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Ralph Nader, Founder

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July 12, 2000

U.S. Department of Agriculture
FSIS Docket Room
Docket No. 00-014N
Room 102 Cotton Annex
300 12th Street, SW
Washington, DC 20250-3700

This letter is in response to the May 15, 2000 FSIS Federal Register notice regarding an industry petition on Hazard Analysis and Critical Control Point (HACCP) inspection.¹ The petition, submitted by several meat and poultry industry trade associations, requests FSIS to amend sections of the HACCP regulations “to increase the[ir] effectiveness” and make them more consistent with the HACCP principles published by the National Advisory Committee on Microbiological Criteria for Food (NACMCF) in 1997. More specifically, the petition asks FSIS to change the definitions of the terms “food safety hazard,” “hazard analysis,” “severity,” and “shipped,” and to change the regulations to provide that a meat or poultry processing plant’s HACCP system may be found to be inadequate only when adulterated product has been “shipped.”²

In light of several recent developments regarding HACCP, we believe that FSIS should suspend consideration of the industry petition. First, on May 25, 2000, the U.S. District Court for the Northern District of Texas ruled that FSIS does not have the authority to shut down a meat processing plant that repeatedly fails to meet FSIS’ salmonella standards.³ FSIS has stated that this decision applies only to beef processing plants in northern Texas and that the agency will appeal.⁴ However, the ruling may implicate FSIS’ salmonella standards in other jurisdictions as well as other aspects of HACCP.

¹ 65 Fed. Reg. 30952 (May 15, 2000).

² *Id.*

³ *Supreme Beef Processors v. U.S. Department of Agriculture* (N.D. TX), May 25, 2000.

⁴ See Marc Kaufman, “Texas Ruling Threatens USDA Meat Inspections,” *Washington Post*, May 26, 2000, at A1.

Second, on June 21, 2000, the USDA's Office of Inspector General (OIG) released an extensive report highly critical of FSIS' implementation of HACCP.⁵ This report concluded, in part, that under HACCP the FSIS "had reduced its oversight beyond what was prudent and necessary for the protection of the consumer."⁶ The OIG makes twenty recommendations and notes that management decisions have been reached on only four of these recommendations. The OIG also notes that under Departmental Regulation 1720-1, FSIS has six months (until December 21, 2000) to reach management decisions on all the OIG recommendations.

Finally, on June 30, 2000, the U.S. Court of Appeals for the District of Columbia ruled that FSIS' HACCP-Based Inspection Models Project (HIMP), under which FSIS inspectors oversee post-mortem inspections of meat and poultry carcasses and parts performed by industry employees, violates the Federal Meat Inspection Act and Poultry Products Inspection Act.⁷ The Court stated, "Both statutes clearly contemplate that when inspections are done, it will be federal inspectors - rather than private employees - who will make the critical determination whether a product is adulterated or unadulterated. To the extent federal employees are doing any systematic inspection under the Models Project, they are inspecting people not carcasses."⁸

These three situations may have long-term implications for the HACCP system, and may not be entirely resolved for months or even years. Furthermore, FSIS stated in the May 15, 2000 Federal Register notice that the industry petition "contains no data or examples to support the requests it makes."⁹ We find it difficult to understand why FSIS is even considering a completely unsupported petition.

For these reasons, we urge FSIS to suspend consideration of the industry petition until the court cases involving HACCP and the problems with HACCP identified in the OIG report have been resolved. If FSIS does decide to amend HACCP regulations in response to the industry petition, despite the consequences for HACCP of the developments outlined above, we request that the agency explain to us in writing the rationale for not suspending consideration of the industry petition and for incorporating any or all of the rule changes proposed in the petition. Thank you for your consideration of our request.

⁵ U.S. Department of Agriculture, Office of Inspector General, Implementation of the Hazard Analysis and Critical Control Point System, Report No. 24001-3-At (Jun. 2000).

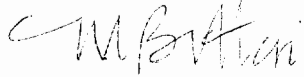
⁶ *Id.* at Sec. 1, p. ii.

⁷ American Federation of Government Employees, AFL-CIO, *et al.* v. Daniel R. Glickman, Secretary of the U.S. Department of Agriculture, *et al.*, (D. D.C.) (98cv00893), Jun. 30, 2000.

⁸ *Id.*

⁹ 65 Fed. Reg. at 30952.

Respectfully submitted,



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