



September 13, 2000

FSIS Docket Clerk
Docket No. 00-027N
U.S. Department of Agriculture
Food Safety and Inspection Service
Room 102, Cotton Annex Building
300 12th Street, SW
Washington, DC 20250-3700

**Re: Availability of Materials on In-Distribution Activities and Initiatives; Notice
65 Fed. Reg. 49534 (Aug. 14, 2000)**

The Center for Science in the Public Interest (CSPI) appreciates this opportunity to comment on the materials presented by the Food Safety and Inspection Service (FSIS) at its June 9, 2000, public meeting on in-distribution activities and initiatives.¹ CSPI is a non-profit consumer organization with over eight hundred thousand members that focuses primarily on food safety and nutrition issues.

A. FSIS Has the Authority and Responsibility to Verify The Safety of Meat and Poultry Products In Distribution Channels.

Some critics of FSIS's proposed in-distribution plan have challenged the agency's legal authority to perform these activities. The Federal Meat Inspection Act and Poultry Production Inspection Act authorize FSIS to regulate the production, sale, transport and storage of meat and poultry products to ensure that such products are safe, wholesome and free from adulteration and

¹ U.S. Department of Agriculture, Food Safety and Inspection Service, In-Distribution Inspection Activities and Initiatives; Public Meeting; Notice, *Federal Register*, Vol. 65, No. 105 (2000), p. 34653.

misbranding.² Jurisdiction over foods in interstate commerce is uniquely a federal activity that is beyond the scope of the police powers reserved for state and local governments.³ Consumers throughout the nation rely on the federal mark of inspection as a sign that the meat and poultry products they are purchasing are wholesome and not adulterated. It is necessary, therefore, for FSIS to fulfill its statutory mandate by ensuring that food safety measures are in place throughout distribution channels.

Food safety experts almost unanimously agree that a farm-to-table approach is needed to achieve the maximum level of food safety possible. In 1985, the National Academy of Sciences (NAS) stated: “An ideal meat and poultry inspection system will ensure that adequate public protection measures are located throughout the food system, from animal production to the final sale of the food product.”⁴ CSPI believes that food safety strategies implemented throughout the continuum of production through distribution and sale of products offers the highest degree of protection to consumers from foodborne illnesses.⁵ FSIS’s in-distribution activities can, with adequate planning and monitoring, add a valuable component to the food safety system in the United States.

² 21 U.S.C. §§ 458(a)(2), (3) and 610.

³ That Congress intended for FSIS to have authority over food products after slaughter and processing was confirmed in the early 1990's with the passage of amendments to the Egg Products Inspection Act that gave the U.S. Department of Agriculture (USDA) jurisdiction over egg labeling and storage temperatures (Pub.L. 102-237; 21 U.S.C. § 1034) and the subsequent Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 that consolidated USDA’s food safety responsibilities in FSIS (Pub.L. 103-354; 7 U.S.C. § 6912).

⁴ National Research Council, Commission on Life Sciences, Food and Nutrition Board, *Meat and Poultry Inspection: The Scientific Basis of the Nation's Program*, (Washington, D.C.: National Academy Press, 1985), p. 153.

⁵ The Center for Science in the Public Interest (CSPI) strongly advocates for the use of on-farm controls as the first line of defense against contamination. See, e.g., CSPI, Comment on Egg Safety; Current Thinking Papers on Egg Safety National Standards; Notice of Availability; Public Meeting (Docket No. 98-045N4), (Aug. 14, 2000). See also, Caroline Smith DeWaal, Remarks Before the Animal Protection Food Safety Conference, St. Louis, MO, (Sept. 6, 2000).

However, we remain concerned that adding another layer of consumer protection is not enough. FSIS's plan fails to address the underlying problem -- the highly fragmentary nature of our nation's food safety system. The NAS stated in a 1998 report on the effectiveness of our current system:

The multi-faceted federal framework of the US food safety system lacks direction from a single leader who can speak for the government when confronting food safety issues and providing answers to the public. . . . The lack of clear leadership at the federal level impedes the federal role in the management of food safety.⁶

Fundamental reform is required. Therefore, while we are encouraged by FSIS's proposed in-distribution activities, we believe that the greatest advances in food safety will be made only when all federal food safety oversight responsibilities are combined into a single, independent food safety agency.

B. Industry Bears Primary Responsibility For the Safety of Foods In Distribution Channels.

A key reason that CSPI supports in-distribution inspection, sampling and other activities is that we believe that each segment of the food industry must bear responsibility for its role in the food production chain. Just as the FSIS Hazard Analysis and Critical Control Point (HACCP) rule and pathogen testing requirements hold slaughter and processing plants accountable for the safety of the foods they produce, it is time for the agency to make the transporters, warehouses, distributors/brokers, retailers and food service industry bear responsibility for their role in the food safety chain. The gains realized under the HACCP rule in slaughter and processing plants must not be undermined by mishandling and recontamination once products leave those plants.

