



C E N T E R F O R
FOOD SAFETY

May 29, 2012

Docket Clerk
U.S. Department of Agriculture
Food Safety Inspection Service
Patriots Plaza 3
355 E. Street SW
8-163A, Mailstop 3782
Washington, DC 20250-3700

Dear Sir or Madam:

The Center for Food Safety (CFS) writes to oppose the proposed rule entitled “Modernization of Poultry Slaughter Inspection” (Docket # FSIS-2011-0012-0001), as published in 77 Fed. Reg. 4407 (Jan. 27, 2012) and (Docket # FSIS -2011-0012-0903) as published in 77 Fed. Reg. 24873 (Apr. 26, 2012).

CFS is a Washington, D.C.-based public interest non-profit membership organization that has offices in San Francisco, CA, Washington, D.C. and Portland, OR and with over 200,000 members nationwide.¹ CFS seeks to ameliorate the adverse impacts of industrial farming and food production systems on human health, animal welfare, and the environment. CFS concurrently supports and promotes sustainable forms of agriculture, including organic systems and the use of heritage crops and livestock breeds.

CFS was created to represent the interests of its staff and members in protecting the environment, human health and food security from harmful food production technologies. Among these interests and concerns are the negative impacts of industrial agriculture technologies: pollution from chemical pesticides; water, air, soil and food contamination from industrial animal agriculture; contaminated and compromised food and food products; transgenic pollution from genetically engineered crops and animals; false and misleading labeling of food products; socioeconomic harm to organic and other sustainable

¹ See generally www.centerforfoodsafety.org.



agronomic systems; and the domination of industrial, unsustainable agricultural practices, standards and protocols.

To achieve its goals, CFS disseminates to government agencies, members of Congress, policy makers and the general public a wide array of educational and informational materials that address the environmental impacts of industrial agricultural products. These materials include, but are not limited to, news articles, policy and scientific reports, legal briefings, press releases and notifications, action alerts, and fact sheets. CFS also sends out notifications to its membership, the True Food Network; these alerts generate public involvement, education and engagement with governmental officials on issues related to industrial agriculture's impacts on health and the environment. Collectively, the dissemination of this material has made CFS an information clearinghouse for public involvement and governmental oversight for issues surrounding our nation's food supply. CFS also engages in litigation when necessary to ensure that our nation's laws are enforced with respect to food and agriculture.

We oppose the proposed rule for several reasons.

1. This proposed rule is designed to privatize inspection by turning critical inspection functions over to poultry company employees and reduce the number of government inspectors assigned to poultry slaughter facilities. The Food Safety and Inspection Service (FSIS) is basing its decision to adopt this new inspection model based on the results of a pilot program called HIMP (the Hazard Analysis & Critical Control Points [HACCP]-based Inspection Models Project) that it has been conducting since 1998, in only about two dozen large poultry slaughter plants. In poultry slaughter facilities where conventional inspection is conducted, each United States Department of Agriculture (USDA) inspector assigned to the slaughter line is responsible for evaluating carcasses for food safety and wholesomeness defects. Each USDA inspector is expected to evaluate up to 35 birds per minute in a conventional plant. There could be as many as four USDA inspectors assigned to each slaughter line. In the HIMP plants, there is only one inspector assigned to each slaughter line. Plants in the HIMP pilot were granted line speed waivers and there have been some plants that have been operating in excess of 200 birds per minute.

2. In HIMP plants, company employees have been assigned to sort carcasses based on certain food safety and wholesomeness regulatory standards that in conventional plants are traditionally done by USDA line inspectors. There is a USDA verification inspector who does not work on the slaughter line but who checks on the work of the company employees by sampling up to 80 carcasses in an eight-hour shift. In an analysis of USDA inspection records from 14 poultry plants participating in the HIMP pilot in 2011, the non-profit

organization Food & Water Watch found that company employees missed food safety and wholesomeness defects at an alarming high rate – as high as 99% in one turkey slaughter plant.² If this is the error rate is based on an 80-carcass sample per shift, how much poultry is making its way to consumers' homes with defects that have not been checked? Furthermore, the Government Accountability Project has secured affidavits from three USDA inspectors who have worked in HIMP plants who report that because of excessive line speeds and lack of training, company employees routinely miss many food safety and wholesomeness issues.³

