

The logo for Food & Water Watch, featuring the text "&waterwatch" in a stylized font with a magnifying glass icon over the word "water".

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May 2, 2007

Ellyn Blumberg
USDA, Food Safety and Inspection Service
Aerospace Building
3rd floor, Room 405
14th and Independence Avenue, S.W.
Washington, DC 20250

Docket Number: FSIS-2007-0012

Transmitted via facsimile: (202) 690-6519

Dear Ms. Blumberg:

We welcome this opportunity to comment on the agency's risk-based inspection (RBI) proposals for processing facilities. We would like to focus these comments on the development of the risk-based inspection algorithm that was discussed on April 2, 2007.

At the outset, we would like to reiterate some points that we have raised in the past – both in writing to the agency and during the public meetings:

- 1) The agency needs to articulate the public health goals of implementing RBI in processing if agency officials continue to make the assertions to both constituent groups and to Congress that its proposals will in fact reduce food borne illness. If it cannot do that, then it must concede that RBI is being implemented to achieve workforce efficiencies.
- 2) The agency needs to articulate the criteria upon which implementing RBI in the 30 prototype locations will be evaluated. How is success or failure going to be judged?

We still contend that the agency is not prepared to move forward even with the 30 prototype locations because we have not been convinced that it has all of the necessary data to implement RBI in July. Even though agency officials claim that they have the data from seven different data banks to move forward, we have not seen that data and how it is being used in the algorithms. We have asked to see how the algorithms are going to be applied to real meat and poultry processing establishments, but the agency has thus far provided us with no demonstration.

Furthermore, on April 19, 2007 before the House Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations, Dr. David Goldman, Acting FSIS Administrator, was asked whether the agency had the information technology infrastructure to execute RBI, and his response was that the agency was still working

on it. Agency officials continue to assert that RBI will be rolled out in the 30 prototype locations in July 2007. That is only two months away. Dr. Goldman's admission indicates to us that FSIS is not ready to proceed at this time.

We would like to focus the remainder of our comments on inspector shortages and their impact on the quality of the data that is being collected by FSIS.

Food & Water Watch has been concerned with the inability of the agency to meet its statutory obligations due to inspector shortages. The workload of many processing inspectors has increased to the point that they are not able to conduct daily visits to establishments in their assignments or have enough time to complete their assigned tasks or be able to fully document regulatory infractions on noncompliance reports (NRs).

Inspection in processing plants has been interpreted to mean "daily" inspection. Many processing plants are part of "patrol" assignments – a group of plants that will be covered by one inspector who travels between them during the shift. The majority of these patrols include more than two establishments (we are aware of some that include up to seven, but some assignments may include more) so inspectors will be there for less than half of the production day, but the Agency views even the briefest appearance as satisfying the mandate of daily inspection. Obviously, any violations that occur during the inspector's absence are not recorded. Additionally, even violations that are observed may not be recorded because of the time it takes to accurately complete the NR form. Inspectors say that, on average, it takes about an hour to complete one NR because of the research of the regulations and the establishment's food safety plans that are required. When inspectors notice several problems in a plant, they may determine that the best way to protect public health is to verbally inform plant management, get them to agree to an acceptable corrective action, and then move on to inspect other plants on his or her patrol that may also routinely have problems complying with the regulations.

This problem is exacerbated by the chronic inspector shortages that occur throughout the country. During the summer of 2006, agency records revealed significant vacancies in every district from which we were able to get records. We got partial information from inspector whistleblowers after the Agency failed to release this information publicly. The vacancy rate was 9% for the Jackson District, 10% for the Atlanta District, 11% for the Raleigh District, and 13% for the Denver District. One agency official recently admitted that the New York City area typically has a 25% vacancy rate. For patrol assignments covering 59 plants in the Chicago District, records showed a vacancy rate of 70%!