⁶ Institute of Medicine, National Research Council, *Ensuring Safe Food from Production to Consumption* (Washington, D.C.: National Academy Press, 1998), p. 8.

All too frequently it seems consumers are blamed for causing their own foodborne illnesses due to improper handling of products in their homes. Yet when foodborne illness outbreaks are investigated, oftentimes temperature abuse and cross-contamination in distribution channels are implicated, as well as in-plant deficiencies. Industry must be held accountable for the conditions of the foods it transports and sells to consumers. Therefore, while we continue to believe that consumer education on safe food handling is important, we believe that appropriate controls earlier in the food chain will eliminate many food safety problems before they ever reach consumers.

C. The Current Oversight of In-Distribution Channels By Federal, State and Local Authorities is Inadequate.

Some have criticized FSIS's proposed in-distribution activities, charging that the agency would be duplicating efforts by state and local governments and thus wasting taxpayer resources. This charge is wholly untrue. State and local governments, on balance, do not have a good record on ensuring consistent, strong enforcement of food safety standards. Just last year, for example, the state of Alaska considered eliminating all state safety inspections of retail food establishments. Ultimately, the state legislature cut the number of state inspectors and officials were forced to abandon the state's meat-processing program due to lack of funding. State public health officials warned consumers that the reduction in the state's food safety efforts meant an increased risk to public health.⁷ Alaska's experience is not unusual. Quite simply, food safety is a low priority for most state and local governments.

⁷ Janice Adair, *Food Safety: Is It Worth the Risk?*, available at <http://www.state.ak.us/dec/deh/editorial.htm>. See also, U.S. Department of Agriculture, Food Safety and Inspection Service, Final Rule, *Federal Register*, Vol. 64, No. 133 (1999), pp. 37666-67; and National Food Processors Association, Comments to the State of Alaska regarding a proposal to eliminate all state safety inspections of retail food establishments, (Apr. 6, 1999), available at http://www.nfpa-food.org/Letters/alaska99_4_6.html.

Even where the federal government has established guidelines for state and local governments to follow, they often fail to adopt these standards. For example, the Food and Drug Administration (FDA) publishes a set of guidelines, known as the Food Code, for states to follow in inspecting restaurants. A 1996 survey of 45 state and local health departments conducted by CSPI showed that on average, these departments had adopted only six of the 12 key Food Code standards, including cooking temperatures for ground beef.⁸ Officials told CSPI that their state and local government structures made it difficult to adopt updated codes in a timely manner, and even when they do, they have trouble enforcing the codes due to the lack of staff and funding to perform frequent inspections.⁹

CSPI's findings were confirmed earlier this week, when the FDA released a report that found more than 40 percent of time the retail food industry was out of compliance with FDA's suggested holding temperatures and date markings for key products, as well as equipment sanitation and handwashing practices.¹⁰

D. FSIS Should Promulgate National, Uniform Standards for Food Safety In-Distribution.

FSIS officials at the June 9, 2000, public meeting indicated that the agency hoped to establish new federal performance standards for the safety of foods in distribution channels. We support the use of such standards for the transport, distribution and retail of food products. In the past, FSIS has stated its desire to work with the FDA and the Conference for Food Protection (CFP) to encourage

⁸ Center for Science in the Public Interest, *Dine At Your Own Risk: The Failure of Local Agencies to Adopt and Enforce National Food Safety Standards for Restaurants*, (Washington, D.C.: CSPI, 1996), p. 37.

⁹ *Id.* at 34.

¹⁰ Food and Drug Administration, *Report of the Retail Food Program Database of Foodborne Illness Risk Factors*, (Aug. 10, 2000), p. 2. The data were obtained from 895 inspections (consisting of 17,477 observations) of institutional food service establishments, restaurants and retail food stores throughout the U.S. conducted by the agency's Retail Food Specialists. *Id.* at 4.

states to adopt the model Food Code as a means to ensure that consistent, science-based food safety standards are being used at the retail level across the country. CSPI has participated in CFP meetings, and the reality is that the CFP is a closed process that is industry-dominated and fraught with conflicts of interest.¹¹ Even if FSIS decides to use the Food Code as the basis for national performance standards for in-distribution, we strongly urge the agency to promulgate those standards through a notice and comment rulemaking with an opportunity for full public participation. Proposing the Food Code as a federal regulation is also supported by the Association of Food and Drug Officials, which will enable states to adopt it by reference.¹²

