

**UNITED STATES DEPARTMENT OF AGRICULTURE  
FOOD SAFETY AND INSPECTION SERVICE**

In re: Fecal Contamination of Poultry and Meat

Docket No. \_\_\_

**PETITION FOR RULEMAKING**

**Submitted to:**

FSIS Docket Clerk  
Department of Agriculture  
Food Safety and Inspection Service  
Room 2534 South Building  
1400 Independence Ave., SW  
Washington, DC 20250-3700

**Date:**

March 14, 2013

**Reply to:**

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## **INTRODUCTION**

The Federal Meat Inspection Act<sup>1</sup> and the Poultry Products Inspection Act<sup>2</sup> direct the Secretary of the Department of Agriculture (“USDA”) to inspect all meat and poultry. Together the acts 1) allow meat or poultry that is unadulterated to be labeled as wholesome and fit for consumers to eat and 2) require adulterated meat or poultry to be condemned.<sup>3</sup> USDA’s Food Safety and Inspection Service oversees the inspection of all meat and poultry products.

Inconsistent with its statutory mandate, USDA regularly passes at inspection meat and poultry that is contaminated with feces. Although USDA implements a “zero tolerance” policy for fecal contamination, this policy applies to visible fecal contamination only. The result is that fecally contaminated meat and poultry products pass inspection as long as the feces on them are not “visible” to the naked eye.<sup>4</sup>

This inspection policy conveys a misleading promise of “wholesomeness.” Feces may contain round worms, hair worms, tape worms, and leftover bits of whatever the animal excreting the feces may have eaten, not to mention the usual fecal components of digestive juices and various chemicals that the animal was in the process of excreting. Americans deserve fair notice that food products deemed “wholesome” by USDA would be deemed disgusting by the average consumer and adulterated under any reasonable reading of federal law.

To prevent the ongoing violation of law and to stop the continued release of fecally contaminated meat and poultry from slaughterhouses and processing plants, the Physicians Committee for Responsible Medicine, pursuant to the Administrative Procedure Act<sup>5</sup> and USDA regulations,<sup>6</sup> petitions USDA to take the following actions:

1. Declare feces an adulterant and regulate feces as an adulterant.
2. Amend sections 317.2(l)(2), 381.125(b)(2)(i), and 381.125(b)(2)(ii) of Title 9 of the Code of Federal Regulations such that all meat and poultry product labels uniformly disclose the presence of feces.
3. Amend section 381.96 of Title 9 of the Code of Federal Regulations to remove the word “wholesome” from the official inspection legend for poultry such that the legend reads as follows: “Inspected by U.S. Department of Agriculture.”

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<sup>1</sup> 21 U.S.C. §§ 601–695.

<sup>2</sup> 21 U.S.C. §§ 451–472.

<sup>3</sup> 21 U.S.C. §§ 451, 604.

<sup>4</sup> The regulations adhere to this standard even though other methods, such as laser-induced fluorescence imaging, can detect feces that the human eye cannot. *See* Cho B, Kim MS, Chao K, Lawrence K, Park B, Kim K. Detection of fecal residue on poultry carcasses by laser-induced fluorescence imaging. *J Food Sci.* 2009;74(3):E154-9.

<sup>5</sup> 5 U.S.C. § 553(e).

<sup>6</sup> 7 C.F.R. § 1.28; 9 C.F.R. §§ 392.1–392.9.

