FSIS Proposed Rule "Records To Be Kept by Official Establishments and Retail Stores That Grind Raw Beef Products"

The webinar will begin shortly.

Phone number: 1- 866-269-6685
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FMI Webinar
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FSIS Proposed Rule
Today’s Speakers

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FMI Antitrust Policy

FMI believes strongly in competition. Our antitrust laws are the rules under which our competitive system operates. It is FMI's policy to comply in all respects with the antitrust laws.

Association meetings or workshops by their very nature bring competitors together. It is expected that all member representatives involved in FMI activities, as well as FMI consultants and other participants, will be sensitive to the legal issues and act in compliance with applicable antitrust and competition laws both at FMI meetings and FMI-sponsored events.

Accordingly, it is necessary to avoid discussions of sensitive topics that can create antitrust concerns. Agreements to fix prices, allocate markets, engage in product boycotts and to refuse to deal with third parties are illegal under the antitrust laws. At any association meeting discussions of prices (including elements of prices such as allowances and credit terms), quality ratings of suppliers, and discussions that may cause a competitor to cease purchasing from a particular supplier, or selling to a particular customer, should be avoided. Also, there should be no discussion that might be interpreted as a dividing up of territories.

An antitrust violation does not require proof of a formal agreement. A discussion of a sensitive topic, such as price, followed by action by those involved or present at the discussion is enough to show a price fixing conspiracy. As a result, those attending an association-sponsored meeting should remember the importance of avoiding not only unlawful activities, but even the appearance of unlawful activity.

As a practical matter violations of these rules can have serious consequences for a company and its employees. Antitrust investigations and litigation are lengthy, complex and disruptive. The Sherman Act is a criminal statute, and may even result in penalties punishable by steep fines and imprisonment. The Justice Department, state attorneys general and any person or company injured by a violation of the antitrust laws may bring an action for three times the amount of the damages, plus attorney's fees.

If you have any questions or concerns at this meeting, please bring them to the attention of FMI staff.
FSIS Proposed Rule

“Records to be Kept by Official Establishments and Retail Stores that Grind Raw Beef Products”

Docket No. FSIS-2009-0011

Federal Register, Tuesday, July 22, 2014

Comments due September 22, 2014
How did we get here?

“In some situations, official establishments and retail stores have not kept adequate records that would allow effective traceback and traceforward activities. Without such records, FSIS cannot conduct timely and effective consumer foodborne illness investigations and other public health activities through the stream of commerce.”
How did we get here?

2002 Notice regarding traceback and traceforward specific to O157:H7

2009 Guidance document

Dec 2009 Joint FDA and FSIS public meeting on essential elements of product tracing

March 2010 FSIS public meeting
How did we get here?

“Retail stores, however, often do not document and maintain supplier information at times other than when FSIS collects samples of ground raw beef product from the stores for E. coli O157:H7 testing. As a result, the Agency is unable to respond quickly during foodborne disease investigations. This information, which the Agency expects businesses to obtain from their suppliers pursuant to the requirements contained in 9 CFR 320.1, is essential for effective traceback and traceforward activities.”
How did we get here?

“Incomplete and nonexistent grinding records have impeded traceback and traceforward activities by FSIS investigators during food safety events, limiting their ability to identify implicated product and sources of contaminations. This rule is needed to enhance FSIS’ ability to protect public health by conducting recalls quickly and efficiently, thereby reducing illnesses associated with contaminated ground beef product.”
What has FMI done?

Comprehensive Guide
Meat Ground at Retail
Recordkeeping and Sanitation
June 2013

Background:

On January 6, 2013 the U.S. Department of Agriculture (USDA), Food Safety Inspection Service (FSIS) posted “Sanitation Guidance for Beef Grinders” on their website which should be carefully reviewed. FSIS is planning on issuing rulemaking in the near future which will regulate practices for sanitation and recordkeeping in retail stores. Maintaining records on meat ground at retail has remained both an issue of concern by regulatory, as well as a challenge for some retailers, and recent food safety recalls and field inspection activities have raised the issue for more immediate action. FSIS has been very direct and persistent about issuing a proposed rule requiring recordkeeping at retail for grinding meat.

Twice yearly, the federal agencies publish a regulatory agenda with a list of the rules that they plan to publish. In the most recent regulatory agenda released on December 21, 2012, this entry appeared for a proposed rule from FSIS “Records to be Kept by Official Establishments and Retail Stores That Grind or Chop Raw Beef Products (Grinding Logo).”

The reason that FSIS is strongly pursuing required recordkeeping is to protect public health. If there are histories linked with products, FSIS investigates the source of the contamination. If meat from multiple suppliers is used and no or limited records are maintained, the investigation stalls at the retail store and the supplier and often the potential hazard cannot be identified. In some cases, this uncertainty can be the difference between recalling product from one day or product from several months.

In a recent outreach, there was significant media and congressional pressure on USDA asking them to explain why records were not available. Since USDA already has statutory and regulatory authority, they have publicly stated that they are going to address a perceived gap in recordkeeping at retail, and will likely do so by issuing a proposed and then a final rule regulating the recordkeeping process.

USDA Authority:

FSIS has the authority to require records and access to records under 21 USC 347 (a)(2) and regulations 9 CFR 326.1 (b)(1)(v), 9 CFR 320.1 (b)(1)(v), and 9 CFR 323.1 (b)(1)(v).

Recordkeeping at Retail:

According to FMI surveys, over three quarters of FMI members maintain records on the meat products ground at retail. The level of detail in the records varies and the...
What else has FMI Done?

CFP Beef Grinding Log Committee
§ 320.1 Records to be kept.
(4)(i) In the case of raw ground beef products, official establishments and retail stores are required to keep records that fully disclose:

(A) The names, points of contact, phone numbers, and establishment numbers of the establishments supplying the materials used to prepare each lot of raw ground beef product;
What is in the Proposed Rule?

(B) All supplier lot numbers and production dates;

(C) The names of the supplied materials, including beef components and any materials carried over from one production lot to the next;

(D) The amount of the beef component used in each lot (in pounds);
What is in the Proposed Rule?

(E) The date and time each lot of raw ground beef product is produced; and

(F) The date and time when grinding equipment and other related food contact surfaces are cleaned and sanitized.
What is in the Proposed Rule?

(ii) Official establishments and retail stores covered by this regulation that prepare raw beef products that are ground at an individual customer’s request must keep records that comply with paragraph (4)(i) of this section.
### Table 1: Grinding log record that FSIS posted (2011)

* This information will be required if this proposed rule is finalized.
Other items already in 9 CFR 320.1

§320.3 Record retention period

…of 2 years after December 31 of the year in which the transaction to which the record relates has occurred…
Costs

• USDA underestimated costs
• Establishments needing to upgrade records
  – Additional 30-60 seconds per day
• Establishments that presently do not maintain a grinding log
  – Additional 60-90 seconds per day
Process and Timing
Can we change anything about this?

• Recordkeeping will be required

• We might be able to influence what is required on the records (detail)
Comments to FSIS

• Who is covered by the rule?
• Details on the records
• Trim/pullbacks/customers requests
• Economic Impact – time and $
• Applicability of Electronic forms?
Questions or additional comments

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