

April 20, 2012

Mr. Alfred V. Almanza
Administrator, Food Safety Inspection Service, U.S. Dept. of Agriculture (USDA)
c/o Docket Clerk, USDA, FSIS
Patriots Plaza 3
355 E. Street SW, 8-163A, Mailstop 3782
Washington, D.C. 20250-3700

**Re: Modernization of Poultry Slaughter Inspection, Docket No. FSIS-2011-0012 –
*Request for Withdrawal or Extension of Comment Period***

Dear Mr. Almanza:

Due to the significant analytic, procedural, and policy shortcomings of the proposed rule on poultry slaughter inspection, we urge you to withdraw the proposal or, at the least, extend the comment period until NIOSH can complete comprehensive studies regarding the impact of this proposed rule on workers' health and safety and the public has a full opportunity to comment on the studies and any resultant changes. Such studies may take a year or more to complete.

Our primary concern with the proposal is USDA's failure to account for the significant adverse health impacts that will be borne by the workers in the covered facilities. USDA acknowledges that line speeds will increase to dizzying rates of up to 175 birds per minute and calculates the firms' economic benefits in terms of decreased per-bird processing costs, but completely ignores the human toll of high-speed poultry processing. The strain of repetitive motion in this industry has been linked to increased cuts and lacerations, upper extremity musculoskeletal symptoms, and depression.¹ In 2010, the most recent year with available data, poultry processing workers reported injuries at a rate 70% higher than the private industry average.² At a minimum, USDA should analyze the projected increased incidence of these health impacts and their associated health care and workers' compensation costs on firms covered by the rule.

Further highlighting the inadequacy of USDA's analysis supporting the proposal, the analysis fails to account for the distributional impacts of the proposed increase in line speeds. The poultry processing industry's workforce includes many Hispanic workers, immigrants, working poor, and other members of communities that have historically had to bear disproportionate burdens of industrial production. USDA's failure to analyze the distributional impacts of the proposed rule flies in the face of President Obama's efforts to ensure all federal rulemaking efforts include robust environmental justice assessments. In fact, USDA has expressly recognized the potential for its rules to disproportionately burden minority and low-income communities in its *Draft Environmental Justice Strategic Plan: 2012-2014*.³ This

proposal should have gone through an environmental justice review, with the results documented in the rulemaking docket at the time of publication in the *Federal Register*.

Finally, it is lamentable that USDA apparently did not consult with the Occupational Safety and Health Administration (OSHA) or the National Institute for Occupational Safety and Health (NIOSH) before publishing this proposal. White House staff have testified before the U.S. House of Representatives and published op-ed pieces, touting this proposal as a way to save industry \$1 billion over the next five years.⁴ But that testimony is based on the faulty assumption that increased line speeds will have no impact on workers' health and safety and thus no impact health care costs. Both OSHA and NIOSH have decades of experience dealing with occupational health and safety hazards in the poultry processing industry and could have provided useful information about the prevalence of cuts, lacerations, amputations, musculoskeletal disorders, and other adverse health impacts that will result from increasing line speeds. USDA has indicated that NIOSH is willing to evaluate the consequences of increased line speed on poultry plant workers' health and safety, but there is no evidence that such an evaluation has commenced. The docket does not have any indication that USDA has provided funds to NIOSH to conduct the study and guarantee access to a sufficient number of poultry plants, much less a protocol for the NIOSH evaluation.

Because this proposal, if finalized, would force poultry processing workers to endure uncommonly dangerous working conditions and because those burdens will be placed on some of this country's most vulnerable workers, we request that the USDA withdraw the rule. At a minimum, the comment period should be extended until NIOSH has completed comprehensive studies to determine the effects on the health and safety of poultry workers and the public has had a chance to comment on the studies and any resultant changes in USDA's proposed rule. We expect those studies would take at least one year to complete.

Thank you for considering this request.

Sincerely,

Jim Albers, MPH, CIH, Cincinnati, OH

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D.C.*

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Rena Steinzor, President, Center for Progressive Reform, Washington, D.C.

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Omaid Zabih, Staff Attorney, Nebraska Appleseed Center for Law in the Public Interest, Lincoln, NE

*Affiliations listed for identification purposes only.

¹See, e.g., U.S. GOV'T ACCOUNTABILITY OFFICE, *Safety in the Meat and Poultry Industry, While Improving, Could Be Further Strengthened*, GAO-05-96 (Jan. 2005); C.S. McPhee and H.J. Lipscomb, *Upper-Extremity Musculoskeletal Symptoms and Physical Health Related Quality of Life Among Women Employed in Poultry Processing and Other Low-Wage Jobs in Northeastern North Carolina*, 52 AM. J. INDUSTRIAL MED. 331 (Apr. 2009); Hester J. Lipscomb et al., *Depressive symptoms among working women in rural North Carolina: A comparison of women in poultry processing and other low-wage jobs*, 30 INTL. J.L. PSYCHIATRY 284 (2007).