## **STATEMENT OF FACTS**

### **I. Federal Statutes, Regulations, and Directives**

#### **A. Federal Meat Inspection Act**

In 1906, Congress mandated USDA to conduct inspections of cows, pigs, goats, sheep, and horses used for food before and after slaughter and during the processing operation to prevent the distribution and sale of meat that was unwholesome, adulterated, unhealthful, and not properly marked, labeled, and packaged.<sup>7</sup> Under the act, USDA must ensure that only unadulterated carcasses are approved for further distribution to consumers. If meat is unadulterated, USDA must affix an inspection legend indicating that the meat has been inspected by USDA, passed the inspection, and is safe to eat.<sup>8</sup> The mandatory inspection legend for all unadulterated meat products reads, “Inspected and passed.”<sup>9</sup>

The underlying principle of the Federal Meat Inspection Act is that adulterated meat is unfit for consumption and cannot be passed at inspection by USDA for sale to the public.<sup>10</sup> All adulterated carcasses must be marked as “inspected and condemned” and are prohibited from use as food.<sup>11</sup> Under the Federal Meat Inspection Act, meat is adulterated:

if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

...

if it consists in whole or part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.<sup>12</sup>

The Federal Meat Inspection Act also prohibits the misbranding of meat. Meat is misbranded “if its labeling is false or misleading in any particular” or “if it fails to bear . . . the inspection legend and . . . such other information as the Secretary may require . . . to assure that it will not have false or misleading labeling.”<sup>13</sup>

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<sup>7</sup> See 21 U.S.C. § 601.

<sup>8</sup> See 21 U.S.C. § 601(n)(12).

<sup>9</sup> 21 U.S.C. § 604.

<sup>10</sup> See 21 U.S.C. § 608.

<sup>11</sup> 21 U.S.C. § 604.

<sup>12</sup> 21 U.S.C. § 601(m)(1), (m)(3).

<sup>13</sup> 21 U.S.C. § 601(n)(1), (n)(12).

## B. Poultry Products Inspection Act

As with the Federal Meat Inspection Act, Congress enacted the Poultry Products Inspection Act to protect the “health and welfare of consumers” by assuring that products containing the meat of chickens, turkeys, ducks, geese, and guineas “are wholesome, not adulterated, and properly marked, labeled, and packaged.”<sup>14</sup> Like the Federal Meat Inspection Act, the Poultry Products Inspection Act requires inspections,<sup>15</sup> defines “adulterated” as shown above,<sup>16</sup> and prohibits misbranding.<sup>17</sup> Again, the basic principle underlying the Poultry Products Inspection Act is that adulterated poultry is unfit for consumers to eat. Although the Poultry Products Inspection Act also mandates application of an inspection legend to all unadulterated poultry indicating that it has passed at inspection, the act does not specify the language that must be included on the legend, leaving discretion of this matter to USDA.<sup>18</sup>

## C. USDA Regulations and Food Safety and Inspection Service Directives

USDA permits several inspection legends for meat, including “Inspected and passed,” “U.S. Inspected and Passed,” or “U.S. Inspected and Passed by Department of Agriculture,” all of which contain the required phrase, “inspected and passed.”<sup>19</sup> For poultry, USDA authorizes only one inspection legend: “Inspected for wholesomeness by U.S. Department of Agriculture.”<sup>20</sup> All poultry that has passed inspection must bear the “Inspected for wholesomeness” legend.<sup>21</sup> In addition to the official inspection legends, USDA requires a handling label on all raw meat and poultry products.<sup>22</sup> Under most circumstances, the mandatory label advises that the meat or poultry “product was prepared from inspected and passed meat or poultry.”<sup>23</sup>

USDA has directed its Food Safety and Inspection Service to enforce a zero tolerance standard for visible fecal material. This standard is reflected in USDA regulations, which require that establishments prevent contamination of livestock carcasses and carcass parts by fecal material and promptly remove contamination if it occurs.<sup>24</sup> The regulations similarly require that establishments prevent poultry carcasses contaminated with visible fecal material from entering the “chilling tank,”<sup>25</sup> the large vat of water that serves as a common bath for all poultry carcasses after inspection. When inspectors observe feces at or after post-mortem livestock inspection or when poultry carcasses are about to enter the chilling tank, inspectors are supposed to condemn

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<sup>14</sup> 21 U.S.C. § 451.

<sup>15</sup> 21 U.S.C. § 455.

<sup>16</sup> 21 U.S.C. § 453(g)(1), (g)(3).

<sup>17</sup> 21 U.S.C. § 453(h).