3. Line speeds will be allowed to increase to 175 birds per minute in all poultry slaughter facilities under the proposed rule. Already, poultry inspection and slower line speeds is a stretch of the requirement that every carcass be examined. Proper inspection cannot occur at these excessive line speeds whether conducted by a trained USDA inspector or a company employee. The agency readily admits that the poultry industry will stand to earn an additional \$260 million per year by removing the cap on line speeds. The agency believes that the use of a higher concentration of antimicrobial and chlorine-based chemical cocktails at the end of the slaughter process is enough protection to deal with any food safety issues that might be missed by company employees or the one (1) USDA inspector assigned to the slaughter line. There are alternative methods available for sanitizing poultry at this stage that do not involve chemicals, or increasing a bird's meat weight by absorption of a chemical brine. Air chilling is one example of an alternative method. By unleashing higher line speeds, this proposed rule furthers the industrialization of the food supply.

4. The proposed rule does not require company employees to receive any training or prove proficiency in performing duties normally performed by government inspectors who are required to take training before they are assigned to the slaughter line. The proposed rule indicates that the agency will issue a "guidance" document to the industry on how training should be conducted for its employees, but lack of training will not preclude a company employee from performing inspection responsibilities under the proposed rule.

5. Increasing line speeds will most likely have an impact on worker safety in these plants. The Government Accountability Office has recommended independent research to

² Food & Water Watch. "Privatized Poultry Inspection: USDA's Pilot Project Results," <http://www.foodandwaterwatch.org/food/foodsafety/privatized-poultry-inspection-usdas-pilot-project-results/>

³ Government Accountability Project. "USDA Inspectors: Government 'HIMP' Plan is a Threat to Food Safety," <http://foodwhistleblower.org/blog/23-2012/346-usda-inspectors-government-himp-plan-is-a-threat-to-food-safety>

determine whether high line speeds lead to an increased incidence of worker injuries.⁴ While the narrative to the proposed rule does mention a study to be conducted by the National Institute of Occupational Safety and Health to determine whether increased line speeds have adverse effects on worker health and safety, the agency is not waiting for that study to be completed before proceeding with the implementation of the proposed rule. The agency should wait until the results of that study are published before moving forward with any new inspection model that allows increased line speed.

6. The agency contends that implementation of the proposed rule will prevent 5,200 food borne illnesses. However the risk assessment accompanying the proposed rule admits that there is no evidence that the new inspection model will reduce the incidence of campylobacter, a major source of food borne illness attributed to poultry. The proposed inspection method and increased line speeds will also essentially eliminate any internal examination of poultry organs during the slaughter process. Organs are often an indicator of animal health and unhealthy animals should be condemned, not re-purposed to become part of our nation's food supply. Thus the agency's assertion about food safety is questionable at best.

7. The proposed rule would allow corporations – who are responsible to shareholders, not to the public – to determine the quality of food that is provided to the American public.

8. The proposed rule's increase in line speeds and industry oversight also streamlines slaughtering within the integrated factory farm production system. The result of the proposed rule thereby once again allows large producers to increase profits at the expense of increased risks to human health.

9. FSIS has also failed to comply with the National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 et seq., and adequately analyze the impacts of its proposed action.

NEPA is “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA sets forth a “broad national commitment to protecting and promoting environmental quality,” and mandates that federal agencies evaluate the impact of their actions on the natural environment. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989); see 42 U.S.C. § 4332. NEPA requires an agency to take a “hard look” at the environmental consequences of its actions so “that environmental consequences are integrated into the very process of decision-making.” *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976).

⁴ U.S. Government Accountability Office. “Safety in the Meat and Poultry Industry, While Improving, Could Be Further Strengthened,” <http://www.gao.gov/products/GAO-05-96>.

NEPA and its implementing regulations, issued by the Council on Environmental Quality (CEQ), require federal agencies to prepare an Environmental Impact Statement (EIS) regarding all major federal actions that “will or may” have a significant environmental impact. 40 C.F.R. § 1508.3; 42 U.S.C. § 4332(C).

