



Consumer Federation of America

May 22, 2015

Docket Clerk
U.S Department of Agriculture, FSIS
Patriots Plaza 3
355 E Street SW
Mailstop 3782, Room 8-163B
Washington, DC 20250-3700

Re: Docket No. FSIS 2014-0023

To Whom It May Concern:

The Consumer Federation of America (CFA) appreciates the opportunity to comment on the Food Safety and Inspection Service's (FSIS) Federal Register notice regarding Changes to the *Salmonella* and *Campylobacter* Verification Testing Program: Proposed Performance Standards for *Salmonella* and *Campylobacter* in Not-Ready-to-Eat Comminuted Chicken and Turkey Products and Raw Chicken Parts and Related Agency Verification Procedures and Other Changes to Agency Sampling (Docket No. FSIS 2014-0023).

CFA is a non-profit association of some 280 organizations, with a combined membership of over 50 million Americans. Member organizations include local, state, and national consumer advocacy groups, senior citizen associations, consumer cooperatives, trade unions and food safety organizations. Since its founding in 1968, CFA has worked to advance the interest of American consumers through research, education and advocacy. CFA's Food Policy Institute was created in 1999 and engages in research, education and advocacy on food and agricultural policy, agricultural biotechnology, food safety and nutrition.

CFA strongly supports efforts to reduce pathogen contamination in meat and poultry products. Performance standards are an important tool to provide the industry and the federal government with measurable goals for reducing pathogen levels. CFA supports FSIS' proposed performance standards for *Salmonella* and *Campylobacter* in comminuted poultry and raw chicken parts in order to help reduce the impact of these pathogens on human health. CFA further supports FSIS' efforts to sample both domestic and imported poultry products as part of this program.

Progress on Reducing *Salmonella* and *Campylobacter* Illnesses has Stalled

According to the Centers for Disease Control and Prevention (CDC), *Salmonella* is estimated to cause 1 million illnesses every year. However, the U.S. has made almost no progress in reducing illnesses from *Salmonella* since 2000. In 2014, the incidence of salmonellosis was 15.45 cases per 100,000.

Campylobacter is the most common causes of diarrhea illness in the United States with over 1.3 million estimated cases each year. The vast majority of cases occur as isolated, sporadic events, not as part of recognized outbreaks. Similar to *Salmonella*, there has been almost no progress in reducing *Campylobacter* infections in the U.S. since 2002. The incidence of campylobacteriosis in 2014 was 13.45 cases per 100,000; above the National Health Objective of 8.50 cases per 100,000.

CFA Supports New Performance Standards for Poultry Parts and Comminuted Poultry

Raw or undercooked poultry is a frequent source of *Salmonella* and *Campylobacter*. Efforts to reduce contamination of these raw poultry are important to protect consumers from foodborne illness. While FSIS has found low rates of pathogen contamination on poultry carcasses, poultry parts and comminuted poultry have high rates of contamination.

FSIS' baseline testing estimated the prevalence of *Salmonella* in raw chicken parts to be 24 percent and the prevalence of *Campylobacter* to be 21.7 percent.¹ In January 2014 *Consumer Reports* magazine published an analysis of more than 300 raw chicken breasts purchased at stores across the U.S.² The study revealed that *Campylobacter* was in 43 percent of the chicken breasts tested and *Salmonella* was in 10.8 percent. As stated in the notice, the national prevalence for *Salmonella* in NRTE comminuted chicken is 49 percent and in NRTE comminuted turkey is 20 percent. For *Campylobacter*, the prevalence in NRTE comminuted chicken is three percent and in turkey, one percent. Establishment of new performance standards for these products could help reduce the levels of contamination and improve public health.

Since breasts, legs and wings are the most frequently produced and consumed poultry parts in the U.S., it is appropriate for FSIS to focus the new performance standards on those parts. However, CFA agrees that FSIS should conduct some testing of parts other than breasts, legs and wings in order to better understand the level of *Salmonella* and *Campylobacter* on these additional parts. Based on this testing, FSIS should take any necessary steps to address concerns about the other poultry parts.

CFA agrees with FSIS that the new performance standard for chicken parts should include parts that have been injected or marinated. Consumers often cannot tell the difference between poultry that has been marinated or injected and poultry that has not. In addition, adding fluids to chicken products can increase the risk of contamination.

CFA Supports Move to Routine Sampling

FSIS states that it will replace its existing *Salmonella* set-approach with a routine sampling approach. This will provide a better sense of ongoing performance throughout the year compared to the current approach. In order to rely on this data however, FSIS must be assured that plants are not taking action to substantially and temporarily alter its food safety systems when tests are taken. As such, FSIS testing should be random and unannounced so that plants cannot take steps in advance, such as adding antimicrobial chemicals, to bias the test results. In addition, the agency needs to further investigate the

¹ Food Safety and Inspection Service, "The National Microbiological Baseline Data Collection Program: Raw Chicken Parts Survey, January 2012-August 2012."

