



May 29, 2012

The Honorable Elisabeth Hagen
Under Secretary
Food Safety and Inspection Service
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 227-E
Washington, DC 20250

RE: Docket No. FSIS-2011-0012

Dear Under Secretary Hagen:

OMB Watch welcomes the opportunity to comment on FSIS' proposed rule regarding the Modernization of Poultry Slaughter Inspection (Docket No. FSIS-2011-0012). OMB Watch is a nonprofit, nonpartisan research and advocacy organization promoting an open, accountable government responsive to the public's needs. Since its inception in 1983, OMB Watch has carefully monitored regulatory policy and advocated for strong health and safety protections on behalf of the public.

Although OMB Watch agrees that modernizing and improving food safety inspections is a worthwhile goal, we believe the proposed rule is fundamentally flawed for two reasons and should be withdrawn or substantially revised before it is adopted. The rule would not increase food safety, but might increase the incidence of foodborne illness. And, under the rule, poultry workers will pay an enormous price, in terms of more injuries and disability, for modernized inspection. Both of these effects are the result of FSIS' rush to save the already hugely profitable poultry industry money without adequately studying the effects of its proposed rule on the health and safety of poultry workers and the public at large.

Food Safety Concerns

We are concerned that modifying the national poultry inspection system will have serious implications for food safety that are not evident from FSIS' proposal.

Promoting Government Accountability and Citizen Participation Since 1983

1742 Connecticut Ave. NW
Washington, DC 20009

tel: 202.234.8494
fax: 202-234.8584

email: ombwatch@ombwatch.org
web: <http://www.ombwatch.org>

FSIS is basing its decision to adopt this new inspection model on the results of a pilot program called HIMP (the HACCP-based Inspection Models Project), a more flexible inspection system based on the USDA's Hazard Analysis and Critical Control Points (HACCP) program. The record of the HIMP program suggests it should not be extended nationwide.

A 2001 report by the Government Accountability Office (GAO), previously called the General Accounting Office, found several weaknesses in the HIMP program that have not been remedied. According to GAO, the "pilot project for chickens had several design and methodology problems that compromised the overall validity and reliability of its results."¹ GAO doubted whether the data generated by the pilot project was indicative of how all of the chicken plants' inspection systems would perform if modified inspections were adopted nationwide.² Finally, GAO concluded that the information reported by the agency did not conclusively demonstrate that modified inspections are at least equal to traditional inspections.³ Until FSIS can assure the public that these weaknesses have been corrected, that pilot program results are valid and that the modified inspections will be at least equal to traditional inspections, the proposed rules should be withdrawn.

A recent analysis by Food & Water Watch of poultry plants participating in the HIMP pilot program found that company employees missed many defects in poultry carcasses.⁴ In many of the plants, the overwhelming number of non-compliance records filed cited fecal contamination found on the carcasses. Moreover, affidavits from USDA inspectors who have worked in HIMP plants revealed instances of excessive line speeds, inadequate training, and missed food safety and wholesomeness issues.⁵ The inspectors raised concerns over giving more inspection responsibility to the plants themselves, "which are concerned primarily with keeping the line speeds up and maintaining productivity," said one inspector.⁶ Alarming, the inspectors expressed that if the HIMP program is

¹ Government Accountability Office, "Food Safety: Weaknesses in Meat and Poultry Inspection Pilot Should Be Addressed Before Implementation." GAO-02-59, Dec. 17, 2001, <http://www.gao.gov/new.items/d0259.pdf>.

² *Id.*

³ *Id.*

⁴ Government Accountability Project, GAP Releases Early Evidence From HIMP Investigation – Shocking Whistleblower Affidavits Detailing Dangers of Poultry Plant Self-Inspection, Apr. 5, 2012, <http://www.whistleblower.org/press/press-release-archive/2012/1889-usda-inspectors-government-himp-plan-is-a-threat-to-food-safety>.

⁵ *Id.*

⁶ *Id.*

implemented nationally, more unsafe poultry products could reach consumers. This evidence suggests that expanding the HIMP program nationally will weaken the food safety inspection system, putting the public at risk.

