Congress of the United States

Washington, DC 20510

November 16, 2017

Carmen Rottenberg
Acting Deputy Under Secretary for Food Safety
Food Safety and Inspection Service
United States Department of Agriculture
Jamie L. Whitten Building #331E
Washington, D.C. 20250

Dear Acting Deputy Undersecretary Rottenberg:

We write to urge the Food Safety and Inspection Service (FSIS) to reject the National Chicken Council's September 1, 2017, petition requesting that FSIS permit certain chicken processing plants to increase their line speeds. The petition asks FSIS to implement a waiver system exempting chicken slaughter establishments that participate in the New Poultry Inspection System (NPIS) and the *Salmonella* Initiative Program (SIP) from the line speed limits in FSIS regulations.[1] FSIS should reject the petition because granting it would be unlawful and increasing line speeds would further endanger an already vulnerable workforce.

As a threshold matter, FSIS does not have the authority to grant the petition because the circumstances it presents do not trigger the agency's waiver authority, making any waiver unlawful. The petition asks FSIS to initiate a "waiver process" pursuant to 9 C.F.R. § 381.3(b), which permits the FSIS Administrator to temporarily waive line speed limits in "specific classes of cases," but only 1) in the event of a public health emergency or 2) "to permit experimentation so that new procedures, equipment and processing techniques may be tested to facilitate definite improvements."

Current FSIS regulations do not permit the Administrator to grant this petition for three reasons. First, the petition identifies no public health emergency. Second, increasing line speeds above 140 birds-per-minute (bpm) is not a "new" technology, equipment, or procedure. There is nothing "new" or "experiment[al]" about fast line speeds. In fact, the United States Department of Agriculture has already issued waivers to select plants permitting fast line speeds under the old SIP waiver program, and, following a two year notice-and-comment rulemaking process, FSIS issued a final rule in 2014 declining to allow any increase in the line speed limit beyond 140 bpm.[2] Third, the petition does not request a temporary waiver, which is the only kind of waiver current law permits the agency to grant. See 9 C.F.R. § 381.3(b) (restricting waivers to "limited periods").

Therefore, the petition fails to show the narrow set of circumstances in which FSIS regulations permit the Administrator to grant a waiver.[3] Further, the agency should not modify these

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[1] See "Petition Submitted by National Chicken Council," FSIS, available at https://www.fsis.usda.gov/wps/wcm/connect/7734f5cf-05d9-4f89-a7eb-6d85037ad2a7/17-[illegible]5-Petition-National-Chicken-Council-09012017.pdf?MOD=AJPERES; 9 C.F.R. § 381.69; "Modernization of Poultry Slaughter Inspection Final Rule," 79 Fed. Reg. 49,566 et seq. (Aug. 21, 2014).

[2] See 79 Fed. Reg. 49,597 (Aug. 21, 2014) ("any increase in line speed that establishments implement under the NPIS will not exceed the maximum line speeds authorized under the existing inspection systems.").

[3] If the agency wishes to modify its regulations, it must undertake a full notice-and-comment rulemaking. See 5 U.S.C. § 553.

regulations, which it appears to be considering.[4] Initiating a rule change based on this petition would be truly arbitrary as no credible evidence submitted since 2014 supports increasing the line speed limits.[5]

Additionally, FSIS assured the public that it would make no changes to any provisions in the rule until it could assess the impact of changes under the NPIS after it has been "fully implemented on a wide scale" for at least one year.[6] The system has not been "fully implemented on a wide scale;" only a few dozen plants out of the 187 expected to convert to NPIS have operated for a year or more under it. Therefore, any waiver or proposed rulemaking would be premature and unsupported by evidence – and would fly in the face of FSIS's recent, clearly articulated pronouncements.

