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August 27, 2001

Docket No. 97-013P
U.S. Department of Agriculture
Food Safety and Inspection Service
300 Twelfth Street, SW
Room 102
Washington, DC 20250-3700

**Re: Proposed Performance Standards for the Production of Processed
Meat and Poultry Products; Docket No. 97-013P**

Dear Sir or Madam,

The Food Marketing Institute (FMI) is pleased to comment on the U.S. Department of Agriculture's (USDA's) proposal on performance standards for the production of processed meat and poultry products. 66 Fed. Reg. 12589 (Feb. 27, 2001). The proposal primarily addresses the levels of pathogen reduction and limits on pathogen growth that official meat and poultry establishments must achieve. However, the Department also considered proposing a requirement that processors of ready-to-eat (RTE) meat and poultry products incorporate "use by" date labeling on their products. We agree with the Department's determination that it would be premature to propose "use by" date labeling at this time. The purpose of these comments is to respond to the Department's request for information associated with this issue.

FMI conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 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 60 countries.

A. Background

USDA is proposing to amend the federal meat and poultry regulations to establish food safety and performance standards for all RTE and partially heat-treated meat and

poultry products. 66 Fed. Reg. at 12590. In particular, the proposed rule would establish pathogen lethality and stabilization requirements for these products. In addition, USDA has proposed to require all inspected establishments that produce RTE meat and poultry products to test food-contact surfaces for *Listeria spp* if the plants have not developed and implemented post-lethality treatment controls for *Listeria monocytogenes (Lm)* in their HACCP plans.

In the preamble to the proposed rules, USDA states that the Department considered requiring establishments to label certain RTE meat and poultry products with a product shelf-life based on product safety. 66 Fed. Reg. at 12604. USDA explained that “use by” date labeling might provide further reductions in risk in the case of an RTE product that was contaminated at the plant after lethality treatments are applied, *e.g.*, slicing deli meats or peeling hot dogs. *Id.* at 12605, 12635. The Department states that food-contact surface testing may not be sufficient to address concerns of post-processing contamination since minuscule levels of *Lm* that are not detectable with current test methods might “grow out” in certain products, even while they are held at refrigerated temperatures. *Id.* at 12635. USDA theorized that, if consumers understood “use by” dates and changed their behavior accordingly, “use by” labels might increase proper handling and, thereby, reduce listeriosis. The Department notes that “consumer behavior would have to be significantly modified to ensure that they understand ‘use by’ dating.” *Id.* at 12635.

USDA declined to propose a “use by” date labeling requirement at this time, however, because of the lack of information regarding several issues regarding the feasibility and effectiveness of “use by” date labeling. The information gaps identified by USDA include the following:

- Most effective way to implement “use by” labeling statement;
- Appropriate handling assumptions for determining “use by” date;
- Data regarding shelf-life and safety of RTE meats with pathogens;
- Current consumer understanding of “use by” labeling, the likelihood that consumer practices would change based on new labeling, and the effect behavioral changes would have on listeriosis cases;
- Potential for “use by” date labeling to give consumers a false sense of security; and
- Effect “use by” date labeling would have on production and shipment patterns of labeled RTE products and the structure of the industry.

66 Fed. Reg. at 12604, 12635. The Department intends to present the “use by” date labeling issues to the National Advisory Committee on Microbiological Criteria for Food (NACMCF).

B. “Use By” Date Labeling

We agree with the Department that it is premature to require “use by” date labeling on RTE meat and poultry products at this time. As discussed more fully below, many consumers are confused by the product dating statements that are currently in use. Moreover, insufficient data are presently available to establish “use by” dates based on product safety. Therefore, we recommend that the Department consider this issue independently and develop the data necessary to establish meaningful date labeling if such labeling will actually reduce foodborne illness.

