

BY THE COMPTROLLER GENERAL

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Report To The Congress

OF THE UNITED STATES

Food Salvage Industry Should Be Prevented From Selling Unfit And Misbranded Food To The Public

Potentially adulterated food in dirty, rusted, swollen, and severely dented cans or torn packages is being sold to the public and to health care facilities. Product labels are often missing or incomplete.

These conditions in the food salvage industry are the same as those GAO reported in 1975.

For the most part, recommendations made in GAO's earlier report have not been carried out. The Food and Drug Administration and the Department of Agriculture believe that regulation of this industry is a relatively low priority because there is not a significant health risk to consumers of salvaged food products.



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COMPTROLLER GENERAL OF THE UNITED STATES

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To the President of the Senate and the
Speaker of the House of Representatives

This is a followup to our May 1975 report on the need for regulating the food salvage industry to prevent sales of unfit and misbranded foods to the public. The Food and Drug Administration, Department of Health, Education, and Welfare, and the Food Safety and Quality Service, Department of Agriculture, are responsible for administering the activities discussed in this report.

We are sending copies of this report to the Director, Office of Management and Budget; the Secretary of Health, Education, and Welfare; and the Secretary of Agriculture.

James P. Stacks
Comptroller General
of the United States



D I G E S T

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FIRE-DAMAGED PRODUCTS IN SALVAGE OUTLET. MANY FOOD CONTAINERS WERE SWOLLEN, SEVERELY DENTED AND RUSTED, TORN, LEAKING, AND FILTH ENCRUSTED.

Under various laws, the Food and Drug Administration and the Department of Agriculture are responsible for assuring that food products are:

- Accurately labeled regarding contents, net weight, and manufacturer's or distributor's name.
- Free from unclean or injurious substances.
- Transported and stored under conditions that prevent contamination of the products and containers. Contaminated food should be identified and rejected, or processed to eliminate the contamination.

In 1974 many food salvage stores GAO visited sold potentially adulterated food in leaking, rusted, swollen, and severely dented containers to the public and institutions. As a result, in its report 1/ GAO recommended that the Department of Health, Education, and Welfare develop food salvage guidelines and regulations, establish a program for inspecting salvage outlets, and alert health agencies responsible for inspecting institutions about the potential hazards of salvaged foods.

Federal efforts to clean up the food salvage industry have been disappointing. Since GAO reviewed the salvage industry in 1974, ~~it has seen~~ no improvement ⁱⁿ the deplorable conditions or the questionable quality of products sold in salvage operations. ~~GAO~~ *It was* found that

- 53 of 59 salvage operations visited offered food for sale that was vermin infested or in rusted, leaking, severely dented, swollen, or filth encrusted containers;

1/"Need for Regulating the Food Salvage Industry to Prevent Sales of Unwholesome and Misbranded Foods to the Public" (MWD-75-64, May 20, 1975).

--38 of 59 salvage operations were selling processed food products in containers with missing, misleading, or incomplete labels; and

--9 of 17 institutions (nursing homes or convalescent hospitals) visited bought food in mislabeled, swollen, leaking, rusted, or dented or torn containers, thereby presenting a threat to people on special diets for such reasons as illness or allergies.

In addition, the Food and Drug Administration:

--Has not developed Federal regulations establishing a nationally uniform code for salvage operations, as recommended in GAO's earlier report, because it does not believe that salvaged food poses a significant health risk to the public.

--Has not established an effective regulatory program to prevent the sale of misbranded and potentially adulterated or potentially unsafe salvaged food to the public and institutions.

--Contracts with 21 States to inspect food manufacturers and warehouses including food salvage operations; however, this has not resulted in effective regulation of the food salvage industry because many States have no basis for enforcement or have not enforced existing laws and regulations.

Consumers who buy salvaged food should be given the same protection and product information given to those who buy other food. Salvage operations, however, are offering food to the public and institutions that (1) may not have been properly reconditioned after disasters, wrecks, or mishandling or (2) is in unlabeled, leaking, swollen, rusted, or badly dented containers.

Therefore, many consumers may be taking an unreasonable health risk in eating salvaged food. Those in such institutions as orphanages, youth camps, and nursing homes are particularly vulnerable because they are not aware of the salvaged nature of the food served them.

Few existing Federal, State, or local laws or regulations pertain specifically to food salvage. Uniform, comprehensive regulations should be developed and implemented to effectively regulate food salvage operations. The Food and Drug Administration should coordinate this effort because it has prime responsibility for many of the goods sold.

The Food and Drug Administration has not assumed direct responsibility for such retail operations as grocery stores and restaurants because of their numbers. However, it could assume responsibility for the inspection and enforcement efforts against the much smaller number of food salvage operations, at least on a selective basis. This seems essential in view of the conditions GAO found.

The Secretary of Health, Education, and Welfare should direct the Commissioner, Food and Drug Administration, to:

- Establish a program or strategy for regulating salvage outlets. As part of this program, the agency should (1) urge States to use existing agency guidelines for inspecting salvage outlets until Federal regulations can be developed, (2) make more joint inspections of salvagers with State and local inspectors to help them identify and report on improper practices, (3) ask States, especially those that have an agreement with the agency, to provide information on enforcement actions involving food salvagers, (4) inspect food salvage operations on a selective basis, paying particular attention to large metropolitan areas where food salvagers are often concentrated, and (5) enforce regulations against violators that continue to disregard laws and regulations.

- Develop and publish a Federal regulation establishing a national uniform code of practice for food salvaging, including guidelines and criteria for transporting, sorting, reconditioning, repacking, and storing salvaged food.
- Require that salvaged food products be identified as such on the label.
- Actively work for the adoption of the Association of Food and Drug Officials' model regulation in States where it has not been enacted.
- Reemphasize to Federal and State health agencies responsible for inspecting institutions the potential effects of allowing institutions to buy misbranded or damaged food products, and provide them with existing FDA inspection guidelines.

The Department of Health, Education, and Welfare does not believe that the Federal Government should get more involved in regulating food salvage operations. It does believe that State and local authorities are better able to regulate food salvage activities by virtue of their resources, authorities, and proximity to these firms. (See p. 28.)

Because conditions in the food salvage industry have not improved since GAO's 1974 review and the States are not effectively regulating the industry, GAO believes the Food and Drug Administration must work more actively for improvements in the food salvage industry.



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ABBREVIATIONS

AFDO	Association of Food and Drug Officials
FDA	Food and Drug Administration
GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare
USDA	U.S. Department of Agriculture



CHAPTER 1

INTRODUCTION

During distribution, some food becomes damaged or subjected to contamination due to mishandling, accidents, or disasters caused by fires, floods, or storms. Consequently, many containers for food products lose their labels, leak, or rust. Other food products are (1) potentially contaminated by vermin infestations, (2) exposed to poisonous substances, or (3) submerged in contaminated water.

The Food and Drug Administration (FDA) estimates that there are about 1,000 salvage operations nationwide. Much salvaged food is sold in outlets in low-income urban areas or to social institutions and private organizations, such as nursing homes, orphanages, schools, restaurants, and bakeries.

Both FDA and the Food Safety and Quality Service, U.S. Department of Agriculture (USDA), are responsible for ensuring that all food shipped or received in interstate commerce is properly labeled and safe to eat. ~~The Fair Packaging and Labeling Act (15 U.S.C. 1451) and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301) describe FDA's authority. The Federal Meat Inspection Act (21 U.S.C. 601) and the Poultry Products Inspection Act (21 U.S.C. 451) give USDA its authority over meat and meat products.~~ Although FDA and USDA have authority over food establishments receiving goods that have been in interstate commerce, responsibility for monitoring salvage operations is usually left to the State and local authorities.

In 1974 we reviewed the food salvage industry and in May 1975 issued a report to the Congress about potentially unwholesome and unsafe food sold by food salvage operations in predominantly poor neighborhoods nationwide. We recommended several ways that Federal agencies responsible for the safety of foods sold to the public could better control and monitor food salvage operations. Because of the severity and magnitude of the problems discussed in our 1975 report, we made a followup survey to see whether FDA and USDA had progressed in regulating the food salvage industry.

CHAPTER 2

QUALITY OF SALVAGED FOOD HAS

NOT IMPROVED AT FOOD SALVAGE OPERATIONS

The quality of salvaged food products sold to the public and to institutions has not improved since our 1975 report. Most of the salvage operators visited in 1978 were selling food in containers that were seriously damaged, misbranded, and stored in hazardous and insanitary conditions. In addition, some operators used questionable methods to recondition these products, thereby subjecting much of the food to possible further adulteration. Such practices were widespread, occurring in salvage operations we visited with FDA, State, or local inspectors in various parts of the country. Defective food containers sold by food salvagers and the often-times deplorable sanitary conditions in salvage outlets show the need, we believe, for an immediate, comprehensive Federal program to better regulate the food salvage industry.