<sup>18</sup> 21 U.S.C. §§ 453(m), 457(a).

<sup>19</sup> See 9 C.F.R. § 301.2.

<sup>20</sup> 9 C.F.R. §§ 381.1, 381.96.

<sup>21</sup> 9 C.F.R. § 381.123(a).

<sup>22</sup> 9 C.F.R. §§ 317.2(l); 381.125(b).

<sup>23</sup> 9 C.F.R. §§ 317.2(l)(2); 381.125(b)(2)(i).

<sup>24</sup> 9 C.F.R. § 310.18(a).

<sup>25</sup> 9 C.F.R. § 381.65(e).

the affected product unless the visible feces are removed by reprocessing.<sup>26</sup> Reprocessing such as trimming, vacuuming, or washing of a carcass may remove only the incidental visible contamination.<sup>27</sup>

In 1996, USDA began implementing its Pathogen Reduction and Hazard Analysis and Critical Control Point Systems (“HACCP”).<sup>28</sup> HACCP is intended to identify hazards that may arise at “critical points” in the production process of meat and poultry and devise measures to minimize the risks associated with these hazards. Under HACCP, all meat and poultry plants must 1) develop and implement a system of preventive controls, 2) develop and implement written standard operating procedures for sanitation, and 3) conduct a microbial spot-check for generic *E. coli*.

HACCP’s *E. coli* spot-checking system is meant to verify whether the plant’s systems are working as intended to prevent fecal contamination.<sup>29</sup> The plant operates the generic *E. coli* testing program by testing carcasses on a per volume basis,<sup>30</sup> specifically 1 out of every 22,000 chicken carcasses, 1 out of every 300 cattle carcasses, and 1 out of every 1,000 pig carcasses.<sup>31</sup> The plant collects the samples, tests the samples, and records the results.<sup>32</sup> The data relating to the testing program are maintained by the plant.<sup>33</sup>

To evaluate whether a plant complies with generic *E. coli* testing program procedures, federal inspectors spot-check the recorded test results. Test results that do not meet the performance standard for generic *E. coli* indicate that an establishment may not be maintaining process controls sufficient to minimize fecal contamination. In such case, the inspector is to complete a non-compliance record and “take further action as appropriate to ensure that applicable provisions of the law are met.”

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<sup>26</sup> See Livestock Carcasses and Poultry Carcasses Contaminated With Visible Fecal Material, 62 Fed. Reg. 63,254, 63,255 (Nov. 28, 1997). See also USDA, FSIS Directive 6420.2: Verification of Procedures for Controlling Fecal Material, Ingesta, and Milk in Slaughter Operations (Mar. 31, 2004), <http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/6420.2.pdf>; USDA, FSIS PHIS Directive 6420.2: Verification of Procedures for Controlling Fecal Material, Ingesta, and Milk in Slaughter Operations (Apr. 11, 2011), [http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/PHIS\\_6420.2.pdf](http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/PHIS_6420.2.pdf).

<sup>27</sup> 9 C.F.R. §§ 310.18, 381.91(b)(1).

<sup>28</sup> See Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems, 61 Fed. Reg. 38,806 (July 25, 1996) (to be codified at 9 C.F.R. pt. 417).

<sup>29</sup> Id. See also 9 C.F.R. §§ 310.25, 381.94.

<sup>30</sup> Information provided in this section can be found at 9 C.F.R. §§ 310.25(a), 381.94(a).

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id.

## **ARGUMENT**

USDA advises the public that its inspection system, with its “zero tolerance” policies and testing programs, guarantees a wholesome food supply. Yet it is clear that USDA’s inspection system does not prevent contamination by feces. Thus, USDA must undertake stringent and proactive rules, policies, and enforcement measures to prevent the continued fecal contamination of meat and poultry. At the same time, USDA must vigilantly warn consumers, and no longer mislead them, about the risks inherent to consuming meat or poultry products that have passed inspection under the current system.