FMI and FMI members have an historical commitment to providing consumers with information regarding the products that they purchase at supermarkets, including the safety and quality of food. With respect to product dating and storage times, FMI prepared “The Food Keeper” (copy enclosed), which provides general information regarding storage periods for a variety of foods as well as definitions for the most commonly used product dating statements. Surveys that FMI has conducted demonstrate that shoppers believe that use/sell-by dates are important and that grocery stores generally perform well in providing consumers with this information. FMI “Trends in the United States: Consumer Attitudes and the Supermarket 2000” at 9, Fig. 5 (copy enclosed). Nonetheless, questions on the meaning of product dating statements are some of the most frequent inquiries that FMI and FMI members receive; consumers have difficulty interpreting the dating statements that are used and, therefore, are unsure how to respond to them. Thus, as USDA notes in the preamble, consumer education will be necessary before “use by” date labeling can be effective in reducing foodborne illness.

We are also concerned about the feasibility of determining a “use by” date based on product safety since key pieces of information necessary to establish such a date are currently unavailable. For example, information on the infectious dose level would need to be determined. As infectious dose will vary by the susceptibility of the sub-populations, several different levels may need to be determined. Moreover, pathogens are likely to multiply at different rates based on a variety of factors, such as the composition of different “host” food products (including the presence or absence of ingredients, such as nitrites) and the manner in which the product is handled by the distributor, retailer and consumer.¹ If the Department applies “worst case” standards for

¹ Even if the consumer does not “temperature abuse” the product, the ways in which the consumer chooses to handle the product will impact the “use by” date. For example, if a consumer freezes and RTE product, such as hot dogs, the product will be acceptable for use beyond the “use by” date, provided, of course, that the product is handled properly. Similarly, with the advent of some new packaging technologies, such as modified atmosphere packaging (MAP), some RTE products have an extended shelf life that might warrant a relatively long period during which the product may be offered for sale or held by the consumer. Nonetheless, once the package is opened, the period of time during which the product should be consumed may elapse well before the “use by” date and a distant “use by” date may give the consumer a false sense of security regarding product for which the packaging is no longer in tact. Thus, consumer handling choices beyond the control of the manufacturer or retailer will have an impact on the validity of “use by” dates; labeling that accounted for all possible consumer choices may be excessive and confusing.

infectious dose and handling of the product in order to protect the most highly susceptible populations, food that may be safely consumed by the majority of the population will be destroyed. Furthermore, a "use by" date based on "worst case" assumptions may lead to a permissible shelf life that is too short to allow reasonable distribution, sale and consumption of the product.

Moreover, under the Department's current policy, if an RTE product contains any pathogens, it is considered adulterated and, therefore, in violation of the governing statutes. Adulterated product should not be sold or consumed, regardless of whether the "use by" date has passed or not, so the "use by" date would be irrelevant if the product contains pathogens. Alternatively, if the product does not have any pathogens in it, then the "use by" date is unnecessary and meaningless, and safe food will be destroyed. Thus, "use by" labeling presents some contradictory conceptual issues that would also need to be addressed before it is required.

"Use by" dating may also have further ramifications for manufacturers who currently "test and hold" product before shipment. If a "use by" date is added to the label, the window of use may be too small to permit manufacturers to hold product while awaiting test results. In that case, the result may be an increase in recalls of foods that would not have previously been distributed to the public. In addition to the obvious potential public health ramifications of distributing food to the public that may contain pathogens, increasing the number of recalls will decrease consumer confidence in the safety of the overall food supply.

For the foregoing reasons, we agree with USDA that it is premature to propose "use by" date labeling at this time. Moreover, given the issues discussed above, if further measures are necessary to ensure that RTE meat and poultry products are safe, additional interventions may be a more effective means of ensuring food safety than labeling. We recommend that USDA consider the "use by" date labeling issue independently of the current performance standard proposal, if the Department determines a need for such labeling.

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We appreciate the opportunity to comment on USDA's proposal. If we may provide further information in this regard or if we may be of assistance in any other way, please do not hesitate to let us know.

Sincerely,

Tim Hammonds
President and CEO

Enclosures