POTENTIALLY UNFIT FOOD SOLD BY SALVAGE OPERATIONS

Of the 59 salvage operators we visited during 1978, 53 were selling food in leaky, rusted, dented, or swollen containers, some of which were contaminated by rodents or insects. Food in these containers can decompose or become potentially contaminated, according to the Association of Food and Drug Officials (AFDO) and the National Cannery Association. Nine of the 17 convalescent hospitals, rest homes, and nursing homes we visited had purchased potentially adulterated food or food in defective containers from food salvage operations.

Food laws, regulations, and guidelines

Federal laws (the Federal Food, Drug, and Cosmetic Act, Poultry Products Inspection Act, and Federal Meat Inspection Act) define adulterated food as food (1) containing substances that make it injurious to health, (2) containing any filthy, putrid, or decomposed substance, or (3) being prepared, packed, or held under insanitary conditions in which ~~it may become~~ contaminated. The Code of Federal Regulations (21 C.F.R. 110) contains additional regulations that apply to food establishments which, in our opinion, could include food salvage operations. These regulations state:

- Food products should be protected against contamination from animals, birds, rodents, and insects.
- Food should be packaged and stored under conditions that minimize potential deterioration or contamination.
- Finished products should be stored and transported under conditions that will prevent contamination.
- All contaminated foods must be rejected or treated or processed to eliminate the contamination.
- Running water at a suitable temperature and under pressure must be provided in all areas where the processing of food or containers is required.

In addition to the laws and regulations, nonmandatory detailed guidelines for salvageable containers have been published by FDA, AFDO, and the National Cannery Association. Swollen, leaking, and severely rusted and dented containers represent a potential health hazard, and according to these guidelines, the contents of such containers should not be sold, distributed, or consumed.

FDA's criteria, published in the form of an Inspector Operations Manual for use by FDA inspectors and others, include guidelines on salvaging, segregating, and reconditioning food products. AFDO's criteria are published in the Model Uniform State Food Salvage Regulation, which provides inspection uniformity to prevent the sale of potentially adulterated and misbranded food. The publication also provides criteria and methods for reconditioning food containers to a level of acceptance for resale. The National Cannery Association's published criteria for salvaging food are in a 1975 bulletin--"Safety of Damaged Canned Food Containers." The bulletin provides guidelines for consumers, regulatory officials, canners, distributors, and retailers.

Container defects

Food salvage operators are selling food in severely damaged containers despite existing criteria and guidelines that define unacceptable containers. (See figs. 1 and 2.)

The following table shows that, similar to the 30 salvage operators visited in 1974, a high percentage of the 59 salvage operators we visited in 1978 were selling food in defective containers.

Salvage Operators
Selling Food in Defective Containers
in 1974 and 1978

Number of items	Types of container defects							
	Swells, springers, or flippers (note a)		Severe rim or seam dents		Rust		Leaks	
	1974	1978	1974	1978	1974	1978	1974	1978
(percent)								
1-9	13	31	30	19	13	17	17	20
10-50	37	8	33	14	30	27	40	25
Over 50	<u>3</u>	<u>24</u>	<u>24</u>	<u>42</u>	<u>20</u>	<u>31</u>	<u>3</u>	<u>2</u>
Total	<u>53</u>	<u>63</u>	<u>87</u>	<u>75</u>	<u>63</u>	<u>75</u>	<u>60</u>	<u>47</u>

a/Swells--Both ends are bulged. Neither can be forced back in position to remain flat.

Springers--One end of the can bulges. Hand pressure on the bulged end forces the opposite end out.

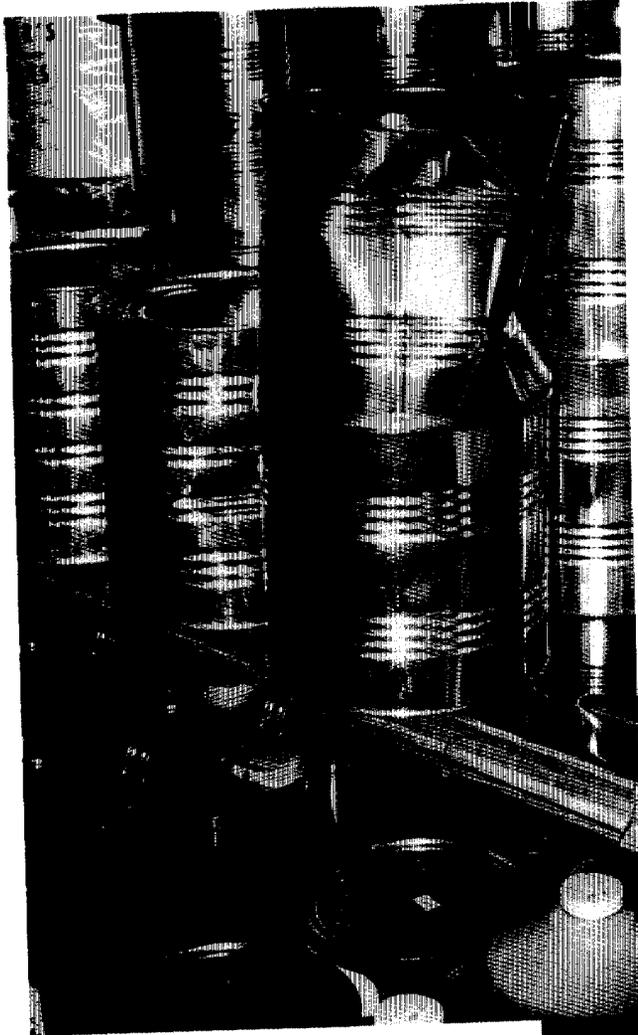
Flippers--Only one end is slightly bulged. By applying pressure with a finger, the end can be pressed back flat and will remain so.

Specific examples we found on the retail shelves at salvage operations included swollen and badly dented cans of salmon and cans of baby milk formula that were swollen, unlabeled, and badly dented.

Ineffective reconditioning methods

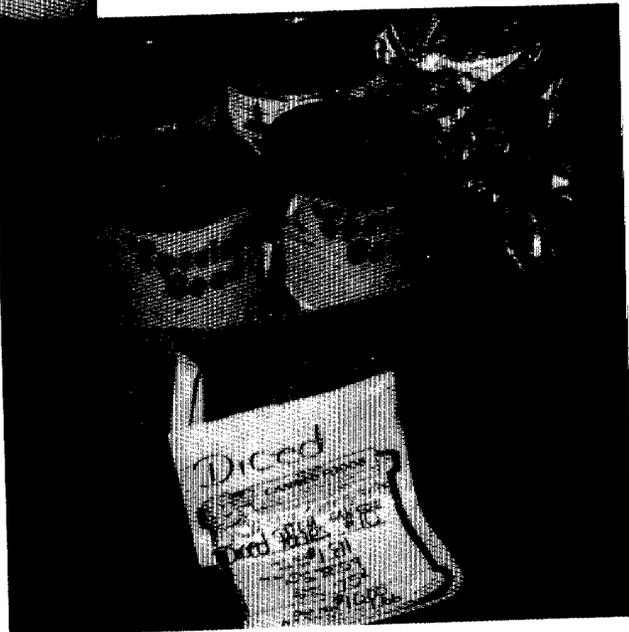
Reconditioning improves the appearance of products and/or makes them fit for human consumption. It includes cleaning, buffing, disinfecting, and relabeling product containers and repackaging the products. Reconditioning methods were often improper, and some methods observed even increased the potential for contamination.

FDA and AFDO guidelines provide that containers with screw-top, twist-top, crimp-top, and similar types of closures may be reconditioned if the closure is free from soil and debris. However, such containers cannot be reconditioned when sediment and debris are lodged under the cap lip or the containers were submerged in water, chemicals, or other liquids.



**FIG. 1--LEAKING AND MISBRANDED
CANNED FOOD ON THE RE-
TAIL SHELVES OF A FOOD
SALVAGE STORE.**

**FIG. 2--SEVERELY RUSTED AND
LEAKING CANNED PROD-
UCTS IN THE RETAIL
SECTION OF A FOOD
SALVAGE STORE.**





Most salvage operators we visited were not following these guidelines. For example, salvage operators were selling food containers with soil and debris encrusted on the closures or underneath the screw-top lid. (See fig. 3.) One operation had about 200 jars of baby food encrusted with filth, many with maggots underneath the jar lids. Another operation had over 100 jars of leaking, mold encrusted baby food, some with mold around the lids. Several other operations had glass containers with screw-top lids that were being cleaned by completely immersing them in soapy water, thereby increasing the chance of product contamination.