² See attached summary tables of injury and illness data from the U.S. Bureau of Labor Statistics.

³U.S. DEPT. OF AGRICULTURE, *DRAFT Environmental Justice Strategic Plan: 2012-2014* (Nov. 2011), available at <http://www.dm.usda.gov/hmmd/USDADraftEJStrategicPlansigned.pdf>.

⁴ Testimony of Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, before the Subcommittee on Courts, Commercial, and Administrative Law, Committee on the Judiciary, United States House of Representatives, March 21, 2012, available at <http://judiciary.house.gov/hearings/Hearings%202012/Sunstein03212012.pdf>; Cass R. Sunstein, *Why regulations are good—again*, CHICAGO TRIBUNE, March 19, 2012, available at http://articles.chicagotribune.com/2012-03-19/news/ct-oped-0319-regs-20120319_1_regulation-baseball-scouts-requirements.

Attachment: BLS data on poultry processing injuries and illnesses

Number and rate (1) of nonfatal occupational injuries and illnesses by selected industry, All U.S., private industry, 2010 (Numbers in thousands) Characteristic	Private industry (2) (3) (4)		Poultry processing	
	Number	Rate	Number	Rate
Injuries and Illnesses				
Total cases	3,063.4	3.5	13.6	5.9
Cases with days away from work, job transfer, or restriction	1,598.1	1.8	9.4	4.1
Cases with days away from work (5)	933.2	1.1	2.0	0.9
Cases with job transfer or restriction	664.9	0.8	7.4	3.2
Other recordable cases	1,465.2	1.7	4.2	1.8
Injuries				
Total cases	2,906.1	3.4	10.6	4.6
Illnesses				
Total cases	157.2	18.1	3.1	133.6
Illness categories				
Skin disorders	24.9	2.9	0.1	3.6
Respiratory conditions	12.8	1.5	0.1	4.3
Poisoning	2.4	0.3	(6) 0.0	(6) -
Hearing loss	18.8	2.2	0.6	25.9
All other illness cases	98.3	11.3	2.3	99.8
Footnotes				

Number and rate (1) of nonfatal occupational injuries and illnesses by selected industry, All U.S., private industry, 2010 (Numbers in thousands)	Private industry (2) (3) (4)		Poultry processing	
	Number	Rate	Number	Rate
Characteristic				
<p>(1) Incidence rates represent the number of injuries and illnesses per 100 full-time workers (10,000 full-time workers for illness rates) and were calculated as: $(N / EH) \times 200,000$ (20,000,000 for illness rates) where, N = number of injuries and illnesses, EH = total hours worked by all employees during the calendar year, 200,000 = base for 100 full-time equivalent workers (working 40 hours per week, 50 weeks per year) 20,000,000 = base for 10,000 full-time equivalent workers (working 40 hours per week, 50 weeks per year).</p> <p>(2) Excludes farms with fewer than 11 employees.</p> <p>(3) Data for Mining (Sector 21 in the North American Industry Classification System -- United States, 2007) include establishments not governed by the Mine Safety and Health Administration (MSHA) rules and reporting, such as those in oil and gas extraction and related support activities. Data for mining operators in coal, metal, and nonmetal mining are provided to BLS by the Mine Safety and Health Administration, U.S. Department of Labor. Independent mining contractors are excluded from the coal, metal, and nonmetal mining industries. These data do not reflect the changes Occupational Safety and Health Administration made to its recordkeeping requirements effective January 1, 2002; therefore estimates for these industries are not comparable to estimates in other industries.</p> <p>(4) Data for employers in railroad transportation are provided to BLS by the Federal Railroad Administration, U.S. Department of Transportation. These data do not reflect the changes Occupational Safety and Health Administration made to its recordkeeping requirements effective January 1, 2002; therefore estimates for these industries are not comparable with estimates for other industries.</p> <p>(5) Days-away-from-work cases include those that result in days away from work with or without job transfer or restriction.</p> <p>(6) Less than 15 cases</p>				
<p>NOTE: Dashes indicate data that do not meet publication guidelines. SOURCE: Bureau of Labor Statistics, U.S. Department of Labor, Apr 17, 2012</p>				