### **I. USDA Should Declare Feces, Whether Visible or Not, an Adulterant and Regulate Feces as an Adulterant**

USDA has recognized that feces are the major source of contamination in livestock and poultry slaughterhouses<sup>34</sup> and that consumption of meat and poultry contaminated with feces is the primary vehicle for transmitting foodborne pathogens to humans.<sup>35</sup> Yet, the current policy regarding fecal contamination of meat and poultry addresses only feces that are “visible” to the naked eye or discovered in HACCP spot-checks, permits processes that contribute to the spread of fecal contamination, and authorizes plants to reprocess contaminated carcasses using methods that do not guarantee the elimination of feces.

Transport, handling, slaughter, and process methods under current large-scale food-animal production make it likely that many animals will be contaminated with feces and that “visible” feces will not be seen or removed completely. If neither the plant workers nor the inspectors see the feces, a carcass contaminated with feces will pass through the plant for sale to consumers.

#### **A. Fecal Contamination of Poultry<sup>36</sup>**

Poultry plants collectively slaughter more than 20 million birds every day, typically on high-speed automated production lines. At these poultry plants, chickens are stunned, killed, bled, and sent through scalding tanks, which help remove feathers but also act as reservoirs that transfer feces from one carcass to another. As USDA’s Food Safety and Inspection Service has stated, “cross-contamination can also occur during scalding from microorganisms present on the external and internal surfaces of the carcass and in the scalding water.”<sup>37</sup> After scalding, feathers and intestines are mechanically removed. Intestinal contents can spill onto machinery and contaminate the muscles and organs of the chicken and those processed afterward.

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<sup>34</sup> USDA, New Detector Spots Unseen Fecal Contamination on Meat (Mar. 17, 1998), <http://www.ars.usda.gov/is/pr/1998/980317.htm>.

<sup>35</sup> Livestock Carcasses and Poultry Carcasses Contaminated With Visible Fecal Material, 62 Fed. Reg. 63,254, 63,255 (Nov. 28, 1997).

<sup>36</sup> Information in this section regarding common processing procedures can be found at Food Safety & Inspection Service, USDA, Improvements for Poultry Slaughter Inspection Technical Report (May 16, 2008), [http://www.fsis.usda.gov/oppde/nacmpi/feb2008/poultry\\_slaughter\\_tech\\_report.pdf](http://www.fsis.usda.gov/oppde/nacmpi/feb2008/poultry_slaughter_tech_report.pdf).

<sup>37</sup> *Id.* at 7:320-21.

The eviscerated carcasses are then rinsed and checked for visible fecal matter. However, some slaughter lines process as many as 140 birds per minute, allowing inspectors minimal time to examine each carcass for visible feces. Because the same machine eviscerates thousands of birds an hour—without intervening decontamination—contamination by feces may easily spread to other birds. At this line speed and with the minimal number of federal poultry inspectors required, an inspector generally has mere seconds to thoroughly check each chicken’s chest, cavity, interior, and flesh for nearly a dozen diseases, bruises, cancers, lesions, other defects, and feces.<sup>38</sup>

After the visual check for fecal matter, carcasses are typically chilled in ice water, effectively a communal bath in which feces spread from bird to bird, permeating the carcasses. After chilling, a chicken may be cut up, allowing for further fecal spread from carcass to implements. The remains are then packaged, carrying the contamination to consumers. A 2009 USDA study found that 87 percent of chicken carcasses tested positive for generic *E. coli*, a sign of fecal contamination, after chilling and just prior to packaging.<sup>39</sup>

Industry experts coined the term “fecal soup” to describe the content of both the scalding and chilling tanks. As explained in 2008 by Stan Painter, current Chair of the National Joint Council of Food Inspection Locals, the government meat inspectors’ union, “you take a chicken that eats, sleeps, craps and everything in one little space, they enter the scald vat dirty, and it takes only a few minutes to become just brown fecal soup.”<sup>40</sup> More recently, a federal inspector said,