Furthermore, even if HIMP plants met food safety goals, there is no reason to believe that if the program were extended *all* poultry plants would perform equally as well. First, FSIS has looked only at the performance of 20 volunteer plants, a small fraction of the number of plants who could be expected to implement the program if the proposed rule is finalized. These most likely demonstrated exemplary performance in conducting operations and inspections, producing results on the high end of the performance scale.

FSIS' own risk assessment highlights the uncertainty about the effects on food safety. The agency concedes that "substantial uncertainty about forecasted changes in illness rates" results from uncertainty about the change in future inspection activities and the rates of human illness attributable to poultry.⁷ Furthermore, the analysis of the potential increases in illness rates is not comprehensive. While the risk assessment details the uncertainty about the change in human illness rates when off-line inspection activities are *intensified*, there is no comparable examination of the human illness changes from *reducing* on-line federal inspection activities.⁸ Not surprisingly, the assessment indicates that even more illnesses could be avoided by intensifying off-line inspection activities when accounting for uncertainty, but that is a grossly incomplete assessment of the inspection changes that will result under the proposed rule. FSIS should withdraw the proposal until a complete analysis of all of the modifications and variables provides certainty that the inspection changes will not increase the risk to human health.

In addition to our concern with the agency's reliance on the HIMP program, we believe several additional provisions should be revised or deleted from the proposed rule because they could impede the inspection process and negatively affect food safety.

1. Proposal to shift online carcass inspection responsibilities

⁷ FSIS, Public Health Based Poultry Slaughter Inspection Risk Assessment, Nov. 14, 2011, at 32, available at http://www.fsis.usda.gov/PDF/Poultry_Slaughter_Risk_Assess_Nov2011.pdf.

⁸ See *id.* at 27-30.

Under the proposed new inspection system, only one FSIS on-line inspector would be responsible for inspecting every carcass that comes down the line for food safety defects before the carcasses enter the chiller. Inspectors believe this to be an impossible task. FSIS emphasizes the importance of off-line verification inspection and hypothesizes that switching existing FSIS activities towards more off-line verification activities may reduce pathogen levels in slaughter plants. Maybe off-line inspection activities will reduce pathogen levels and foodborne illnesses, but off-line activities should not be increased at the expense of on-line visual inspections.

The proposed rule removes *trained* FSIS inspectors who conduct sorting and inspection activities from the line, but does not require their replacements to receive training. This omission should be corrected.

2. Proposed changes to sampling and testing microbial organisms

Under the proposed rule, each plant would be responsible for developing and implementing its own microbiological sampling plan, including sampling at both post-chill and pre-chill locations. The proposal does not specify how frequently plants must sample and test poultry carcasses, or for which organisms, but instead allows each plant to determine which organisms it will sample and how it will conduct testing. Plants would not be required to sample for *Salmonella* or *Campylobacter*, two harmful pathogens associated with raw poultry. We believe that FSIS should specify baseline requirements for sampling process and frequency to accurately compare plants and detect new or changed threats from pathogens.

3. Proposal to eliminate pathogen performance standards regulation

FSIS proposes to eliminate the pathogen performance standard regulations in 9 CFR 381.94(b). The agency has developed new performance standards for *Salmonella* and *Campylobacter* in young chicken and turkey slaughter establishments, but plans to implement the standards through guidance. FSIS cannot ensure compliance with guidance that is not legally binding. Plants should be legally required to meet new performance standards.

Under the existing regulations, an establishment's consistent failure to comply with the *Salmonella* performance standards or take the corrective actions necessary to comply with the standards constitutes a failure to maintain sanitary conditions and to maintain an adequate HACCP plan.⁹ FSIS can suspend inspection services for failure to meet the standards.¹⁰

According to FSIS, its ability to suspend inspections was constrained by a decision by the U.S. Court of Appeals for the Fifth Circuit enjoining FSIS from suspending inspection services against a meat grinding operation for failure to meet the *Salmonella* performance standards.¹¹ But, FSIS can use *Salmonella* performance standard failures as a basis to conduct an in-depth evaluation of the establishment's food safety systems, including its HACCP plan and sanitation standard operating procedures. The failure to meet performance standards indicates that an establishment's HACCP controls are inadequate and must be addressed. Regardless of FSIS' ability to suspend inspection services, the obligation to meet new performance standards should be explicit and codified into regulation.

