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Docket Clerk
United States Department of Agriculture (USDA)
Food Safety and Inspection Service
300 12th Street, SW.
Room 102, Cotton Annex
Washington, DC 20250

[Docket No. FSIS–2006–0017] Technical Service Center Operations; 71 *FR* 43095; July 31, 2006

Dear Sir or Madame:

FPA is the largest trade association serving the food and beverage industry in the United States and worldwide, and our laboratory centers, scientists and professional staff provide technical and regulatory assistance to member companies and represent the food industry on scientific and public policy issues.

FPA and its members are pleased to have this opportunity to provide input into the FSIS review of the organization, operations, and services provided by its Technical Service Center (TSC) in Omaha, NE. In general, we believe the TSC has played, and should continue in the future to play, an important role in providing information and guidance to the industry as well as to FSIS program personnel.

General Comments

We compliment the Agency for its foresight in establishing the Technical Service Center. From the beginning, it has provided an exemplary model for Agency responsiveness to its customers. Historically, the phones have always been answered and callers have been expeditiously directed to appropriate staff for a response. The TSC deserves accolades for the major role it played in facilitating HACCP implementation, by organizing its staff to respond promptly and efficiently to the myriad of questions received from both field staff and from industry.

In our experience, the TSC initially was staffed with many personnel who had broad experience in the field and who were able to call upon their experiences to supplement their responses to questions raised about the intent as well as the wording of Agency regulations and policies. In most cases, they combined their knowledge of the regulations and their in-plant experiences with a healthy dose of common sense to come up with practical responses

that fully protected public health and assured compliance with the intent of the regulations, yet did not require costly or time-consuming actions to be taken by industry in the absence of some regulatory or consumer benefit. The key was that they had the knowledge base to make informed decisions or recommendations on the basis of the specific circumstances presented.

While there remain a number of extremely well versed and capable individuals at the TSC, attrition has reduced the numbers of the most experienced and capable personnel. As a consequence, and as noted in the member comments expressed below, we believe the level of inconsistency in responses has increased and the ability of general staff to inject reason based on experience into responses to questions regarding regulatory requirements and expectations has diminished.

We should note that FPA for many years has held a summer meeting of its Meat and Poultry Products Committee in Omaha, specifically to allow members to spend a morning at the TSC receiving presentations on key issues and engaging in constructive dialogue with TSC staff on matters of mutual interest. Uniformly, TSC officials and staff were courteous and hospitable to us during those visits and we believe our visits served a very useful purpose.

From the beginning, Agency policy has been that the TSC's function is not to settle disputes between inspectors and their inspected establishments. Nevertheless, the regulatory interpretations provided by knowledgeable TSC staff have served that ultimate purpose on many occasions. This is because clarification of misunderstandings about Agency requirements or expectations is all that is needed in many cases to bring a disagreement to full resolution.

Over the years, one unfortunate consequence of the necessary Agency policy that field inspection staff do not "take orders" from TSC staff has been that some field staff have blatantly rejected advice from the TSC with which they disagreed. Assuming the guidance provided by the TSC accurately represents Agency policy, it should not be so easy for field personnel to disregard. We understand that the primary reason for the Agency position on TSC advice is that the TSC staff are not in the plant and therefore do not have the intimate knowledge of circumstances and conditions that the in-plant personnel should have. Nevertheless, we have made a recommendation below to have the Agency make it more difficult for field personnel to arbitrarily ignore TSC advice with which they disagree.

We would also like to commend the TSC staff for producing Interactive Knowledge Exchange (IKE) scenarios. These have been helpful to industry and hopefully to the field staff as well. We especially like the fact that draft versions of the scenarios are made available before they are finalized. The limited period for public comment before the final IKEs are posted on the Agency website has allowed an opportunity to make corrections and clarifications before, rather than after, publication – an outcome that is beneficial for the industry and the Agency. (This is also a practice that would be equally or perhaps more beneficial if extended to Agency Notices and Directives.)

We would also note that export assistance is very important to our members. We are very appreciative of TSC staff efforts to answer questions and facilitate US meat and poultry exports. Having immediate access to the expectations of foreign countries through the Export Library and getting prompt answers to questions that arise are key assets.

Response to Questions

Bulleted items below represent specific member responses to the questions raised by the Agency.

In what way has the availability of TSC services helped you with your operations?

- TSC has on multiple occasions responded to questions regarding regulatory references and provided guidance and additional information on interpretation of different regulations when they were unclear.
- TSC provided an interpretation of the USDA regulations. Though interpretation has varied depending on the TSC responder, it assisted in a few instances with interpretation of requirements.
- It is an excellent resource to get a non-inspection based interpretation on specific issues.
- Even though there were times where we would get conflicting information – depending on who you talked to at the TSC, most of the time, we would get the information needed and the in-plant inspectors would accept the information given by the TSC.