[I]f the fecal contamination is not touching the bird’s skin, it is not considered fecal contamination. We often see birds going down the line with intestines still attached, which are full of fecal contamination. If there is no fecal contamination on the bird’s skin, however, we can do nothing to stop that bird from going down that line. It is more than reasonable to assume that once the bird gets into the chill tank (a large vat of cold water), that contamination will enter the water and contaminate all of the other carcasses in the chiller. That’s why it is sometimes called “fecal soup.”<sup>41</sup>

Testing conducted in 2012 by an independent laboratory at the request of the Physicians Committee for Responsible Medicine confirms the need for a more comprehensive policy regarding fecal contamination.<sup>42</sup> According to the results, generic *E. coli* is present in nearly one

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<sup>38</sup> Food Safety News, Poultry Inspectors Protest Inspection Proposal at USDA (Apr. 3, 2012), <http://www.foodsafetynews.com/2012/04/poultry-inspectors-protest-inspection-proposal-at-usda/#.UDZKWdWns7k>.

<sup>39</sup> Altekruze SF, Berrang ME, Marks H, et al. Enumeration of *Escherichia coli* cells on chicken carcasses as a potential measure of microbial process control in a random selection of slaughter establishments in the United States. *Appl Environ Microbiol.* 2009;75(11):3522-3527.

<sup>40</sup> Stan Painter, Remarks at Plenary Session of the National Advisory Committee on Meat and Poultry Inspection (Feb. 6, 2008), [http://www.fsis.usda.gov/OPPDE/NACMPI/Feb2008/Plenary\\_020608.pdf](http://www.fsis.usda.gov/OPPDE/NACMPI/Feb2008/Plenary_020608.pdf).

<sup>41</sup> Comment submitted by Amanda Hitt, Director of the Food Integrity Campaign, Government Accountability Project, to Food Safety & Inspection Service, USDA, at 13 (May 25, 2012), <http://www.regulations.gov/contentStreamer?objectId=0900006481020a96&disposition=attachment&contentType=pdf>.

<sup>42</sup> All information provided in this and the following paragraph can be found at Physicians Committee for Responsible Medicine, *Fecal Contamination in Retail Chicken Products* (2012),

out of every two supermarket chickens. As explained above, federal regulations require slaughter and processing plants that produce meat and poultry to test carcasses for generic *E. coli* as an indicator for fecal contamination.

The testing sampled 120 chicken products—whole chickens, breasts, drumsticks, thighs, or wings—purchased in ten cities in nine states from the following grocery store chains: Albertsons, Dominick’s, Fry’s, Giant, Harris Teeter, H-E-B, Jewel-Osco, Kroger, Pic ‘n Save, Piggly Wiggly, Publix, Ralphs, Randalls, Safeway, and Winn-Dixie. Brands tested included Perdue, Pilgrim’s, Sanderson Farms, Covington Farms, Eating Right, Foster Farms, Gerber’s Poultry, Harris Teeter, Harvestland, H-E-B, Hill Country Fare, Murray’s, Nature’s Promise, Open Nature, Smart Chicken, Piggly Wiggly, Publix, Red Bird Farms, Roundy’s, Safeway, Safeway O Organics, Springer Mountain Farms, Super G, Supervalu, and Wild Harvest Natural.

The products were purchased, and store packaging was left undisturbed. The packages were placed unopened in coolers with ice packs and immediately shipped overnight to EMSL Analytical Inc., a certified, independent analytical testing laboratory in Chicago, Illinois. Using detection methods standard for food testing,<sup>43</sup> EMSL tested for the presence of generic *E. coli* in the products. Results revealed that 48 percent of all chicken samples tested positive for feces. Among skinless breasts, 49 percent of products were contaminated, compared with 28 percent of breasts with skin intact, indicating that skin removal did not reduce fecal contamination in the samples tested. Of the antibiotic-free chicken samples, 46 percent tested positive for fecal contamination, while 48 percent of conventional samples tested positive.