Salvage operators were also not practicing recommended procedures for reconditioning canned food products. FDA guidelines recommend washing cans in a detergent solution, buffing to remove rust, disinfecting in a chlorine solution, drying to prevent rust, and relabeling. Several operators made little or no effort to recondition metal containers. One told us he did not do any reconditioning of metal containers because it was too expensive. Several operators could not follow proper reconditioning procedures because they lacked even the basic facilities, such as hot water and sinks. (See fig. 4.)

Food products in paper containers can be reconditioned by repackaging. Repackaging is sometimes done when containers of products such as sugar or flour become damaged. Under FDA guidelines, repackaging is allowed when the food has not been obviously subjected to contamination and when the process is done under sanitary conditions.

Of the 59 operations visited in 1978, 16 repackaged food items. In 13 of these operations, insanitary conditions, such as the presence of rodents, insects, garbage, and toxic chemicals, subjected food to contamination during repackaging. One operator repackaged salvaged food on a wooden workbench next to chemicals, dangerous nonfood items, and tools. In another location, the inspector looked at fifteen or twenty 2-pound bags of repackaged rice and found four bags containing live weevils.

Insanitary food storage conditions

Storage conditions in food salvage operations usually contribute to potential product contamination. Of the 30 food salvage firms visited in 1974,

- 10 had considerable filth and product spillage,
- 13 had evidence of rodent or insect infestation, and
- 15 stored food products with harmful nonfood products.

Our 1978 review disclosed that salvage operators continued to store food improperly. (See fig. 5.) Insanitary storage conditions, such as commingling food with nonfood items, product spillage, insect and/or rodent infestation, and general filth, were found in 43 of the 59 outlets visited. Examples of storage conditions witnessed follow:

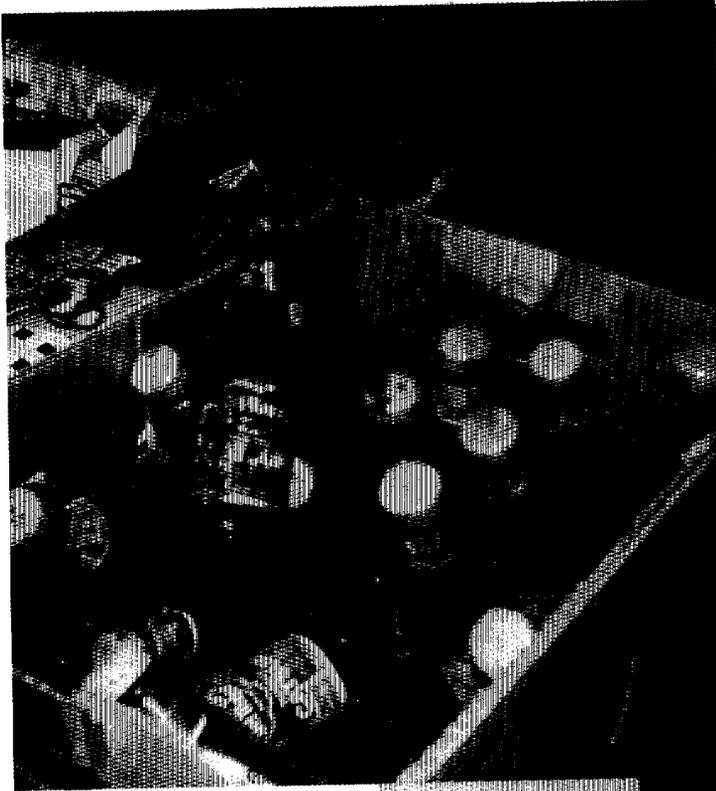
Operation A had: (See fig. 6.)

- Filthy floors, walls, and shelves.
- Uncovered garbage next to food ready for sale.
- Leaking, filth-encrusted food next to reconditioned food ready for sale.
- Food and nonfood items stored together in filthy, moldy boxes, garbage cans, and wash tubs.

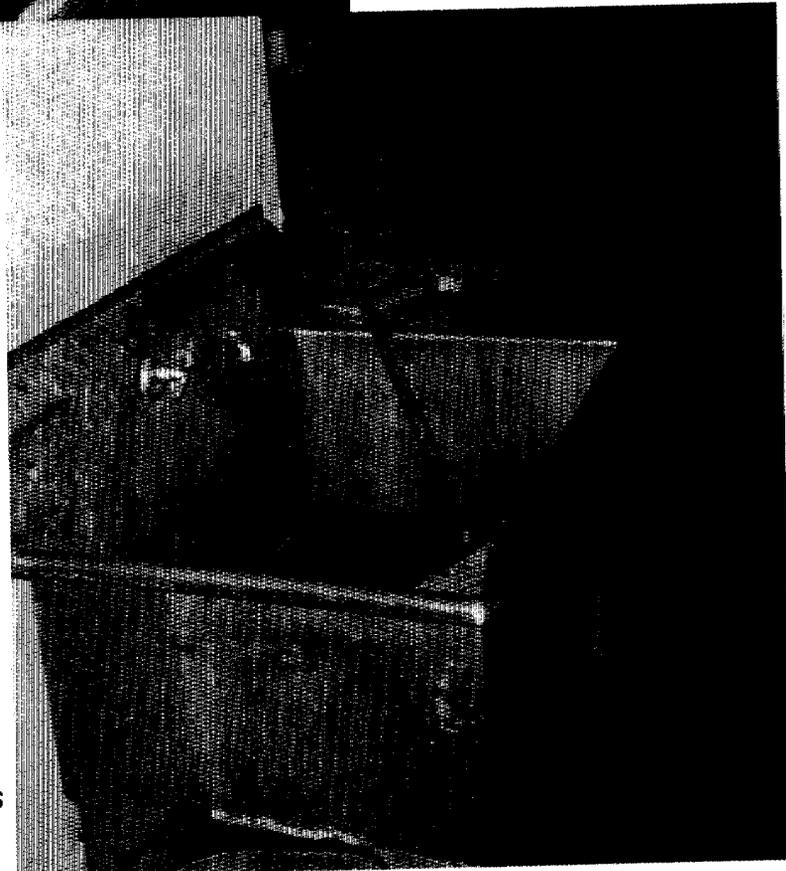
Operation B had: (See fig. 7.)

- Widespread commingling of hazardous and toxic chemicals with food products.
- Spillage and leakage of products, such as dog food and syrup, in aisles of storage area.
- Insects and rodent droppings in and around retail area.
- Trash and garbage scattered throughout the area.

Based on our observations, we believe that the quality of salvaged sold to the public and to institutions has not improved since our first review. Salvaged food continues to create potential health hazards because of defective containers, improper reconditioning methods, and insanitary storage conditions. (See fig. 8.)