When one inspection position is vacant, other inspectors have to assume responsibility for those plants, resulting in inspectors being "doubled or tripled up." In the summer of 2006, we learned of one inspector in the Albany District who was covering 18 plants for many weeks. Recently we learned of an inspector in the Philadelphia District who has been covering 26 plants for several weeks, at least. Obviously, when inspectors are doubled or tripled up they do not have enough time even to visit all of the plants they are supposed to cover that day. They are therefore even less likely, and it would arguably be irresponsible for them, to instead spend an hour

documenting one violation at one plant.

On April 18, 2007, Food & Water Watch sent another letter to Under Secretary for Food Safety Richard Raymond reiterating our concerns about inspector vacancies and their potential impact on the ability of the agency to meet its statutory obligations and the accuracy of its data collection.¹ That letter was supplemented by actual FSIS inspector accounts of how shortages were impacting their ability to perform their jobs properly. We call your attention to the observations made by one FSIS inspector in our April 18 letter:

We are currently short three people this week and next. We are always short at least two people. We have to rush through our tests. Last night I had the floor all to myself for one period. I had four food safety tests, a PBIS test and a flock change, which consists of ante-mortem and leukosis test. So far we have managed to make all our tests, but I can assure you that we have compromised the quality of our tests.

Lack of sufficient time to complete documentation occurs not only in small processing plants but also in some of the largest slaughter and processing establishments in the nation. Processing inspectors in those facilities are often pulled from their own inspection tasks to fill in vacant slaughter inspection assignments at the same plant. During those days, the processing inspection tasks will not be performed. Agency policy exacerbates the problem by prohibiting processing inspectors from documenting any violations they see while they are covering a slaughter position, even though they would be able to document the identical violation if they observed it while performing their processing inspection duties. So, no NRs will be written for violations that are observed by processing inspectors who are filling in vacant slaughter assignments. During the summer of 2006, the slaughter vacancy rate was 8% for the Philadelphia District, 9% for the Atlanta District, 10% for the Jackson District, 11% for the Chicago District, 12% for the Denver District, 14% for the Raleigh District, and 16% for the Minneapolis District. Processing inspectors would be diverted from their tasks to fill in for these missing slaughter inspectors.

As a result of the aforementioned, absence of evidence cannot legitimately be construed as evidence of absence. That is, a lack of NRs documenting violations at an establishment should not be interpreted, for purposes of measuring establishment risk, to be evidence of historical compliance with the regulations. At a minimum, the Agency would at least have to be able to determine which establishments received less than standard inspection coverage and interpret the dearth of findings appropriately. Although USDA's Office of Inspector General has repeatedly recommended that the Agency keep records of instances when inspection tasks are not performed, for example, specifically because of lack of inspector time, the agency has failed to do so. (The Agency did keep such records until 1997, and the PBIS system is capable of recording the information.) Therefore, the agency will not accurately be able to determine systematically where a lack of NRs clearly indicates a history of compliance and where it may, instead, signal an establishment that has received decreased oversight. If the Agency interprets

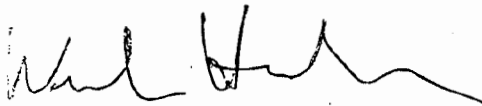
¹ See <http://www.foodandwaterwatch.org/food/foodsafety/meat-inspection-1/usda-vacancies-mean-u-s-food-supply-not-inspected>

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the current data without controlling for these factors; it might, ironically, decrease inspection at an establishment that has been without adequate inspection oversight for sometime and consequently has few NRs, in order to increase inspection at an establishment that has been improving its operations under a more constant and watchful inspection presence. If the agency seeks local anecdotal information or establishes some other system to identify establishments that have few NRs because of a history of decreased inspection, the agency should take a precautionary approach which prioritizes public health, while extrapolating for the missing information.

Food & Water Watch does not believe that the agency is ready to move forward in July with risk-based inspection in processing. The agency still has not addressed all of the concerns that we and others have put forth in the past about the lack of quality data at the agency's disposal. It has not even articulated the reasons why it wants to proceed with this change in inspection. For all of the reasons cited above and in the past, we strongly oppose the agency's initiative.

Sincerely,



Wenonah Hauter, Executive Director