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**Joan Claybrook, President**

October 13, 2004

Docket Clerk,  
USDA Food Safety and Inspection Service  
300 12<sup>th</sup> Street SW  
Room 102 Cotton Annex  
Washington D.C. 20250

Docket Number: FSIS 03-033P

Dear Ms. White,

It is with interest that we read in 69 FR 51194 (Aug. 18, 2004) that FSIS is proposing to eliminate the requirement that foreign nations exporting meat or poultry to the United States ensure that their in-plant meat inspectors receive monthly supervisory visits. FSIS proposes to eliminate this safety requirement solely because FSIS interprets the World Trade Organization's Sanitary and Phytosanitary agreement (SPS Agreement) to prohibit the application of food safety requirements for foreign countries that are more stringent than those applied domestically.

This is not the first time USDA - which has as its first responsibility securing the health and safety of U.S. consumers - has recommended weakening standards in the name of free trade. USDA is currently proposing opening the Canadian border to trade in beef and live cattle even though it is contrary to APHIS regulation and long standing practice for the U.S. to import meat or cattle when even one case of indigenous BSE has been found by a trading partner, and even though the border remains closed to four other nations in like circumstances.

Even as the U.S. government is increasingly concerned about the vulnerability of the food supply to microbial contamination and even bioterrorism and as it is being given new funds by Congress to shore up woefully inadequate border inspection capacity, USDA is far too ready to prioritize the facilitation of trade and the unimpeded flow of goods via trade-mandated international "equivalency" agreements.

Neither USDA, nor any other U.S. government agency engaged in trade-related equivalency decision-making, has answered the fundamental paradox posed by this new trading concept: how can something that is different be the same? When it comes to important public health and safety standards, most Americans would argue that "close" is simply not good enough. Thus, many consumer and public health groups have questioned the appropriateness of equivalency and the sloppy manner with which it is being implemented by U.S. agencies. For instance, the 65 consumer groups that make up the Transatlantic Consumer Dialogue issued a resolution stating, "The very notion of equivalence allows for imprecise, subjective comparisons that are not appropriate when dealing with issues as important as public health and safety."

WTO SPS Article 2.3 states, "Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade."

By proposing this regulatory change, FSIS is declaring that this regulatory requirement was not developed and applied for public safety reasons, but for protectionist reasons, yet has offered no evidence of this assertion. Notably absent from the proposed rule is any detailed explanation regarding why this regulatory change is necessary. A country by country analysis of the appropriate frequency of plant visits, potential alternative methods of supervision or forms of communications would have been appropriate. Clearly the "phone calls" mentioned in the proposal do not provide supervisors the ability to eyeball the plant themselves to make sure it is sanitary and that the inspectors are doing their jobs.

By proposing this regulatory change, FSIS is also suggesting that all its foreign trading partners are operating under conditions "so similar" that this extra safety precaution is unnecessary. However, FSIS's own country audits have demonstrated time after time that FSIS continues to extend equivalency status to many nations which have not maintained the same sanitary conditions, do not have the same resources to implement their meat inspection systems and have had consistent problems meeting the requirements of U.S. law and regulation.

A review of a number of the publicly available FSIS audits of the performance of these nations in the meat inspection area reveals that over the years regulatory systems that have been classified as "equivalent" by FSIS have not always complied with core requirements of U.S. food safety law and regulations.

- U.S. regulations requiring monthly supervisory reviews by foreign government officials were repeatedly violated by *Argentina, Brazil, Canada, and Mexico*. Canada and Brazil are requesting an equivalency determination on this core requirement of U.S. regulation.
- The U.S. law requiring meat to be inspected by independent government officials was violated by plants in *Brazil, Mexico and Argentina*.
- The regulatory systems of *Brazil and Mexico* were rated equivalent even though the countries pleaded insufficient personnel and monetary resources to explain their inability to carry out all required functions.
- Even though U.S. regulations require that a government official and not a company employee sample meat for *Salmonella* contamination, USDA approved company employees performing this task as part of equivalency determinations with *Brazil and Canada*.
- Even though U.S. regulations require government samples to be tested at government laboratories, the U.S. approved testing by private labs as part of the equivalency determinations with *Brazil, Canada and Mexico*.
- USDA's sanitary and zero tolerance policies for contaminants including feces, urine, and ingesta (stomach contents) was violated by *Australia, Canada and Mexico*.
- Unapproved and/or improper testing procedures and sanitation violations have been identified by FSIS year after year for *Australia, Brazil, Canada and Mexico*, but the countries have retained their eligibility to export to the U.S.
- After its regulatory system was designated equivalent, *Mexico* began using alternative procedures for *Salmonella* and *E. Coli* that had never been evaluated by FSIS.
- *Australia and Canada* were allowed to export to the U.S. while utilizing their own

