



State of California—Health and Human Services Agency
Department of Health Services



ARNOLD SCHWARZENEGGER
Governor

June 13, 2005

Patrick J. McConnon, MPH
Executive Director
Council of State and Territorial Epidemiologists (CSTE)
2872 Woodcock Boulevard, Suite 303
Atlanta, GA 30341-4015

Dear Pat,

Attached is my progress report to the CSTE 2004 Position Statement 04-ID-02 entitled “Disclosing Food Distribution Information to Protect the Public Health.” Please let me know if anyone has comments or questions.

Sincerely,

Duc J. Vugia, MD, MPH
Chief, Infectious Diseases Branch

2005 Progress Report to the CSTE 2004 Position Statement 04-ID-02 “Disclosing Food Distribution Information to Protect the Public Health”

1. Since the resolution has passed and the position statement forwarded to the United States Department of Agriculture (USDA), the US Food and Drug Administration (FDA), the US Centers for Disease Control and Prevention (CDC), and the Association of States and Territorial Health Officials (ASTHO) last year, letters of response have been received from USDA, FDA, and CDC:

a. USDA Food Safety and Inspection Service (FSIS)'s Philip S. Derfler, Assistant Administrator, Office of Policy, Program, and Employee Development responded in a letter in August 2004. The USDA FSIS letter acknowledged the memorandum of understanding that it has negotiated with several states to permit USDA to share distribution information with state officials. However, it also confirmed that USDA (and implied are also the MOU signatories) cannot release the names of businesses that received the recalled product since they “are considered proprietary.”

b. FDA John M. Taylor, III, Associated Commissioner for Regulatory Affairs, responded in a letter in August 2004. The FDA letter pointed out that FDA has worked with CDC and state health agencies on “foodborne illness outbreaks in which the agencies shared information openly.” While acknowledging that FDA has signed agreements with several states in the sharing of confidential commercial information, and that such information can only be used internally “without allowing the confidential information to become public,” FDA quoted Title 21 of the CFR – Food and Drugs, Section 20.19 which mentioned that “...Data and information otherwise exempt from public disclosure are nevertheless available for public disclosure to the extent necessary to effectuate such action, e.g., the brand name, code designation, and distribution information are released when a product is recalled.” Apparently, CFR—Food and Drugs, Section 20.19 applies primarily to FDA, which has used this authority to provide state and local authorities, as well as in its own press releases, with information on product distribution in the past.

c. CDC Director, Dr. Julie Louise Gerberding also responded in an August 2004 letter. While CDC acknowledged that “food distribution information can play an important role in the investigation of outbreaks and the implementation of public health interventions,” it also “recognizes the primary role of federal regulatory partners in the collection and distribution of this type of information and the associated legal limitations of such activities.” “CDC will collaborate with CSTE, other public health organizations” FDA, and USDA FSIS “to determine the most effective solution for this issue.”

2. Thus far, there has been no positive action or outcome due to the resolution.

3. At this time, I would consider bringing this up for the Food Safety Committee of CSTE to reconsider and to discuss whether CSTE should follow up on the Desired Action to be Taken #3 on this Position Statement, which was for ASTHO, in cooperation with CDC, NAACHO, and CSTE to “convene a formal process to produce a formal written

report with recommendations for state health officials about food safety notifications and public health responsibilities.”

4. To date, I am not aware of any partners being mobilized because of the resolution.

5. In California, this very issue was addressed in 2004 with a proposed legislation (California Senate Bill 1585) to require California food distributors to notify local and state public health agencies of any USDA meat or poultry product recalls so that appropriate public health actions can be taken without being impeded such as by the USDA MOU, and basically bypassing the USDA MOU altogether. However, this 2004 bill was vetoed by Governor Schwarzenegger who directed “the Department of Health Services to enter into a new MOU with USDA that expressly authorizes them to share recall information with local public health officials.” Our Department subsequently sent letters to the USDA attempting to re-negotiate the MOU. USDA’s response stated that DHS could share information with local health officials if local officials agree to protect the confidentiality of the information, which is no change and no improvement from before. This year, a similar legislation is again introduced (California Senate Bill 611) and it remains to be seen how this proposed bill will fare.