**FIG. 3--FILTHY AND ENCRUSTED
CATSUP IN TWIST-TOP
BOTTLES IN THE RETAIL
SECTION OF A FOOD SAL-
VAGE OPERATION.**



**FIG. 4
ONLY SINK AVAILABLE
TO CLEAN THE PRODUCTS
IN A LARGE FOOD SAL-
VAGE WAREHOUSE.**

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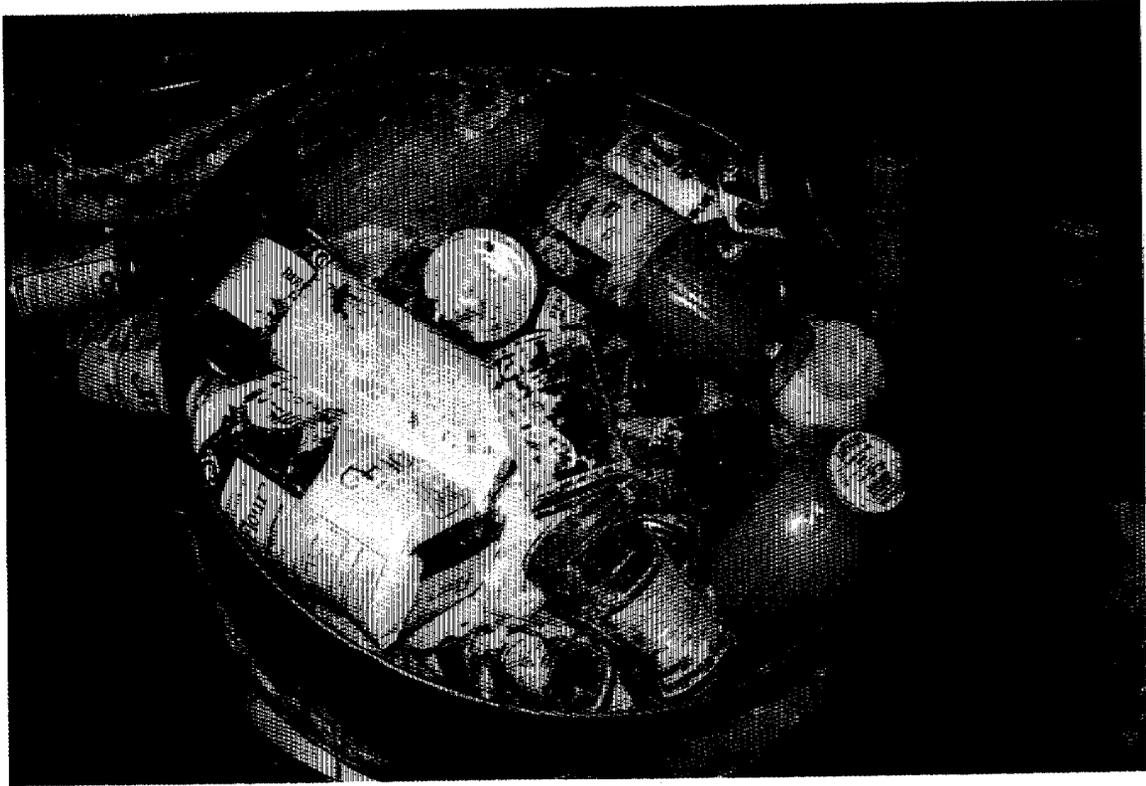
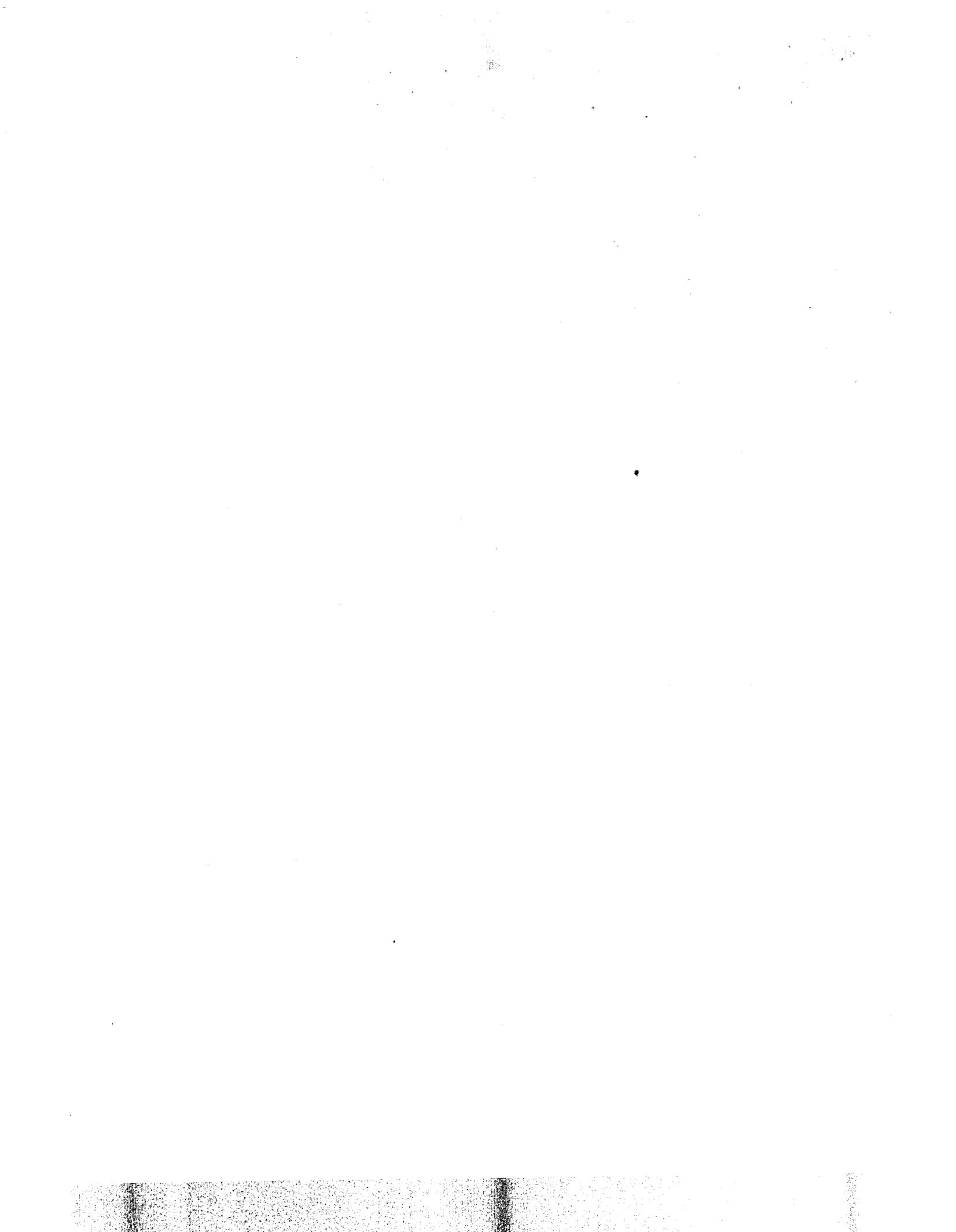
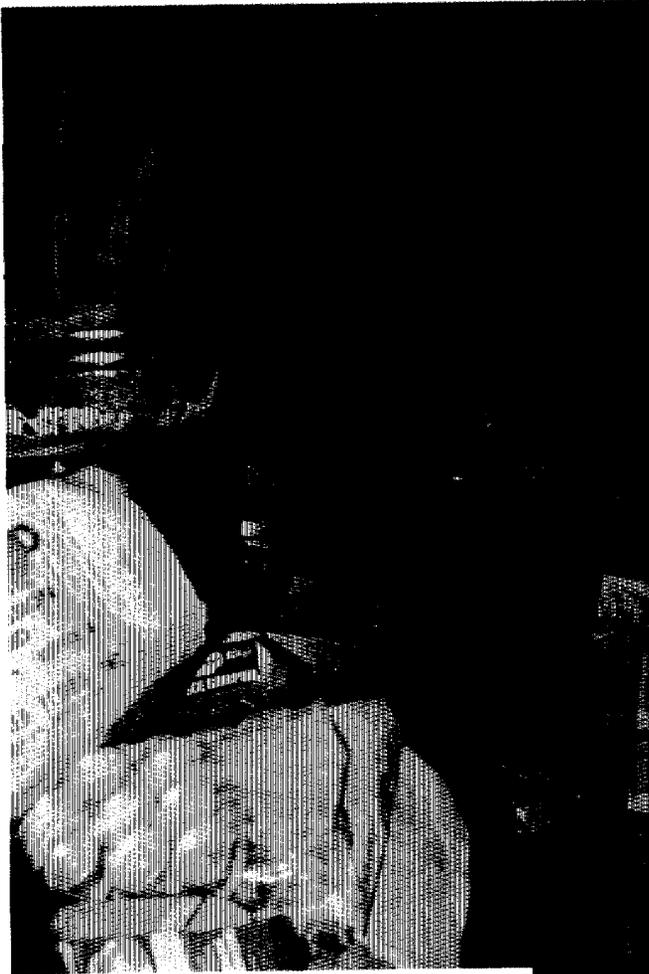


FIG. 5--FILTHY AND ENCRUSTED SALVAGED FOOD IN MOLDY STORAGE CONTAINERS IN A FOOD SALVAGE STORE.





COMMINGLING OF FOOD AND
NONFOOD PRODUCTS IN THE
BACK ROOM STORAGE AREA
OF SALVAGE OPERATIONS.

FIG. 6



FIG. 7



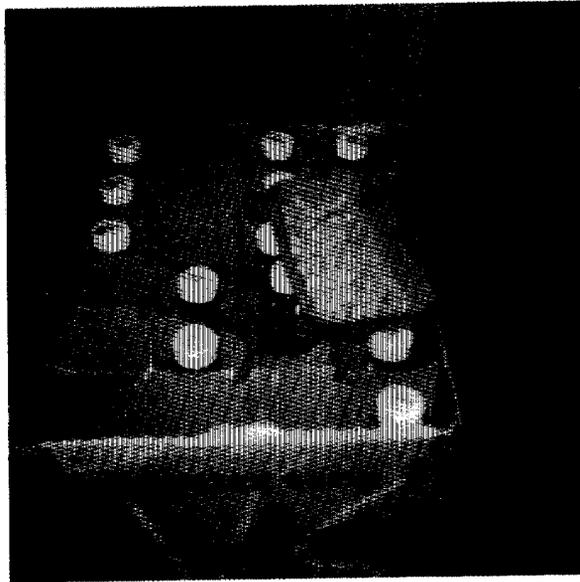


FIG. 8--RODENT BAIT, IMPROPERLY PLACED ON TOP OF FOOD PRODUCTS IN THE RETAIL AREA OF A FOOD SALVAGE OPERATION.



