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January 31, 2005

Docket Clerk
U.S. Department of Agriculture
Food Safety & Inspection Service
300 12th Street, SW
Room 102 Cotton Annex
Washington, DC 20250

Re: Food Safety and Inspection Service Report on Assessing the Effectiveness of the *Listeria monocytogenes* Interim Final Rule (69 Fed. Reg. 70051 (Dec. 2, 2004); Docket No. 04-032N

Dear Sir or Madam:

The Food Marketing Institute (FMI) appreciates the opportunity to provide comments on the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service's (FSIS's) Report on Assessing the Effectiveness of the *Listeria monocytogenes* (Lm) Interim Final Rule (hereinafter the Report). FMI conducts programs in research, education, industry relations and public affairs on behalf of its 1,500 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all food retail store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 50 countries.

Our primary concerns relate to the section of the report directed to retail operations. The Report properly notes that the measures set forth in USDA's interim final rule on the control of *Listeria monocytogenes* in ready-to-eat meat and poultry products (68 Fed. Reg. 34207 (June 6, 2003) (hereinafter interim final Lm rule)) have significantly reduced the occurrence of *Listeria monocytogenes* in the meat and poultry products that are ultimately sold at retail. This was further reinforced in a statement made by Dr. Merle Pierson, Acting USDA Undersecretary, on January 4, 2005 when he said, "The results have been remarkable." Reducing LM on meat and poultry products produced at federal establishments minimizes one of the potential sources of LM at retail. Efforts at retail can be focused on minimizing other sources of LM and controlling potential risk factors such as time, temperature, and sanitation.

Several of the findings by the Project Assessment Team (PAT) are based on assumptions, however, and are not backed by current scientific data. For example, the report states that “slicing and packaging of luncheon meats at retail deli counters present a significant source of exposure to *Listeria monocytogenes*,” but the data used to support this statement were collected *prior* to the full implementation of the interim final rule. Therefore, this conclusion can not be part of an assessment of the effectiveness of the rule. The report further states that, “Deli operations are a significant concern for public health,” but, again USDA presents insufficient evidence to link findings of LM at retail to human cases of listeriosis. Ongoing and proposed studies should provide a better basis upon which to determine the role of retail in preventing listeriosis.

The report suggests that training of retail managers is likely the most effective strategy to mitigate any problems that may be associated with retail. We strongly support education and training initiatives, and note that the FDA Database of Risk Factors for Foodborne Illness demonstrated the positive effects that can be achieved by training and certification of food handlers and managers.

Two additional statements in the “Retail” section of the Report merit comment. First, the report states, “Including discussions of liability issues might improve attention of all parties to these issues.” The retail industry is fully committed to food safety and to protecting the public health. Our members value the health and well-being of consumers and disagree with USDA’s intimation that the retail food industry would be further motivated by the threat of liability.

Second, the report states, “It is unclear whether FSIS can facilitate and/or encourage state public health departments to assume more responsibility for these [retail] efforts.” The state health departments do an outstanding job in their efforts to assure the protection of the public and implying that they need encouragement from FSIS to do more may reflect a lack of information on the roles of state health departments, the Food and Drug Administration (FDA) and the Association of Food and Drug Officials (AFDO) in food safety controls at retail - a concern pointed out to FSIS by the National Advisory Committee on Meat and Poultry Inspections (NACMPI). We recommend that the Agency continue to work with retailers, FDA, state health departments, AFDO and the Conference for Food Protection to develop cost-effective measures that will continue to increase public health protection at retail. To that end, we are pleased with the work currently underway by all stakeholders to develop guidance for retail best practices to minimize the risks associated with LM at retail.

Finally, we note that the report includes an important discussion of the availability of consumer incentive labeling. As an addendum, we note that one issue not addressed by the PAT was the impact that home refrigeration temperatures can have on reducing listeriosis. The “what-if” scenarios in the USDA/FDA/CDC Risk Assessment identified this as one of the most significant factors in reducing cases of listeriosis. The Partnership

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for Food Safety Education is developing "Project Chill," an initiative to educate consumers about the importance of keeping home refrigerators at 41° or less. The retail food industry will be working with the Partnership to disseminate refrigerator thermometers to consumers to support this project.

We appreciate the opportunity to comment on the Report on the interim final Lm rule. If you have any questions regarding our remarks, please do not hesitate to contact us.

Sincerely,

Deborah R. White
Associate General Counsel,
Regulatory Affairs