



THE VOICE OF FOOD RETAIL

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June 19, 2014

Docket Room Manager
U.S. Department of Agriculture
Food Safety and Inspection Service
Patriots Plaza 3
1400 Independence Avenue SW.
Mailstop 3782, Room 8–163B
Washington, DC 20250–3700.

RE: Best Practices Guidance for Controlling *Listeria monocytogenes* in Retail Delicatessens¹

Docket No. FSIS-2013-0038

On April 21, 2014, the U.S. Department of Agriculture’s Food Safety and Inspection Service (“FSIS” or “the Agency”) published in the *Federal Register* a Notice announcing the availability of the “FSIS Best Practices Guidance for Controlling *Listeria monocytogenes* (Lm) in Retail Delicatessens,”² (“Guidance”) and requested that comments on the Guidance be submitted on or before June 20, 2014. The Food Marketing Institute (“FMI”) appreciates the opportunity to comment on the Guidance.

FMI proudly advocates on behalf of the food retail industry. FMI’s U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost \$770 billion. Through programs in public affairs, food safety, research, education and industry relations, FMI offers resources and provides valuable benefits to more than 1,225 food retail and wholesale member companies in the United States and around the world. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains and mixed retail stores. For more information, visit www.fmi.org and for information regarding the FMI foundation, visit www.fmifoundation.org.

Introduction

The Guidance provides specific recommendations which retailers can take to control *Lm* in ready-to-eat (“RTE”) foods prepared or sliced in retail delicatessens such as deli meats and salads. These recommended best practices are based on the findings of an interagency risk

¹ 79 Fed. Reg. 22082 (April 21, 2014).

² [Best Practices Guidance for Controlling *Listeria monocytogenes* \(Lm\) in Retail Delicatessens](#)

assessment conducted by the FSIS and the U.S. Food and Drug Administration (“FDA”) to “better understand the risk of foodborne illness associated with eating certain RTE foods prepared in retail delis.”³ The risk assessment was finalized by FSIS and FDA in September 2013 and is available on the FSIS website at:

<http://www.fsis.usda.gov/wps/portal/fsis/topics/science/riskassessments>.

The information in the Guidance reflects not only the key findings from the interagency risk assessment, but also incorporates information from the FDA Food Code, scientific literature, other guidance documents (including two from FMI),⁴ and lessons learned by FSIS from its verification sampling and review of sanitation programs in meat and poultry processing establishments. FMI fully supported the interagency risk assessment and its use of sound science in better understanding the risk of foodborne illness that may be associated with consuming certain foods prepared in retail delicatessens.

Moreover, FMI has done additional studies which surpassed those of the risk assessment to further define and support the use of best practices at the retail level. FMI encourages FSIS to continue to use sound science in its review of comments and finalization of the Guidance. FMI is also supportive of the fact that FSIS recognizes that the Guidance is the first step in introducing many of these “best practices” to the retail delis and commends FSIS on developing the Guidance. However, FMI wants to express its concern that FSIS and its investigators treat the document as what it is: only guidance, and not regulation when performing in-commerce inspections at retail.

Impact on FMI Members

Introduction of the First Steps in Establishing “Best Practices”

FMI commends FSIS on drafting this Guidance for use in retail delis. While there have been a number of retail surveys that have analyzed the risk of listeriosis from deli meat sliced and packaged at retail versus pre-packaged deli meats;⁵ this Guidance captures actions identified in the various risk assessments, other available information and lessons learned in meat and poultry establishments on best practices that retailers can use in controlling and reducing this risk. This Guidance provides specific steps that a retailer can take, which have been proven successful, in decreasing the potential for *Lm* growth or cross-contamination.

³ 79 Fed. Reg. at 22082.