E. In-Distribution Inspections May Be Particularly Appropriate For Certain FSIS Duties.

In-distribution activities can add another valuable tool to FSIS's efforts to ensure food safety and wholesomeness and to prevent economic adulteration and mislabeling. Food safety has been the top priority for FSIS's in-plant activities. It should remain so for the agency's in-distribution activities as well. Therefore, the agency should use its in-distribution inspectors to sample for, among other things, *Listeria monocytogenes* growout increases and the presence of *E. coli* O157:H7 at post-processing stages. In-distribution inspectors also should monitor the adequacy of temperature controls in each segment of the distribution channel. Data compiled from FSIS's in-distribution activities will be useful to the agency as it develops action plans and other regulatory initiatives on pathogen reduction and will provide important information to plants on the adequacy

¹¹ For example, only this past month did consumers win voting representation on each of the CFP's three councils. Mary Ellen Butler, Consumers, academics to vote alongside industry at next CFP meeting, *Food Chemical News*, (Sept. 4, 2000), p. 7. While consumers and academics now have one vote each on the councils, industry will continue to have 10 votes on each council. *Id.* State regulators will also will retain 10 votes on each council. *Id.*

¹² Association of Food and Drug Officials, Resolution No. 99-11 Concerning Codification of the Food Code, (June 9, 1999).

of their HACCP plans. We also believe that in-distribution inspectors can improve the number of recall effectiveness checks that the agency performs.

In addition to sampling and monitoring for food safety concerns, we agree with FSIS representatives that certain “other consumer protection” (OCP) activities may be better performed on foods in distribution channels, such as net weight measurements. On other OCP activities we view in-distribution efforts on OCP’s to be a supplement to, rather than a substitute for, in-plant actions. These would include labeling audits and excessive water retention.

F. FSIS Must Provide Adequate Training for Inspectors Assigned to In-Distribution Activities.

One criticism that has dogged the HACCP program is the effectiveness of inspector training. A December 1999 Government Accounting Office report concluded that only two-thirds of inspectors believed they had been adequately trained to perform their HACCP duties.¹³ Quite frequently, the inspectors were most confused about the scope of their authority under the new HACCP rule.¹⁴ FSIS should ensure that the training it provides to in-distribution inspectors will anticipate questions about the inspectors’ roles, responsibilities (and in particular) authorities for in-distribution activities. Unless inspectors are properly trained, FSIS’s ability to ensure the consistent and effective oversight of in-distribution activities will be compromised.

¹³ Government Accounting Office, *Meat and Poultry: Improved Oversight and Training Will Strengthen New Food Safety System*, (Dec. 1999), p. 10.

¹⁴ *Id.* For example, inspectors were uncertain about their authority to ask for changes to a plant’s HACCP plan and to take action when a plant’s microbial testing program, not cited in the HACCP plan, detects contamination. *Id.*

G. In-Distribution Activities Should Not Be Delegated To States Without An Adequate Federal Oversight System In Place.

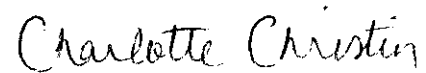
Although both FSIS and FDA have legal authority to regulate in-distribution activities, in the past the agencies have devoted little resources to such activities. Too often the federal government has cast off its responsibility over foods once they leave processing facilities and has attempted to place the responsibility with state, county and local governments. This is not the answer.

At the June 9, 2000, public meeting, a representative from the state of Minnesota spoke about his state's capability and desire to conduct in-distribution inspections. While Minnesota is to be commended for its efforts, it does not represent the great majority of states, who have neither the expertise or willingness to perform these activities. Moreover, handing over federal food safety functions to state or local agencies is not acceptable to consumers. Consumers want and deserve rigorous enforcement of these standards, carried out during frequent inspections by federal agents. In light of the dismal record of most state and local governments on restaurant food safety, CSPI strongly opposes handing federal responsibility for food safety over to these governments. Should FSIS decide to empower state and local governments to conduct in-distribution activities, we urge the agency to develop an adequate system of federal oversight before delegating any authority to state and local governments.

CONCLUSION

The risk of foodborne illness arises whenever potentially hazardous foods are transported or stored. However, CSPI and your sister agency, FDA, have found that the current system of post-processing inspection fails to adequately protect public health. FSIS has the statutory authority and obligation to verify the safety of meat and poultry in distribution channels. We believe that FSIS's proposed in-distribution activities would represent a significant step toward improving food safety in the United States.

Sincerely,



Charlotte Christin
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Caroline Smith DeWaal
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