² Consumer Reports magazine, January 2014, <http://www.consumerreports.org/cro/magazine/2014/02/the-high-cost-of-cheap-chicken/index.htm>.

extent to which antibacterial chemicals used in poultry plants may be masking the presence of *Salmonella* and rendering test results unreliable, and take any action to remedy the problem.³

FSIS also states that it will use a “moving window” approach to assess process control in establishments. CFA supports this approach but notes that assessing data through a moving window approach requires adequate analytic capacity, both in terms of laboratory capacity and data analysis as well as appropriate IT infrastructure. FSIS should detail the extent of the agency’s capacity in this regard to provide assurances that this moving approach can be appropriately used.

CFA Supports Publishing Establishment Performance Categories

CFA supports FSIS’ intention to post the category status for all establishments in order to provide greater transparency and clarity about the status of individual establishments. This should include establishment performance for both *Salmonella* and *Campylobacter*. Publishing establishments on FSIS’ website based on performance category can result in improvements across the industry. Posting the set results from Category 2 and 3 establishments by establishment name and number can help provide the necessary incentive for plants in those categories to increase process control efforts through the threat of public scrutiny. Publishing Category 1 plants would serve to highlight the best performing plants so that the public could better identify the plants which are providing higher levels of food safety.

FSIS Must Regularly Update Performance Standards

The 1996 HACCP rule required companies to demonstrate process control by meeting performance standards for generic *E. coli* and for *Salmonella*. The performance standards set at the time were not based on public health data, but on industry’s capacity to control these indicators of fecal contamination. USDA claimed the system would spur continuous improvement because new baseline studies would be performed regularly and the standard would be raised to reflect the industry’s increasing capacity to control contamination and pathogens. As stated in the final rule:

The *Salmonella* standards being established are a first step in what FSIS expects to be a broader reliance in the future on pathogen-specific performance standards for raw products. FSIS plans to repeat its baseline surveys and collect substantial data through other means and, on that basis, adjust the *Salmonella* targets and possibly set targets for additional pathogens, as appropriate⁴.

However, FSIS has been slow to revise performance standards for meat and poultry products. The performance standards addressed in this notice are brand new for chicken parts and comminuted poultry. FSIS should regularly review industry performance against the standards and adjust the standards as appropriate to continue to incentivize the industry to improve performance and reduce pathogen contamination. FSIS should provide stakeholders with a plan on how frequently the agency will assess the effectiveness of these performance standards, as well as other standards the agency has established, and a process for updating the standards.

³ Kindy K, “USDA reviews whether bacteria-killing chemicals are masking salmonella.” *The Washington Post*, August 3, 2013.

⁴ Food Safety and Inspection Service, “The Final Rule on Pathogen Reduction and Hazard Analysis and Critical Control Point (HACCP) Systems.” July 1996, <http://www.fsis.usda.gov/OA/background/finalrul.htm>

FSIS Must Have Specific Authority to Set and Enforce Performance Standards

As FSIS points out in the notice, neither *Salmonella* nor *Campylobacter* are considered adulterants and therefore a single positive test result would not result in regulatory enforcement action. Further, the U.S. Court of Appeals ruled in *Supreme Beef, Inc. v USDA* that FSIS does not have authority to close permanently a plant that fails to meet performance standards for pathogen reduction.

FSIS indicates in its notice that when an establishment does not meet a performance standard, the agency will immediately conduct follow-up sampling and conduct a for-cause Food Safety Assessment (FSA) at the establishment. This is an appropriate step. Yet the agency does not state what happens if the plant continues to fail to meet the performance standard. CFA does not think it is appropriate for the agency to conduct additional testing and FSA at poor performing plants over and over and over again. Rather, FSIS should establish clear procedures for inspectors to follow so that inspectors know when they should initiate increased enforcement action following a second failure to meet the performance standard.

FSIS should also seek and Congress should provide the agency with the specific authority to enforce its performance standards so the standards can truly benefit the public health. This would allow FSIS to shut down a plant that fails to meet a performance standard until the plant can demonstrate that its process is in control. FSIS' current approach of sending in staff to conduct FSAs means that taxpayers are supporting expensive efforts by FSIS to provide technical assistance to meat and poultry plants that are unable or unwilling to meet the current standards. Taxpayer dollars should not continue to subsidize the operation of these poor performing plants. A more straightforward approach of shutting down a plant until it can come into compliance would better protect public health and provide a greater incentive to plants to maintain effective process control.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink that reads "Chris Waldrop". The signature is written in a cursive, flowing style.

Chris Waldrop
Director, Food Policy Institute