MISBRANDING STILL A PROBLEM

Of 59 food salvage operators we visited with FDA, State, or local inspectors, 38 were selling processed food products in containers with absent, misleading, or incomplete labels. Visible misbranding of food products on the shelves of retail salvage operations ranged from a few products at some locations to over 100 at others. Improperly labeled food products were also being sold to such institutions as nursing homes, children's homes, and schools.

Properly labeled food containers are important to protect and inform consumers, especially those on special diets as a result of illness or allergies. According to health officials, the health of millions of people depends upon their avoiding certain food ingredients, such as salt, sugar, and potassium.

Federal laws covering misbranding

According to the Fair Packaging and Labeling Act, informed consumers are essential to the fair and efficient functioning of a free market economy. The act provides that food products be properly labeled to inform consumers of the contents and to help them make value comparisons.

The Federal Food, Drug, and Cosmetic Act prohibits the sale of misbranded food after interstate shipment. A food product is misbranded if its label

- is false or misleading;
- does not (1) identify the product, (2) show the name and place of business of the manufacturer, packer, or distributor, (3) list the ingredients, and (4) show the net contents by weight or measure; or
- is marked dietary, but does not include information on the product's dietary properties.

We did not determine whether the misbranded products we observed in salvage operations had been shipped interstate. However, several salvage operators said they buy salvaged food from interstate carriers, such as railroads, and from grocery warehouses, which according to FDA officials generally fall under FDA regulatory control. In addition, an FDA official said that 90 percent of all processed food is initially transported interstate. Therefore, most salvaged foods have probably been shipped interstate.

Products without labels (see fig. 9)

In 1974

--23 of the 30 salvage operators visited were selling salvaged food in unlabeled containers and

--10 of the 25 institutions were buying salvaged food in unlabeled containers.

Unlabeled food products were offered for sale by 30 of the 59 operators visited in our 1978 review. At least eight operators had more than 50 unlabeled containers on their retail shelves and two had more than 100.

Unlabeled food containers had been purchased from salvage operators by 4 of 17 rest homes and convalescent hospitals visited.

Product containers with incomplete labels

Our 1974 review showed

--22 operators selling food items in containers with labels lacking a list of ingredients, net weight, or name of the distributor or manufacturer and

--7 institutions with salvaged food products in containers lacking complete labels.

During our 1978 review, we found 34 salvage operators selling food items in containers with incomplete labels. Five of 17 institutions had products on hand with incomplete labels.

Products with misleading labels

During our 1974 review, we found products with erroneous labels at both salvage operations and institutions. One nursing home, for example, had purchased salvaged spinach that was supposedly salt free; however, laboratory analysis showed that salt had been added. At another nursing home, 11 cans of plums were labeled as packed in both "water" and "heavy syrup." One can analyzed was found to be packed in fruit juice. Labeling errors of this type, in our opinion, could affect the health of people who must avoid certain ingredients, such as salt or sugar.

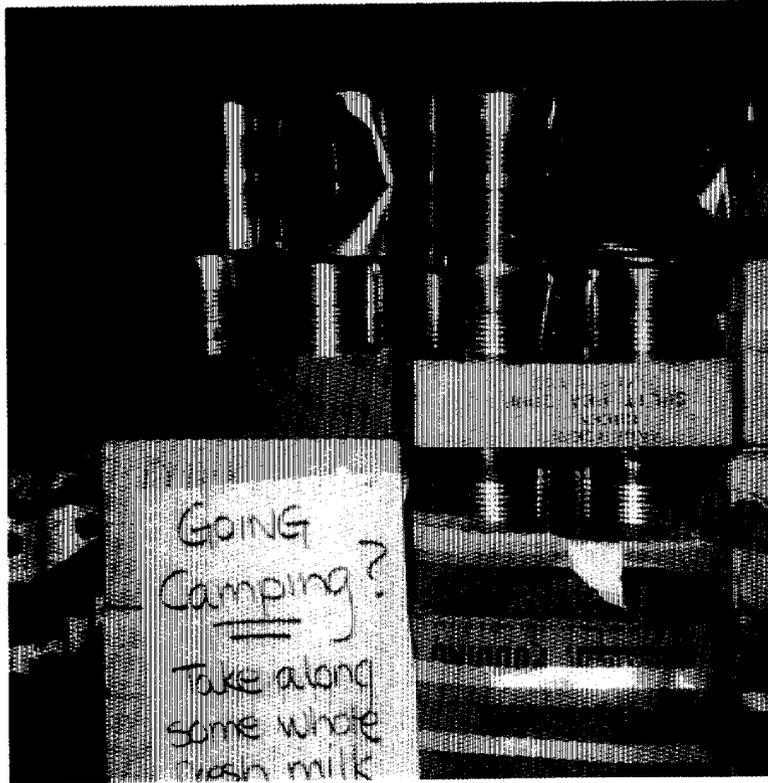


FIG. 9--UNLABELED CANS OF MILK IN RETAIL SECTION OF A FOOD SALVAGE OUTLET.



In 1978 we also found salvage operators selling food items in containers with misleading labels. At one of these, we collected 11 cans of fruit and vegetable products for analysis by the State health department. The labels on three cans were erroneous. Products in two of the three cans were packed in light syrup, while the label said they were packed in heavy syrup. The contents of the third can weighed 17 ounces less than the 6 pounds claimed by the label. In addition, the can interior was coated with a gray material that had partially dissolved in the product. The lot from which the samples were taken was gone when the State inspectors returned to embargo the food. This salvage operator has over 500 customer accounts, most of which are health care facilities, restaurants, and grocery stores.

Another salvage operator repackaged 50-pound bags of corn soya milk into 2-pound bags and labeled it "hi-protein corn cereal" without listing ingredients. According to the product's manufacturer, "corn soya milk" and "hi-protein corn cereal" are not synonymous product names.

At two institutions visited in our latest review, we were told that container contents are sometimes misrepresented on the labels. In several instances, the institutions had received "surprise packages," in which, for example, the label showed peaches and the contents were green beans or some other item.

It is obvious from the conditions we found that the enforcement of Federal, State, and local laws and regulations has been ineffective in preventing unfit and misbranded salvaged food from being sold to the public. We believe that FDA, with the cooperation of USDA, must assume a leadership role in fulfilling its inspection responsibility to better insure that the public receives safe, properly labeled food.

CHAPTER 3

LITTLE PROGRESS IN REGULATING

THE FOOD SALVAGE INDUSTRY

FDA has not fully implemented any of the major recommendations we made in our 1975 report to the Congress on food salvage practices. Uniform regulations or an adequate regulatory program designed to prevent improper salvage practices has not been developed. Although FDA has alerted local health agencies that inspect institutions about the potential effects of salvaged food, this warning has not prevented institutions from buying potentially unsafe or unwholesome food.

To insure that salvaged food sold to consumers is safe to eat, food salvagers and agencies responsible for inspecting them should clearly understand published guidelines and procedures for sorting, reconditioning, labeling, repackaging, and storing food. Also, if a food salvage operation does not adhere to the guidelines, inspection agencies must take appropriate regulatory action.

NO REGULATIONS ISSUED

In our 1975 report to the Congress, we recommended that FDA

"* * * develop and publish a Federal regulation which establishes a national uniform code of practice for salvage operations including guidelines and criteria for transporting, sorting, reconditioning, repackaging, and storing salvaged food."

FDA concurred in our recommendation, stating that it would work with AFDO officials to develop a good manufacturing practice regulation for food salvage outlets. To ensure a uniform approach by State and local officials, FDA said that the regulation would be designed to be issued as a proposed model ordinance and code for State and local adoption.

FDA has not published a Federal regulation on food salvaging, and only four States have adopted AFDO's food salvage regulation since our last review. FDA does not intend to publish a food salvage regulation, according to FDA's Director of Compliance, because food salvage does not pose a significant health risk to the public and regulation of this industry is a relatively low FDA priority. USDA officials took the same position.

In our opinion, a Federal food salvage regulation is needed. It can be prepared using existing criteria and guidelines in FDA's inspection manual and AFDO's model regulation. Such a regulation (1) could be used as a model regulation which States could adopt and (2) would also provide Federal inspectors with criteria for inspecting salvagers.