⁴ FMI: Guidance for the Control of *Listeria monocytogenes* Risks in Retail Food Stores (2006); FMI Listeria Action Plan for Retail Delis (2012) at: <http://www.fmi.org/docs/food-safety-best-practice-guides/listeria-action-plan-for-retail-delis.pdf?sfvrsn=9>

⁵ The May 2010 FSIS Comparative Risk Assessment for *Lm* in Ready-to-eat Meat and Poultry Deli Meats ([Report](#)) estimated that 83% of listeriosis illnesses attributed to deli meats were associated with those sliced and packaged in the retail deli.

Retailers operating delis have not had a clear and easy-to-use guide from federal agencies in the past. Through interagency collaboration, these best practices are recognized as such by the USDA-FSIS as well as the FDA. The self-assessment tool provides retailers with a road map to review what they may currently be doing versus what is known to be a best practice. We were pleased to see FMI's guidance documents as references and appreciate the collaborative relationship between industry and government.

In the FSIS Best Practices Guidance document, it is important that cleaning in surface preparation for sanitation be emphasized rather than sanitizer rotation. Currently there is a limited scientific basis for recommending sanitizer rotation in order to address Lm. Toward providing a useful educational guidance tool for retail delis, best practices based on sound science should be included to lead to programs that help to control Lm. For a sanitizer to have contact with and reduce levels of Lm, cleaning procedures should be thorough (e.g. with scrubbing) and frequent. We question the recommendation for changing sanitizers and believe that this might lead to inefficient sanitation methods.

FMI believes it is important that FSIS recognizes the significance of this document as outlining the first steps in educating retail deli operators in what they can do to minimize the risk of listeriosis associated with products they slice and package in their delis. These first steps provide the initial path to the implementation of better handling practices and subsequent better equipment and facility design as well. That said, it is important that FSIS recognize that the Guidance does provide only those first steps, and that it will take some time for these to lead to procedures and designs which could be compared to those implemented in a fully functional, newly-designed meat or poultry RTE area.

Guidance for Use at Retail is not Regulatory

FMI is optimistic that the Guidance will be a useful educational tool in the retail delis. It is important that FSIS again reminds its Office of Investigation, Enforcement and Audit (OIEA), Compliance and Investigations Division (CID) Investigators as well as contracted state regulatory agencies that the Guidance only sets out recommendations and not requirements. While FSIS issues various guidance documents to assist the meat and poultry industry – especially those small facilities that may not have access to up-to-date research and information – and states that these documents are not regulatory requirements; FMI members have experienced many FSIS inspection where recommendations have been treated as regulatory requirements by the FSIS inspector/investigator. It could also be important that if investigators determined a retail deli was not aware of the information available that they be directed not only to the Guidance, but other educational information that might be helpful to them as well such as FMI's retail specific documents.

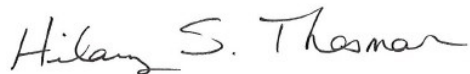
FMI is aware that FSIS issued FSIS Notice 23-14 to its investigators and that it instructs them to inform retail management of the availability of the Guidance as well as reminds them the Guidance contains recommendations – not requirements. Our members support this information being provided to FSIS personnel and its reminder that the Guidance is not regulatory.

Conclusion

Again, we applaud FSIS in putting together this document to provide the first steps in assisting retail deli operators in reviewing their operations and determining what best practices they may already have in place as well as those they should consider in developing a program to control *Lm* in their environment. FMI believes this Guidance provides a road map of those best practices that are the steps needed in developing robust programs for controlling *Lm* at the retail level in meat and poultry products sliced and packaged at the retail level. We look forward to continued collaboration on this issue through our direct work with you and through our collaborations in organizations such as the Conference for Food Protection and the revision of the guidance document on *Lm*.

We have appreciated the cooperative working relationship with FSIS throughout the risk assessment process and look forward to working with the agency to improve the food safety practices of retail delis. Please feel free to contact us should you have questions about these comments.

Sincerely,

A handwritten signature in cursive script that reads "Hilary S. Thesmar".

Hilary S. Thesmar, PhD, RD, CFS
Vice President, Food Safety Programs