When you have contacted the TSC, has the response been prompt, clear, thorough, and courteous?

In general, our members are pleased with the promptness and courteousness of their TSC contacts.

- The TSC has always responded within 24 hours and the answers were very courteous. However, some of the responses received were not clear. It seems normal to get a vague response regarding what should be a yes or no question from the Tech Center.
- The Export Staff have been especially prompt and knowledgeable when sought out for information.
- Got an answer, though it took a while to get to the right person.
- Most of the time – Yes. However, there were occasions where some TSC personnel would give very long, rambling responses where we had to search out and try to summarize what the correct answer was meant to be.

Is the technical guidance provided by the TSC consistent with regulations and policy as written?

- Yes, for the most part.
- I would agree and say yes.

Is the technical guidance consistent with guidance given by FSIS inspection program personnel?

- The guidance given by the TSC is often different than the interpretation of inspection based personnel.
- The responses that the TSC gives concerning specific regulations seem to be fairly consistent. However, I have received different answers for the same questions from the TSC center.
- Not in all cases. In many cases, the call to the TSC is because regulations are not fully understood by industry or in-plant FSIS personnel.
- Generally, the reason for contacting the TSC has been to mediate the differences in guidance given by FSIS inspectors due to differences in interpretation of the regulations.
- There have been numerous cases where an in-plant inspector would "interpret" a certain Regulation or Directive in a way that did not make sense and it was then that we would contact the TSC and get (most) of the situations resolved.

Have you used the TSC website? If so, has it been useful?

No members reported using the TSC website, although it is very likely many have done so. As noted elsewhere, the IKE scenarios have been well received by our members. The Q&As on the various notices and directives are also a good idea. Addition of FAQs that are not specific to notices or directives, but rather are based on common questions received by TSC staff, will also be well received.

If you have contacted the TSC multiple times regarding the same topic, has the guidance been consistent over time?

Most members who submitted comments to us have had experiences in which the guidance provided has been inconsistent, depending on the staff person providing the response.

- Not always.
- It will vary depending on person you talk to.
- There have been several times when guidance on the same topic is different and not consistent between TSC responders.

- One member minimizes problems by requesting to speak to a specific seasoned and knowledgeable TSC staff member, since agreeing to speak to the normally assigned phone responder has often resulted in inconsistent responses.
- Over time, many responses/interpretations have changed (for the worse – or more restrictive) and that has made life more difficult.

How could the TSC improve its services?

- More consistent responses with clearer answers.
- Narrow focus for personnel to comment on, perhaps have more specialization.
- Increased awareness of services provided.
- More interpretive guidance is what is needed – in many cases TSC staff simply quote the applicable regulation associated with the issue. The regulation is almost always already known by those requesting guidance.
- Also provide a more thorough database covering Q&As – because more than one plant will have the same questions.
- Consider how to give more weight to the guidance provided by the TSC staff.

FPA believes it should not be permissible for field personnel to simply ignore "consensus TSC advice" with which they might disagree. Only when in-plant personnel can clearly cite extenuating circumstances in the plant should they disregard such advice. ("Consensus TSC advice" means more than just the opinion of a single TSC staffer; rather it is advice that has the support of upper level TSC officials as well as policy officials in Washington.) FPA strongly recommends the Agency devise a formal process or mechanism by which field staff who disagree with TSC advice can get an official position from the policy office on the matter.

Have you had difficulty in reaching the TSC staff?

In general, our members reported no difficulties in reaching TSC staff. One member reported that it took a while to reach the appropriate individual, but that did not seem to be a major problem.

- No. I've always had calls returned if they were all in a meeting and nobody could be reached.

What recommendations do you have for TSC in communicating information to you?

- One member preferred the TSC to use e-mail to communicate information.
- E-mail/written responses are the only ones which carry any weight. Verbal responses no longer do.

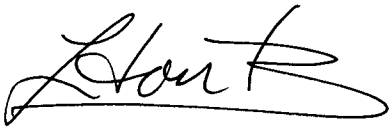
- E-mail provides a written response, which helps prevent misinterpretation of what has been said and that can be shared with others. In addition, a written response is frequently required by in-plant personnel, who otherwise simply would not take the word of plant personnel regarding conversations with the TSC staff and who typically would not likely contact the TSC directly.

What specifically could the TSC do to improve its services to small businesses?

Our members provided no suggestions for improving services for small businesses. In general, we believe that our suggestions for TSC improvements will be beneficial to all businesses regardless of their size.

We appreciate this opportunity to comment on the operations of the Technical Service Center and we trust that it will continue to serve a valuable role for the Agency and the industry. The Agency's goal for the TSC should be that it will function as an indisputably reliable resource for clear, consistent and correct answers to questions about regulatory requirements.

Respectfully,



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