methods and procedures for such matters as *E. Coli* testing, post-mortem inspection, monthly supervisory reviews and pre-shipment reviews while awaiting a decision from FSIS on a request for an equivalency determination on these standards.

FSIS has failed to ensure that meat and poultry coming into the United States meets all the requirements of U.S. law and regulation, including requirements for monthly supervisory reviews. Far from having identical standards, similar standards or equivalent standards, many foreign nations still maintain different standards. Rather than conform to U.S. regulations, they apply political pressure to get the U.S. to declare significant differences as "equivalent," or failing that, apply pressure to change U.S. law and regulation.

Even the USDA Office of Inspector General (OIG) was critical of FSIS' import inspection procedures in its 2000 and 2004 audits. In the most recent audit report, the OIG stated:

"Our June 2000 report recommended that FSIS recognize the conditions disclosed during our audit as material control weaknesses and report them as such in the agency's annual management control report required by the Federal Managers' Financial Integrity Act.

FSIS has not yet agreed to do this. As previously reported, basic control activities, such as documented policies, procedures, supervisory reviews and approvals, and clear lines of authority were lacking in FSIS' operations. FSIS did not conduct the in-depth assessment of its controls as it agreed to; therefore, the agency should report the material weaknesses in the import inspection process."<sup>1</sup>

Monthly supervisory reviews are vitally important to remind the meat industry that the lone meat inspector, who works the line in the plant, is backed by the full weight of the government. Monthly reviews can provide inspectors, who may live long distances from their regional office and not have the luxury of weekly staff meetings or significant collegial contact, with the support and guidance they may need to do their job well. Monthly supervisory reviews give plant inspectors the assurance that there is someone they can count on to discuss their problems with on a regular basis, problems that may not make it into an official report. Monthly supervisory reviews can be used to back up inspectors who have filed critical official reports and are suffering undue pressure from industry officials as a result. In this era of enhanced concerns about microbial contamination and even bioterrorism, monthly supervisory reviews could be utilized to provide another set of eyes and ears on plants who are shipping an important product into the United States that could, if contaminated, be distributed to thousands of U.S. consumers. The fact that FSIS inspects a miniscule fraction of imports for microbial contamination and other problems only underscores the importance of proper sanitation and security at the plant level. Monthly supervisory reviews are especially needed in countries where shrinking SPS budgets have resulted in meat inspectors having their salaries paid by the companies themselves and not by governments as required by U.S. law. This is not an uncommon problem in certain nations.

Nations that export meat products to the United States could benefit from the requirement that their export plants receive monthly supervisory reviews. FSIS should not eliminate this requirement in U.S. regulation. Rather, FSIS may want to consider adopting it domestically and raising rather than lowering the bar for public health and safety. Given that FSIS has provided no analysis to back up this proposed regulatory change, it appears that the decisions is driven more by a desire to satisfy international political demands rather than to enhance the safety of the U.S. food supply. Therefore, at a minimum, FSIS should delay action on this matter until the new year to ensure that it is in conformity with the wishes of the American people as expressed in the results of the November 2004 presidential election.

Sincerely,

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<sup>1</sup> U.S. Department of Agriculture, Office of Inspector General, Southeast Region. "Audit Report: Food Safety and Inspection Service, Followup Audit on the Inspector General's Food Safety Initiative of Fiscal Year 2000, Report No. 24001-4-At, September 2004, page 11.