Incidence rates (1) of nonfatal occupational injuries and illnesses involving days away from work (2) by selected worker and case characteristics and industry, All U.S., private industry, 2010	Private industry (3) (4) (5)	Poultry processing
	2010	2010
Characteristic		
Total:	107.7	87.4
Number of days away from work:		
Cases involving 1 day	15.5	14.4
Cases involving 2 days	11.7	8.7
Cases involving 3-5 days	19.3	15.1
Cases involving 6-10 days	12.7	10.3
Cases involving 11-20 days	12.0	10.4
Cases involving 21-30 days	6.9	4.4
Cases involving 31 or more days	29.6	24.1
Nature of injury, illness:		
Sprains, strains	42.7	21.4
Fractures	8.0	9.8
Cuts, lacerations, punctures	9.1	4.7
Bruises, contusions	8.9	8.1
Heat burns	1.7	-
Chemical burns	0.5	2.5
Amputations	0.6	2.3
Carpal tunnel syndrome	1.0	6.2

Incidence rates (1) of nonfatal occupational injuries and illnesses involving days away from work (2) by selected worker and case characteristics and industry, All U.S., private industry, 2010	Private industry (3) (4) (5)	Poultry processing
	2010	2010
Characteristic		
Tendonitis	0.5	2.6
Multiple injuries	4.8	2.2
With fractures	0.9	0.9
With sprains	1.8	-
Soreness, Pain	11.7	8.9
Back pain	3.8	1.5
All other	18.2	18.0
Part of body affected:		
Head	7.1	6.6
Eye	2.6	4.4
Neck	1.5	-
Trunk	35.8	23.3
Back	21.4	9.4
Shoulder	7.9	7.1
Upper extremities	24.2	34.1
Finger	8.7	10.7
Hand, except finger	4.6	5.2
Wrist	4.5	10.2
Lower extremities	24.5	17.0
Knee	9.6	7.7

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	2010	2010
Characteristic		
Foot, toe	4.6	4.1
Body systems	1.9	1.0
Multiple	12.0	4.8
All other	0.7	-
Source of injury, illness:		
Chemicals, chemical products	1.6	4.4
Containers	13.0	11.4
Furniture, fixtures	4.3	1.8
Machinery	6.0	10.6
Parts and materials	9.1	4.3
Worker motion or position	14.8	22.1
Floor, ground surfaces	22.4	14.0
Handtools	4.9	3.9
Vehicles	8.9	5.5
Health care patient	6.4	-
All other	14.2	8.3
Event or exposure:		
Contact with object, equipment	27.8	26.3
Struck by object	13.7	9.6

Incidence rates (1) of nonfatal occupational injuries and illnesses involving days away from work (2) by selected worker and case characteristics and industry, All U.S., private industry, 2010	Private industry (3) (4) (5)	Poultry processing
	2010	2010
Characteristic		
Struck against object	7.8	5.2
Caught in object, equipment, material	4.7	9.9
Fall to lower level	6.9	3.1
Fall on same level	16.1	12.1
Slips, trips	3.4	1.9
Overexertion	25.8	12.0
Overexertion in lifting	12.9	6.3
Repetitive motion	3.5	15.2
Exposed to harmful substance	4.9	6.6
Transportation accidents	4.4	2.8
Fires, explosions	0.2	-
Assault, violent act	2.7	-
by person	2.0	-
by other	0.7	-
All other	12.0	7.2

Footnotes

(1) Incidence rates represent the number of injuries and illnesses per 10,000 full-time workers and were calculated as: $(N / EH) \times 20,000,000$ where,

N = number of injuries and illnesses,

EH = total hours worked by all employees during the calendar year,

20,000,000 = base for 10,000 full-time equivalent workers (working 40 hours per week, 50 weeks per year).

(2) Days away from work cases include those that result in days away from work with or without job transfer or restriction.

(3) Excludes farms with fewer than 11 employees.

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<p>Health Administration (MSHA) rules and reporting, such as those in oil and gas extraction and related support activities. Data for mining operators in coal, metal, and nonmetal mining are provided to BLS by the Mine Safety and Health Administration, U.S. Department of Labor. Independent mining contractors are excluded from the coal, metal, and nonmetal mining industries. These data do not reflect the changes Occupational Safety and Health Administration made to its recordkeeping requirements effective January 1, 2002; therefore estimates for these industries are not comparable with estimates for other industries.</p> <p>(5) Data for employers in railroad transportation are provided to BLS by the Federal Railroad Administration, U.S. Department of Transportation. These data do not reflect the changes Occupational Safety and Health Administration made to its recordkeeping requirements effective January 1, 2002; therefore estimates for these industries are not comparable with estimates for other industries.</p>		
<p>NOTE: Because of rounding and data exclusion of nonclassifiable responses, data may not sum to the totals. Dashes indicate data that do not meet publication guidelines. The scientifically selected probability sample used was one of many possible samples, each of which could have produced different estimates. A measure of sampling variability for each estimate is available upon request -- please contact iifstaff@bls.gov or call (202) 691-6170.</p> <p>SOURCE: Bureau of Labor Statistics, U.S. Department of Labor, Apr 17, 2012</p>		