Most importantly, granting the petition would further endanger an already vulnerable workforce. Poultry workers face harsh and dangerous working conditions. Industry-reported statistics show that poultry workers are injured at rates almost twice the national average and suffer occupational illnesses at a rate that is over six times as high.[7] Still worse, according to FSIS itself, these shocking figures significantly understate the actual rate of injury and illness among these workers.[8]

Poultry workers currently work at breakneck line speeds, and further increasing the speeds will inevitably result in even more worker injuries and illnesses.[9] National Institute for Occupational Safety and Health (NIOSH) research shows staggeringly high rates of injuries directly related to the rapid, repetitive movements these workers must perform. In one study, 34 percent of such workers had carpal tunnel syndrome (CTS), and 76 percent had evidence of nerve damage in their hands and wrists.[10] In another study, 42 percent had CTS.[11] Further, workers in the poultry industry suffer finger amputations at the single highest rate of any U.S. industry.[12]

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[4] FSIS is hosting this petition on its rulemaking petitions web page. See https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/petitions.

[5] See 5 U.S.C. § 706(2); Motor Vehicle Mfrs. v. State Farm, 463 U.S. 29, 43 (1983) (in rulemaking, a regulatory agency "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'").

[6] See 79 Fed. Reg. 49,591 (Aug. 21, 2014) ("After the NPIS has been fully implemented on a wide scale, and the Agency has gained at least a year of experience under the new system, FSIS intends to assess the impact of changes adopted by establishments operating under the NPIS . . . FSIS will consider these results in assessing whether establishments operating under the NPIS have implemented measures that are effective in maintaining process control.").

[7] See "Highest incidence rates of total nonfatal occupational illness cases, 2015," BLS available at https://www.bls.gov/iif/oshwc/osh/os/ostb4747.pdf (showing illness rate for poultry workers is 6.3 times as high as the average). A decade ago, the illness rate for poultry workers was 5.3 times as high. See https://www.bls.gov/iif/oshwc/osh/os/ostb1916.pdf.

[8] See 79 Fed. Reg. 49,600 (Aug. 21, 2014) ("systematic underreporting of work-related injuries and illnesses could make it difficult to accurately assess the extent to which poultry workers suffer from work related injuries and musculoskeletal diseases and disorders."); id. ("poultry processors' injury and illness logs often do not reflect the full extent of work-related conditions experienced by poultry workers.").

[9] See U.S. Gov't Accountability Off., GAO-16-337, Additional Data Needed to Address Continued Hazards in the Meat and Poultry Industry 30 (2016) available at http://www.gao.gov/assets/680/676796.pdf

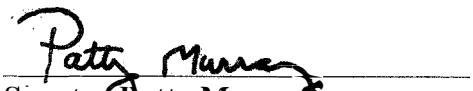
[10] See "Evaluation of Carpal Tunnel Syndrome and Other Musculoskeletal Disorders among Employees at a Poultry Processing Plant," NIOSH available at https://www.cdc.gov/niosh/hhe/reports/pdfs/2014-0040-3232.pdf.

[11] See "Evaluation of Musculoskeletal Disorders and Traumatic Injuries Among Employees at a Poultry Processing Plant," NIOSH available at https://www.cdc.gov/niosh/hhe/reports/pdfs/2012-0125-3204.pdf. Additionally, poultry workers suffer among the highest rates of severe injuries such as amputations and injuries that require hospitalization. Among all industries reporting to the Federal Government, the poultry industry had the 12th highest number of these severe injuries—higher than much of the construction, auto, steel, and saw mill industries. See https://www.osha.gov/severeinjury/index.html.

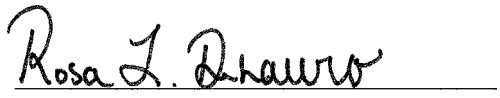
[12] Nevin, Bernt, & Hodgson, Association of Poultry Processing Industry Exposures With Reports of Occupational Finger Amputations, 59 J. OCCUPATIONAL AND ENVTL. MED. e159 et seq. (Oct. 2017).

FSIS must reject this petition, reaffirming its commitment to the law, its own recent findings, and worker safety. If you have any questions, please contact our staff at John_DElia@help.senate.gov and Elizabeth.Albertine@mail.house.gov. We look forward to hearing from you.

Respectfully,



Senator Patty Murray
Ranking Member
Committee on Health, Education,
Labor & Pensions
U.S. Senate



Representative Rosa DeLauro
Ranking Member
Subcommittee on Labor, Health and
Human Services, Education, and Related Agencies
Committee on Appropriations
U.S. House of Representatives