## **B. Fecal Contamination of Meat**

As the New York Times reported in 2009, at “slaughterhouses, the potential for contamination is present every step of the way, according to workers and federal inspectors. The cattle often arrive with smears of feedlot feces, and the hide must be removed carefully to keep it off the meat.”<sup>44</sup> Slaughter of cattle and pigs is executed by plant workers, not machines. At more than 300 cattle slaughtered per hour and more than 1,000 pigs slaughtered every hour, the spread of feces is unavoidable. Organs are torn and their contents spilled. Feces are smeared and splattered. Because feces may have already spread from one cow to another during transport, when cattle undergo the dehiding process, additional fecal contamination can result.

Because pigs’ hides are not removed during the slaughter process, pig carcasses are put through a communal scalding tank, similar to the defeathering tank for chickens. Contaminated carcasses enter the same water as do the other pig carcasses, potentially infecting the uncontaminated ones. Scalding is followed by dehairing, in which “rotating drums equipped with scraper blocks . . .

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<http://www.pcrm.org/health/reports/fecal-contamination-in-retail-chicken-products>.

<sup>43</sup> See Lattuada CP, Dillard LH, Rose BE. Examination of Fresh, Refrigerated, and Frozen Prepared Meat, Poultry and Pasteurized Egg products. In: Dey BP, Lattuada CP. Examination of Microbiology Laboratory Guidebook. Vol. 1-2. 3rd ed. Washington, DC. 1998, <http://www.fsis.usda.gov/OPHS/microlab/mlgchp3.pdf>.

<sup>44</sup> Michael Moss, *The Burger That Shattered Her Life*, N.Y. TIMES, Oct. 3, 2009, [http://www.nytimes.com/2009/10/04/health/04meat.html?\\_r=2&pagewanted=all](http://www.nytimes.com/2009/10/04/health/04meat.html?_r=2&pagewanted=all).



rotate the carcasses to remove the hairs.”<sup>45</sup> Recontamination of the carcasses occurs at dehairing.<sup>46</sup>

Until 1978, USDA required the condemnation of any carcass with visible fecal contamination. Thereafter, USDA allowed carcasses contaminated with visible feces to be “reprocessed,” rather than condemned.<sup>47</sup> As long as feces are no longer visible after the corrective reprocessing action, the carcass may continue to be processed.

Current USDA policy allows livestock carcasses to be steam vacuumed (hot water is sprayed on a carcass and then vacuumed off), washed with an acid rinse, or trimmed to remove fecal contamination. Yet Steam vacuuming to remove fecal contamination from meat carcasses removes only “incidental visible contamination.”<sup>48</sup> And although chemical rinses may wash off visible traces of feces, feces not visible to the naked eye may remain on the carcass.<sup>49</sup>

### **C. USDA Should Regulate Feces as an Adulterant**

A policy that addresses only visible fecal contamination is sorely inadequate. Visible feces can be overlooked because of the speed involved in slaughtering and processing, and traces of feces too small or diluted to be seen by the naked eye can pass inspection. A more comprehensive policy that addresses all fecal contamination is necessary.

As set forth above, under the Federal Meat Inspection Act and the Poultry Products Inspection Act, meat or poultry is adulterated “if it bears or contains any poisonous or deleterious substance which may render it injurious to health” or “if it consists in whole or part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.”

Meat and poultry products contaminated with feces clearly meet these criteria. Feces “may render [food] injurious to health,” feces are a “filthy, putrid, or decomposed substance,” and feces render products “unsound, unhealthful, unwholesome, or otherwise unfit for human food.” Indeed, under no circumstances are feces considered wholesome. In a medical setting, feces and animal carcasses that may be contaminated with pathogenic bacteria are regulated as “medical waste” consistent with specific restrictions to minimize human exposure—mandatory incineration or disposal in a biohazard container.<sup>50</sup> Outside scientific institutions, the presence of feces can shut down the neighborhood swimming pool for days, whereas the presence in that

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<sup>45</sup> Food Safety & Inspection Service, USDA, Public Health Risk-Based Inspection System for Processing and Slaughter Technical Report, at 13:503-06. (Apr. 18, 2008), [http://www.fsis.usda.gov/OPPDE/NACMPI/Feb2008/Processing\\_Slaughter\\_Tech\\_Rpt\\_041808.pdf](http://www.fsis.usda.gov/OPPDE/NACMPI/Feb2008/Processing_Slaughter_Tech_Rpt_041808.pdf).

