of the public record?

Mr. MUNSELL. When I earlier made the comment about the fact that the—that July 29th policy change had been rescinded in regards to when is information documented as to the origin of the

meat being sampled—I was wondering if Mr. Smith could define what Dr. Nathaniel Clark meant when he said, “For legal reasons, it’s been decided to wait until 3 days later when the presumptive positive has been determined.” So what did he mean by “legal reasons”? What kind of legal ramifications would this have to the USDA?

Mr. SMITH. Honestly, I do not. Not being in that conversation, I’m not sure. I can tell you the policy did not change. The policy was published in a press release on July 15th and said we will notify suppliers when we have a positive result. We collect the information when we have presumptives because, again, there’s a high probability that a presumptive will confirm. It’s an 80-percent chance. So whether he was referring to maybe we should collect it when it’s potential, and then potential you have a 10 percent chance of confirming—I don’t know what his thinking was at the time.

I’m telling you the policy was published on July 15th, 2002, an FSIS press release, and I’m not aware of any changes to it since.

Mr. MUNSSELL. I’m sure that—I have a copy in my briefcase of the July 29th three-paragraph memo that specifies that they are to begin documenting that information on the day they collect the sample. And included with that was a form that appeared on the Web site that showed the information. So, Mr. Smith, are you aware of that three-paragraph memo, plus the chart that they were supposed to use to document the information?

Mr. SMITH. Again, we always are putting up information to help our people document and collect information. The policy, again, was made when we announced we were going to notify suppliers, on July 15th. If there’s a July 29th, then I’m not—I’m just not familiar with it right now. If it’s there, my guess would be, it’s instruction to our inspectors on how to document, especially if it was a worksheet. That would make sense that we would do something like that to help them document. I don’t know how that would have changed any policies. And it was instructions to document and collect information.

Senator BURNS. Mr. Smith, give me a—give me some kind of idea of—on whenever you redo policy and policy changes, if you—if it’s—you say that every 30 days you have a working team that reviews changes, or suggested changes.

Mr. SMITH. Well—how often?

Senator BURNS. How often?

Mr. SMITH. We meet with our constituents pretty much on a monthly and never less than every-other monthly basis, and questions either the consumer groups have or the industry have on our executing policy, we discuss. And then if there’s changes needed, we try and do that in a public arena, just like—for instance, we’re having a recall meeting tomorrow in Washington, D.C., to go over some of the issues that Mr. Shire brought up, and that’s, we feel, a very good way to get input on the execution of how we do things. And if there’s changes needed, then that can be brought forward in the public process, and everybody can weigh in and talk about it, and then we hopefully can make the best decision.

The only time we would not wait for that would be, of course, if we have a food emergency. We will act first, and discuss any associated issues after we control the food safety issue.

Senator BURNS. Well, I know that—and you can hear the frustration here among producers and everybody else, because it just affects all of us. And your procedures, sometimes, I would imagine, has to stand scrutiny and review all the time, because there is—let's face it, there are new ways of doing things. And of course, science turns up new things.

I would—I know there's some more questions out there, and I'm going to leave the record open for more questions and—to all of you. We have a—I know two other Senators that don't—that are interested in this issue, because they have facilities in their States, and also producers in their States. So I have no more questions.

I think we've pretty well covered the policy end of it, and I think probably that you'll see the Senate take a closer look at or maybe a review with the department on those things. And I would imagine you could expect some hearings in Washington, D.C. I don't think this is the end of this, because it causes lots of heartburn whenever these situations happen.

So I'm going to leave the record open for 30 days. I'm going to allow other Senators to—if they have questions, I'll have them send to you for clarification and your response, and you can respond both to the committee and to the Senator. I would appreciate that very much.

If there is anything else that could come before this—I do think that right now our biggest problem is a lack of communication between, say, an operation like Mr. Munsell runs in Miles City, Montana, and also—but it looks like if his records are complete and the documentation is there, I'm not much concerned about what a larger packer might think is an inconvenience to them. I'm more concerned about taking care of the problem and doing it now, because we have the consumers to be concerned about and also the—and also, if that documentation also clears a lot of people down the line. It looks like the—if the dead meat's documented, whenever it goes to the lab it should say where it comes from. And—now if you want to put a—if you want to put an embargo on the information of that until after the—until after the tests are run, I see no problems with that, but I think it should be on there so that we know how to react, and react in a proper and speedy manner. And now that's my opinion. Of course, I may be a minority here, but that's what I think.

CONCLUSION OF HEARING

So I'm going to—I'm going to close these hearings. I'm going to leave the record open for 30 days for questions. And if you can respond to those, I—it would be muchly appreciated.

So as of right now, this session is recessed.

[Whereupon, at 4:20 p.m., Wednesday, December 11, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]