At least four States thought the food salvage situation was serious enough to adopt a food salvage regulation to better protect the public. Enforceable food salvage criteria are not available nationwide, although they are needed. For example, inspectors in some Southern and Midwestern States told us that they were hesitant to take any action against salvage operations selling "questionable" products because of the lack of specific criteria.

In one city, we found numerous food products in filth-encrusted containers that were swollen, rusted, or severely dented at several operations. The local inspector had inspected these operations 3 days before our visit, but his reports did not disclose these conditions. The owner of one of these operations said that an FDA inspector had been to his store about a month before our visit and had told him to destroy much of his merchandise. He objected, since the inspector could not cite a specific law or regulation that clearly stated he could not sell products in swollen and badly dented containers. According to the operator, the inspector had not returned.

The owner of another salvage operation told us he sells all damaged food containers unless the contents are obviously leaking. We saw numerous rusted, swollen, and severely dented products on retail shelves at this operation. Another store operator claimed that there are no uniform criteria that set standards for what food products can or cannot be salvaged. According to him, the criteria vary within and among States.

Without uniform criteria and guidelines covering food salvaging, regulatory agencies cannot effectively inspect food salvage operations and prevent salvagers from selling food that is potentially a public health hazard.

FDA'S LEADERSHIP IS DISAPPOINTING

In 1975 we recommended that FDA "* * * establish a program for regulating salvage outlets through FDA inspections." FDA said that, because of limited manpower, "* * * effective monitoring of food salvage outlets can best be handled at the State and local level." FDA added that it

"* * * will exercise a leadership role in encouraging and assisting State officials to implement well-planned inspectional programs, and in those States where industry is concentrated, encourage a coordinated State and local program."

On the surface it appears that FDA has made some progress in this regard. FDA officials conducted some training courses, at which acceptable food salvage practices were discussed with State and local inspectors. FDA has contracts with 21 States to inspect food manufacturers and warehouses, including about 350 food salvage operations. In the other 29 States, however, FDA inspects only a few salvage operations directly. According to FDA officials, little is known about the total number of food salvage operations, the condition of food sold, or the inspection coverage by State and local regulatory agencies.

The conditions noted during our previous review were prevalent at most places we visited during this review, regardless of whether FDA and the States had entered into an inspection contract. Of the 59 salvage operations we reviewed, 23 were in States with FDA contracts.

The basic problem appears to be lack of enforcement. FDA officials had no idea whether State or local food inspection agencies, to whom they had delegated inspection responsibility, were enforcing the provisions of the Federal Food, Drug, and Cosmetic Act or State and local laws relating to food salvagers.

Our visits disclosed examples of operators which appeared to be violating either State or local laws but against which formal enforcement actions had not been taken. In one city visited, local inspectors had inspected salvage operations several days before our visit, but no effective enforcement action had been taken against the operators to get them to comply with food regulations and guidelines. In one State, a perennial problem salvage operation was inspected by two State inspectors, who spent 2 days throwing away food products unfit for consumption. No court action was planned or taken by the regulatory agency against this operator.

Hence, FDA is contracting for State inspections which, based on our findings, do not prevent food salvagers from selling potentially unwholesome, unsafe, and misbranded food to the public and institutions.

USDA INSPECTIONS OF
FOOD SALVAGE OPERATIONS

USDA, in response to our 1975 report, stated that it would cooperate with the Department of Health, Education, and Welfare (HEW) in preparing a food salvage program as far as meat and poultry products were concerned. One USDA program tracks commercial food operations of all sizes to insure that inspections are made to control possible adulteration or mislabeling of meat, poultry, or egg products. About 300 food salvage operations are included in this inspection program. According to USDA officials as a result of our 1975 report all of these operations were inspected to establish their risk category. This risk category determines how frequently food salvage operations are inspected.

We found the quality of canned meat and poultry products unchanged from that found in 1974. Badly dented, swollen, and misbranded meat and poultry products were being sold on the retail shelves of several food salvage operations.

USDA officials said that:

- Food salvage was not a significant problem or a high priority area, and they did not have the resources to control all the meat, poultry, or egg products in the food salvage channels.
- Most food salvage operations are under FDA's jurisdiction.
- USDA is aware of the public health threat posed by improperly salvaged and handled meat and poultry products.
- USDA believes its present compliance efforts are satisfactory, but it is continually looking for ways to improve the program.

WARNING TO INSTITUTIONAL BUYERS
OF SALVAGED FOOD INEFFECTIVE

Our prior report recommended that FDA alert health agencies responsible for inspecting institutions in all States about the risks of allowing institutions to buy misbranded or damaged salvaged food products. FDA agreed with this recommendation and in June 1975 mailed letters to over 200 State and local institutional inspection agencies.

This one-time warning has not been effective in preventing potentially unsafe and unwholesome salvaged food from finding its way to rest homes, hospitals, and other institutions where proper diets are often critical. In some locations we found

--swollen, rusted, and badly dented cans of vegetables in nursing homes and

--food in containers that were too badly dented and/or rusted to stock on the retail shelves so it was donated to a local halfway house for drug abusers.

Some institutional buyers said that they were not aware they were buying salvaged food and that they might not have purchased it had they known. If the AFDO model salvage regulation is adopted and enforced in all the States, all salvaged food, including that sold to institutions, will have to be labeled "salvaged food." This may be one way to better inform institutional buyers.

CHAPTER 4

CONCLUSIONS, RECOMMENDATIONS, AGENCY COMMENTS, AND

OUR EVALUATION

CONCLUSIONS

Consumers who buy salvaged food should be given the same protection and product information given to those who buy other food. Salvage operations are offering food to the public and institutions that (1) may not have been properly reconditioned after disasters, wrecks, or mishandling and (2) may be in unlabeled, leaking, swollen, rusted, or badly dented containers.

Our visits to salvage operations showed that many consumers may be taking an unreasonable health risk by eating salvaged food. Those in such institutions as orphanages, youth camps, and nursing homes are particularly vulnerable because they are not aware of the salvaged nature of the food served them. FDA can affect the way food salvage operations operate and thus lessen the risk to consumers.

Few existing Federal, State, or local laws, regulations, or guidelines pertain specifically to food salvage. Governments at all levels need uniform, comprehensive regulations as a basis for effectively regulating food salvage operations. FDA should coordinate the development of such regulations because it has prime responsibility for protecting the public against the adulteration and misbranding of foods sold.

FDA has not assumed direct responsibility for such retail operations as grocery stores and restaurants because of their numbers. However, it could directly oversee inspection and enforcement of the much smaller number of food salvage operations, at least on a selective basis. This seems essential in view of the conditions we found.

RECOMMENDATIONS

We recommend that the Secretary of HEW direct the Commissioner, FDA, to:

- Establish a program or strategy for regulating salvage outlets. As part of this program, FDA should

1. urge States to use existing FDA guidelines for inspecting salvage outlets until Federal and State regulations can be developed;
2. make more joint inspections of salvagers with State and local inspectors to help them identify and report on improper practices;
3. ask States, especially those that have contracts with FDA, to provide information on enforcement actions involving food salvagers;
4. inspect food salvage outlets on a selective basis paying particular attention to large metropolitan areas where food salvagers are often concentrated; and
5. initiate enforcement action against violators that continue to disregard laws and regulations.

--Develop and publish a Federal regulation establishing a national uniform code of practice for food salvaging, including guidelines and criteria for transporting, sorting, reconditioning, repackaging, and storing salvaged food.

--Require that salvaged food products be identified as such on the label.

--Actively work for the adoption of the AFDO regulation in States where it has not been enacted.

--Reemphasize to Federal and State health agencies responsible for inspecting institutions of the potential effects of allowing institutions to buy misbranded or damaged salvaged food products, and provide them with specific FDA inspection guidelines.

HEW COMMENTS AND OUR EVALUATION

HEW said that FDA will continue its efforts to have the principles of the AFDO regulations implemented in practice by State and local authorities. (See app. I.) HEW agreed to (1) advise State purchasing agents and food control officials of the findings in this report and (2) continue to provide information and guidelines on inspecting food

salvage operators to State and local officials attending FDA training courses.

However, HEW generally disagreed with our other recommendations. It does not believe that the Federal Government should get more involved in regulating food salvage operations. It believes that State and local authorities are best able to effectively regulate food salvage activities by virtue of their resources, authorities, and proximity to these firms.

Both our current review and our 1974 review have shown, however, that many food salvage operators sell food in contaminated, defective, or improperly labeled containers. The pervasiveness of these conditions indicates that Federal, State, and local regulatory agencies are either not able or not willing to require food salvage operators to properly recondition or label salvaged foods.