In assessing whether or not an action may significantly impact the environment, agencies must evaluate “intensity” which includes an assessment of impacts including the degree to which a proposed action affects the public health or safety; the degree to which the effects on the quality of the environment are likely to be controversial; and the degree to which impacts are uncertain or unknown. 40 C.F.R. § 1508.27(b).

The FSIS proposal claims to be wholesale categorically excluded from NEPA’s mandates. *See* 77 Fed. Reg. at 4451 (citing 7 C.F.R. § 1b.4).

However, first, categorical exclusions (CE) are only appropriate for activities that will not have a significant environmental effect, either individually or cumulatively. As that regulation recognizes (as it must) any activity that *may* have a significant environmental effect, cannot be placed in a CE; rather, NEPA requires that an Environmental Assessment (EA) or full EIS must be completed in such instances.

There are a number of potentially significant environmental impacts under the proposed rule that require analysis in an EA or EIS, including but not limited to:

Local level

- the number of chickens being slaughtered will increase, so the amount of waste needing to be disposed of will increase;
- the number of chickens being transported in and out of slaughter facilities will increase, resulting in increased truck traffic and carbon emissions from the transportation for each facility; and
- the number of chickens being slaughtered will increase, so the energy use of a facility will increase, resulting in greater consumption of electricity / gas to run the slaughterhouse.

Note that the agency’s NEPA duties include analyzing both direct, indirect and cumulative impacts. 40 C.F.R. § 1508.8. These include both local, site-specific impacts, as well as overarching impacts, so long as they are reasonably foreseeable. The agency only cursorily

addressed nationwide impacts and completely ignored potential local impacts. Effects triggering NEPA review can also be both beneficial and detrimental. *Id.*

Public health (which is part of a NEPA analysis, as part of the human environment)

- the number of chickens being slaughtered will result in inspectors missing pathogens (e.g. salmonella and E. coli), which will then enter the human food supply and the environment; and
- in lieu of more inspectors, FSIS is allowing slaughter facilities to use chemical baths of chlorine and antimicrobials to disinfect chicken carcasses. This means more chlorine and antimicrobials to dispose of (or to discharge into the water supply), and that humans will consume in poultry that has been treated this way and retains residues of chlorine and antimicrobials.

Industrial agricultural model

- the more animals that can be processed more quickly, the more the slaughter rule perpetuates the concentrated animal feeding operation (CAFO) model of industrial animal production, which CAFO facilities cause significant environmental damage and major problems for human health. This is a cumulative impact, which can alone trigger NEPA requirements; and
- one of the substances the proposed rule suggests will be used is trisodium phosphate (TSP) which can cause high levels of phosphorus in water and cause algae blooms. The proposed rule attempts to justify the use of TSP by saying only 5 to 7 of the 144 facilities with online reprocessing systems use TSP, and that the water is recycled and does not enter public water supplies. The rule does not account for whether there will be a foreseeable increase in facilities using online reprocessing systems that use TSP as a result of the rule, and what they will do with their TSP-laden water.

Second, even if the agency's proposal is a proper CE, the agency still has the burden to establish that and explain why no exceptions to that categorical exclusion should apply, namely, why there will be no potentially significant environmental impacts from the agency's action. 7 C.F.R. § 1b.3(c).

The burden is on the agency to provide a reasoned explanation for its reliance on the categorical exclusion and explain the inapplicability of exceptions. FSIS did not meet this burden in the proposed rule-making. Its conclusory discussion of potential impacts in

literally a few paragraphs fails to comply with NEPA's mandates, as well as the Administrative Procedure Act . 5 U.S.C. 500 § et seq.

FSIS relies heavily and repeatedly on its conclusion that no NEPA analysis is required because the slaughterhouses are "required to meet local, State, and Federal environmental requirements." This is circular reasoning: it is unknown what potential impacts exist, because the agency has failed to undertaken any NEPA review. FSIS is arguing that it complied with NEPA because it must comply with "Federal environmental requirements," i.e., comply with NEPA. This is circular bootstrapping.

Conclusion

In sum, this proposed rule would let the fox guard the hen house, at the expense of worker safety, consumer protection and the environment. Nor has the agency adequately analyzed the impacts of its proposed action on the human environment; NEPA analysis is required. We urge you to reject the proposal.

Sincerely,

/s/
Elisabeth Holmes
Center for Food Safety