4. Proposal to replace finished product standards with record-keeping requirements

FSIS proposes to eliminate finished product standards (FPS), and instead require that establishments document that their products meet the definition of ready-to-cook poultry. FPS criteria ensure that poultry is consistently wholesome and unadulterated, and include a zero-tolerance policy regarding visible fecal contamination. Plants under the new inspection system would be allowed to choose their own process controls as well as how to meet the documentation requirement. Performance standards should have clear, enforceable goals allowing flexibility in how to meet those goals. The fatal flaw in the proposed rule is that it does not include enforceable goals, but instead allows plants to choose their own goals.

Without specific standards for ensuring that Other Consumer Protection (OCP) defects are promptly identified and addressed, it will be difficult to compare plants across the industry and trace the causes of systematic defects. The lack of uniformity in record-keeping could also

⁹ 9 CFR 381.94(b)(3)(iii).

¹⁰ *Id.*

¹¹ *Supreme Beef Processors, Inc., v. United States Dep't of Agric.*, 275 F.3d 432 (5th Cir. 2001).

make it difficult for FSIS to examine and compare process controls and OCP issues. Furthermore, FSIS inspectors would have to wait for evidence of a plant's inability to produce ready-to-cook poultry before it could force the plant to reduce line speed and remedy the defect.

Worker Safety Concerns

FSIS should be well aware of the hazards of poultry work. The poultry workforce consists mainly of recent immigrants, many women. Average wages in the poultry industry are under \$12 per hour. In real terms, workers are paid less than they were 40 years ago.

Workers in poultry processing plants must keep pace with fast moving conveyor belts while they use knives and scissors to cut up the chickens and then remove the meat from the bones using their bare hands. Workers are exposed to hazardous equipment, slippery floor, dangerous noise levels, knife cuts and amputations, and cold temperatures. Repetitive motion injuries are epidemic. Because of the low wages and hazardous working conditions, annual turnover rates in the industry can be as high as 500 percent.

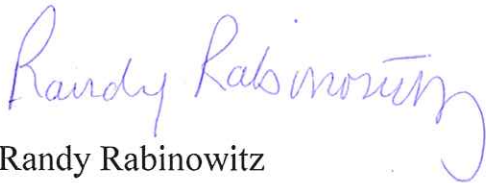
In many instances workers currently must perform as many as 20,000 repetitions of a single defined task each day. Bureau of Labor Statistics data for 2010 show that poultry had a higher rate of injuries and illnesses than all other manufacturing sectors. Poultry was among the industry sectors with the highest rates of injuries requiring job transfer or other restrictions. And, poultry is among the industries with the highest case rate for illnesses. Even these high rates of illness and injury probably understate the problem, as experts believe underreporting of incidents is rampant in the poultry industry.

Because the proposed rule will allow poultry plants to increase line speed substantially, it will undoubtedly create greater risks for poultry workers. More injuries and illness among poultry workers have significant costs: increased workers' compensation costs for poultry producers; increased social service costs for state and local government who have to provide Medicaid and welfare benefits to disabled poultry workers; and reduced tax and Social Security payments from disabled workers no longer able to earn a living.

FSIS has not adequately evaluated the effect this increase in line speed will have. It is not enough for FSIS to assure the public that NIOSH has expressed a willingness to look at these impacts in the future. The analysis must be done now, before the rule is adopted.

The health and safety of American consumers and workers is at stake. It is unacceptable for FSIS to implement this rule without fully evaluating the risks to food and worker safety. We urge you to withdraw the rule until FSIS can assure the public that any proposed inspection changes will not increase these risks.

Sincerely,



Randy Rabinowitz
Director, Regulatory Policy