Because of the potential health hazards associated with salvaged foods, we believe FDA should work more actively for improvements in the food salvage industry.

Agency comments on specific recommendations and our evaluation of them are discussed below.

Establish a program for regulating food salvage operations

Because HEW believes State and local governments can more effectively deal with the general problems cited in this report, it does not believe our findings warrant changing FDA's overall inspection priorities or developing a Federal program for regulating salvage operators. HEW explained that:

--FDA concentrates enforcement efforts on those segments of the food industry that pose the greatest potential public health risk because it does not have sufficient resources to inspect the more than 70,000 domestic food establishments in its inventory. Certain segments of the food industry must receive minimal FDA attention even though additional surveillance might be beneficial. Arguments for increased coverage of these areas have little analytical value in a resource-constrained world unless it can be shown that FDA's existing effort is directed at less urgent health risks.

--States and local governments, through their licensing and permit authorities, can identify food salvage firms more easily than FDA because the Federal Food, Drug, and Cosmetic Act contains no registration requirement; therefore, FDA has no direct means for identifying wholesale or retail salvage dealers.

--State and FDA relationships could be adversely affected if FDA attempted to (1) dictate how inspections of salvage firms are to be conducted, (2) monitor State enforcement actions against violative salvage firms, and (3) audit State inspection results.

--States, with their detention and embargo powers, can remove products from the market faster and more effectively than FDA.

Although State and local governments may be in a better position to regulate food salvage operators, they have not effectively done so. Conditions in the food salvage industry have not improved since our earlier review. In our opinion, FDA can effectively address the problems we found in the salvage industry without major modifications to its existing programs.

HEW's comments imply that FDA inspection efforts are directed primarily at high-risk food products. 1/ However, in addition to about 2,700 inspections of manufacturers or repackers of high-risk food products, FDA's fiscal year 1979 Domestic Food Safety Program 2/ calls for 3,900 inspections of food establishments not considered high risks. Also, according to this program not all high- or low-risk food establishments have equal priority. For example, (1) within the low-risk category, inspections of food storage warehouses and wholesale salvage dealers have a higher priority than processors of low-risk foods, (2) the 13 product categories having the lowest compliance rates in fiscal year 1977 were designated "areas of emphasis" in fiscal year 1979, and

1/High-risk food products are those that (1) are capable of supporting the rapid progressive growth of pathogenic bacteria if the product is mishandled or improperly processed and (2) have a history of being a problem food because of incidents involving contamination by pathogenic bacteria.

2/FDA also plans to inspect about 1,000 high-risk firms under its fiscal year 1979 Domestic Low-Acid Canned Foods Program.

(3) manufacturers of one commodity have been singled out for special inspection coverage because there are indications of significant sanitation problems in their facilities.

Because of the deplorable conditions and the questionable quality of products sold in salvage operations, it would seem that health risks associated with salvaged foods are no less, and in some instances probably greater, than other foods considered to be low risk. Therefore, FDA should give more attention to the salvaged food industry. Such inspections should not have any measurable impact on FDA resources allocated to inspections of high-risk foods and would be consistent with priorities established for low-risk foods in FDA's Domestic Food Safety Program.

The difficulty HEW indicated in identifying food salvagers because of the absence of Federal legislation requiring them to register with FDA applies equally to most other food establishments, since there is no legal requirement for most food establishments to register with FDA. FDA uses various sources, including State and local governments, FDA inspectors, newspaper articles, and telephone directories, to develop an inventory of food establishments which FDA uses to schedule inspections. The same sources could be used to identify food salvagers. We recognize that such an inventory system has limitations and may not include (1) firms that only occasionally handle salvaged foods or (2) food establishments with temporary or short life spans. However, it should identify most food salvagers that operate on a more permanent basis and represent the major segment of the industry.

We agree that relationships between FDA and the States could be seriously affected if FDA takes a peremptory approach in working with States on the salvaged food problem. We do not believe, however, that this relationship will become strained if FDA's approach to the joint inspections we recommend is cooperative in spirit and supportive of State efforts in this area.

Further, when FDA cannot obtain a State's cooperation, because the State does not have either the ability, the interest, or the available resources to regulate salvagers, FDA should exercise its authority under the Federal Food, Drug, and Cosmetic Act for regulating the salvage industry.

Although State detention and embargo authority may, as HEW has indicated, be useful in removing violative products from the market, States are not effectively using their authority. Furthermore, the occasional detention or embargo of violative products found during periodic State inspections would not, in our opinion, achieve the more permanent improvements that are needed in an industry with a history of violative conditions. Stronger measures, such as criminal prosecutions, which FDA can recommend, may be necessary to bring about improvements in the food salvage industry.

A March 1975 article on the conditions in food warehouse sanitation in the "FDA Consumer," an FDA publication, noted that improvements in that industry were brought about by stepped-up inspection activities. The article added that, although preventive measures are preferable and in the long run much more effective in achieving the ultimate goal of assuring that the food purchased by the consumer is clean and safe, criminal prosecutions are necessary when all other efforts have failed.

Develop Federal regulations for food salvage practices

HEW does not believe specific Federal regulations for food salvage operations are necessary. Instead, HEW said, FDA is preparing a Model Uniform Salvage Ordinance and Code based on the AFDO model regulations. According to HEW, these guidelines are designed for State and local adoption.

Model guidelines, if adopted by the States, could help to strengthen regulation of the salvaged food industry. However, during the 4 years since our earlier review, only four States have adopted AFDO's model guidelines. Accordingly, the effectiveness of voluntary model guidelines is questionable.

The States' apparent lack of interest in model guidelines strongly suggests the need for mandatory regulations. Such regulations would provide FDA and its inspectors with a better basis for inspecting and regulating food salvage operations, particularly in States that do not effectively regulate them. The regulations could also be adopted by States that want them.

Label salvaged food products as such

HEW doubts that a labeling requirement for salvaged food products will correct the problems cited in this report. HEW points out that, because most salvaged foods are sold by salvage outlets directly to the public or institutional buyers, there is no significant evidence that buyers are unaware of the salvaged nature of goods. Labels, according to HEW, would not benefit the consumer of salvaged food in an institutional setting since institutional consumers would not see or be served food from such labeled containers.

Although the public and institutional buyers generally may be aware of the salvaged nature of the foods they purchase, we identified some institutional buyers that were not. (See p. 26.)

Although labeling salvaged goods will not correct all the problems we identified at food salvage outlets, it would better inform users or consumers of salvaged foods that the products were damaged or subjected to contamination during distribution.

Moreover, since salvaged food labels are not always accurate (see p. 18), labeling salvaged foods as such would alert dieticians who prepare special diets for institutional residents of the need to take extra precautions to be sure that the package's labeling accurately represents its contents.

CHAPTER 5

SCOPE OF REVIEW

We accompanied FDA, State, or local inspectors visiting 59 food salvage operations in Jacksonville, Florida; New Orleans, Louisiana; Memphis, Tennessee; Kansas City, Missouri; Denver, Colorado; Dallas and Houston, Texas; Phoenix, Arizona; Los Angeles, Oakland, San Jose, and San Francisco, California; Portland, Oregon; and Everett, Washington. We also visited 17 institutions, such as nursing homes, which were purchasing salvaged food in Los Angeles, the San Francisco Bay area, and Portland.

Information about food salvage standards and criteria was obtained from (1) such national food associations as the National Cannery Association and the Association of Food and Drug Officials and (2) Federal food laws and guidelines.

At FDA and the Department of Agriculture, we discussed matters relating to the food salvage industry with agency officials and examined pertinent policies, procedures, and practices. We also reviewed actions taken by these agencies in regulating or controlling the food salvage industry since our earlier review.

We are not providing the names of either the food salvage operations or the institutions visited during this review because

- to do so might subject these firms or institutions to adverse publicity even though their operations or activities may be no worse than others that were not visited;
- we have not given these facilities an opportunity to comment on our findings; and
- we are primarily concerned with the effectiveness of the regulatory activities of FDA and State and local authorities to bring about improvements in this segment of the food industry.

COPY

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

OCT 6 1978

Mr. Gregory J. Ahart
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft report entitled, "FDA Needs to Regulate the Food Salvage Industry to Prevent the Sales of Unfit and Misbranded Food to the Public." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

/s/ Thomas D. Morris
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
ON THE COMPTROLLER GENERAL'S DRAFT REPORT ENTITLED
"FDA NEEDS TO REGULATE THE FOOD SALVAGE INDUSTRY
TO PREVENT THE SALES OF UNFIT AND MISBRANDED
FOOD TO THE PUBLIC"

General Comments

The recommendations in this report imply that GAO derived two general conclusions from the audit findings: (1) that Federal surveillance of food salvage operations should be increased at the expense of existing surveillance of other sectors of the food industry, and (2) that the Federal government can bring salvage operations into compliance more effectively than State or local authorities. Both presumptions deserve careful consideration.

The report itself does not directly address the first conclusion, but it is an inevitable consequence of the recommendations. The report's perspective is similar to previous GAO reports calling for increased federal surveillance of shellfish (1973), food warehouses (1974), canned pineapple (1975), restaurants (1975), and imported foods (1977). Each of these reports focused on a particular segment of the national food system and found federal surveillance efforts to be inadequate, yet none considered the off-setting implications of their particular recommendations on existing food surveillance priorities. Since the Food and Drug Administration (FDA) has more than 70,000 domestic food establishments in its inventory, but sufficient resources to inspect less than 25,000 per year, it is obvious that certain segments of the food industry must receive minimal FDA attention even though additional surveillance of such segments might be beneficial. But arguments for increased coverage of such areas has little analytical value in a resource constrained world unless they are accompanied by evidence that existing FDA effort is directed at less urgent health risks. We do not believe this can be demonstrated.

FDA has developed an inspection strategy that concentrates enforcement efforts on the segments of the food industry that pose the greatest potential public health risk. FDA's decision to concentrate primary emphasis on manufacturers of high risk commodities is a deliberate decision made in the full knowledge that other industry segments will receive less attention. Implementation of all recent GAO recommendations would spread FDA resources more thinly across the entire food industry and relax concentration on high risk areas, but until there is evidence that surveillance of high risk areas can be relaxed without adverse consequences, existing evidence is not sufficient to change current inspection priorities.

With regard to the second conclusion, the report makes a case for greater federal surveillance largely on the basis of inadequate State and local efforts. Although it has been a common GAO prescription for perceived shortcomings in State and local food regulatory programs, greater federal involvement has not always proven to be a practical solution. In this situation, there are several considerations which mitigate against the effectiveness of greater federal involvement.

One factor the report omits is the comparable advantage of State and local officials in identifying food salvage operations. Food salvage operations are not confined to a discrete, fixed group of retailers who specialize in salvaged food. Food salvaging is a function performed to some extent by most food shippers, warehousemen, or wholesalers. But FDA has no direct means for identifying this functional group, or the smaller number of salvage outlets, since there is no registration requirement in existing Federal legislation. In practice, State and local governments, through their licensing and permit authorities, have the most timely and accurate data on the inventory of food firms.

Another aspect of the situation that deserves consideration is the extent of existing effort by the States. In a recent survey of State food and drug control programs, FDA found that States provide rather intensive regulatory coverage to food warehouses and retail food establishments, where presumably most food salvage operations would be classified. On the average, States inspect their inventory of 16,300 food warehouses and 256,400 retail food establishments once every 9 months for a total of 374,000 inspections per year. This does not include efforts by county and municipal governments which may exceed State efforts. If FDA were to dictate how these inspections were to be done, monitor enforcement actions and audit State inspections, even for a small segment of these firms, there would be major consequences for the relationship between FDA and State counterparts. In the past, comparable efforts such as those proposed by the GAO report on shellfish (1973), have encountered significant resistance from the States. If the States fund programs to enforce their own laws, particularly where there are longstanding traditions for such programs, the States generally resent federal attempts to unify or standardize their efforts unless there is clear and obvious benefits. In this case, marginal gains in the compliance of food salvagers might come at a high cost to the cooperative relationship between Federal and State food regulatory programs.

Lastly, and perhaps most significantly, the report omits the fact that FDA has far less authority to interdict hazardous food than most State authorities. In an earlier GAO report entitled, Lack of Authority Limits Consumer Protection: Problems In Identifying And Removing From the Market Products Which Violate The Law, GAO emphasized the serious consequences of FDA's lack of authority to temporarily detain violative products from the market. Since salvage retailers are only one step from the ultimate consumer, FDA's seizure process which requires time-consuming civil court action is an inappropriate regulatory tool for the problem encountered in salvage operations. The earlier GAO report observed:

"...in some seizure actions, FDA requested a State or local official to use his embargo authority to detain products pending removal. In those cases the percentage of the product removed from the market was significantly increased. We noted that 34 States had embargo authority which authorized their inspectors to detain questionable products until they were proven safe or removed from the market....We believe that the use of embargo authority resulted in a significant improvement over cases where embargo authority was not used...."

This earlier finding is not fully consistent with the recommendations in this report that FDA conduct selective inspections of food salvage outlets and initiate enforcement action against violators, since the most effective regulatory power - detention and embargo - are State powers.

In summary, we believe State and local authorities are the most effective regulatory bodies to deal with these salvage problems by virtue of their resources, authorities and proximity to the firms.

GAO Recommendation

We recommend that the Secretary, HEW, direct the Commissioner, FDA to:

- Develop and publish a Federal regulation establishing a national uniform code of practice for food salvaging, including guidelines and criteria for transporting, sorting, reconditioning, repackaging and storing salvaged food.

Department Comment

We do not believe that a Federal regulation is the most suitable regulatory approach in this situation. Instead, a Model Uniform Salvage Ordinance and Code, based on the Association of Food and Drug Officials (AFDO) Model Regulation, is in preparation. A Notice of Availability will be published in the Federal Register and distributed to State and local agencies and to those individuals requesting the Uniform Ordinance Code.

This guideline is designed for State and local adoption. We believe these levels of government are best able to effectively regulate food salvage activities because of their personnel and regulatory (licensing and embargo authority) resources and proximity to the salvage establishments.

GAO Recommendation

- Require that salvage food products be identified as such on the label.

Department Comment

We doubt the usefulness of such a requirement in achieving correction of the problems cited in the report. As the report acknowledges, most salvaged foods are sold by salvage outlets directly to the public or institutional buyers. There is no significant evidence that buyers are unaware of the salvaged nature of goods. Also, labels would not benefit the consumer of salvaged food in an institutional setting since institutional consumers would not see nor be served food from such labeled containers.

GAO Recommendation

- Actively work for the adoption of the AFDO regulation in States where it has not been enacted.

Department Comment

FDA will continue to work through the AFDO which has developed a legislative Fact Kit for use by States who wish to enact AFDO model regulations and laws. FDA will also continue its efforts to have the principles of AFDO regulation implemented in practice by State and local authorities. The substantial training efforts of the past four years - 54 courses for more than 2700 personnel - will be continued, and built around the AFDO model regulation. Also, FDA will continue to make the State Inspectors Manual, prepared by FDA in cooperation with the AFDO, available to State and local officials. The manual which includes a subchapter on Food Salvage has already been provided to more than 3800 State and local authorities.

GAO Recommendation

- Establish a program or strategy for regulating salvage outlets.
As part of this program, FDA should:
 - . Urge States to use existing FDA guidelines for inspecting salvage outlets until Federal and State regulations can be developed;
 - . Conduct more joint inspections of salvages with State and local inspectors to assist them in identifying and reporting on improper practices;

- . Ask States, especially those who have contracts with FDA, to provide information on enforcement actions involving food salvagers;
- . Inspect food salvage outlets on a selective basis with particular attention to large metropolitan areas where food salvagers are often concentrated; and
- . Initiate enforcement action against violators that continue to disregard laws and regulations.

Department Comment

As explained in the General Comments, we do not believe the findings in this report warrant an alteration in FDA's overall inspection priorities. Although decisions regarding the rationing of FDA's regulatory resources are always difficult, the decision with respect to food salvagers is significantly mollified by the proximity of State and local authorities to these problems, the comparable size of their existing programs, and the suitability and effectiveness of enforcement options available to most State and local authorities. Food salvagers do not have fixed production control systems analogous to food processors, and consequently the only effective regulatory program for dealing with the varied situations of salvage is one based on frequent visits by authorities with power to take immediate action. FDA, because of its many diverse responsibilities, resource constraints, and statutory limitations cannot meet that need. State and local food control officials can, we believe, with the training support and other assistance described in our response, most effectively deal with the general problems cited in the GAO report.

GAO Recommendation

- Re-emphasize to the Federal and State health agencies responsible for inspecting institutions of the potential effects of allowing institutions to buy misbranded or damaged salvaged food products, and provide them with specific FDA inspection guidelines.

Department Comment

State and local officials attending FDA training courses will continue to receive information and guidelines on inspecting food salvage operators. We will advise State purchasing agents and food control officials of the findings of this report, as we did in 1975 with the previous GAO report.

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