<sup>46</sup> Id.

<sup>47</sup> 9 C.F.R. §§ 310.18, 381.91(b)(1).

<sup>48</sup> USDA, USDA Announces Approval of Trial Tests for Steam Process to Remove Contamination from Meat Carcasses (Mar. 24, 1995), <http://www.usda.gov/news/releases/1995/03/0262>.

<sup>49</sup> See, e.g., USDA, Steaming Out the Salmonella Risk (Feb. 8, 2007) (quotations removed), <http://www.ars.usda.gov/is/AR/archive/oct97/steam1097.htm>.

<sup>50</sup> See, e.g., College of Biological Sciences, The Ohio State University, Guidelines for Research & Biomedical Waste Disposal (2002).

same pool of a stone, a feather, or a rusty nail—other substances unfit for consumption—will warrant only the mildest response.

In United States v. Pilgrim Market Corporation,<sup>51</sup> the government brought criminal charges against a slaughterhouse for distributing meat and poultry products that were adulterated because they were contaminated with rodent feces. The government asserted that the presence of rat feces caused the product to be adulterated because it consisted of a “filthy, putrid and decomposed substance” and “was unsound, unhealthful, unwholesome and otherwise unfit for human food.”<sup>52</sup> Rodent feces are no more of a health hazard than livestock or poultry feces and there is no logical basis for treating one as an adulterant and the other not. Meat or poultry contaminated with feces falls within the definition of “adulterated” under both the Federal Meat Inspection Act and the Poultry Products Inspection Act and should be treated as such.

Both the Federal Meat Inspection Act and the Poultry Products Inspection Act authorize USDA to declare feces an adulterant and to regulate it as such.<sup>53</sup> For example, in 1994, USDA declared that ground beef contaminated with *E. coli* O157:H7 is adulterated under the Federal Meat Inspection Act.<sup>54</sup> In 2012, USDA announced, for raw beef, a “zero-tolerance policy for six additional strains of *E. coli*.”<sup>55</sup> USDA also has declared salmonella and *L. monocytogenes* on ready-to-eat products adulterants.

By not declaring feces an adulterant and by failing to impose stringent regulations to prevent its spread, USDA is derelict in its duty to ensure a “wholesome” food supply. USDA’s reliance on educating consumers about proper handling and cooking techniques further violates the Federal Meat Inspection Act and the Poultry Products Inspection Act by allowing adulterated products to pass at inspection and placing the burden of decontaminating adulterated products on consumers. This is no way to protect public health.

To provide mandatory, and meaningful, protection to consumers, USDA should declare feces an adulterant and regulate it as such.

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<sup>51</sup> 944 F.2d 14 (1st Cir. 1991).

<sup>52</sup> Id. at 17-18.

<sup>53</sup> 21 U.S.C. §§ 463(b), 621.

<sup>54</sup> USDA, USDA Targeting Six Additional Strains of E.coli in Raw Beef Trim Starting Monday (May 31, 2012), <http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2012/05/0171.xml&printable=true>.

<sup>55</sup> Id.

## II. To Prevent Misbranding, USDA Must Amend the Mandatory Meat and Poultry Label to Disclose the Presence of Feces

The Federal Meat Inspection Act and the Poultry Products Inspection Act require USDA to protect consumers from adulterated and misbranded meat and poultry, not only through inspections at the plants, but also through officially approved labels affixed to such meat and poultry. Under the statutes, meat or poultry is misbranded if it does not bear, in addition to the official inspection legends, “such other information as the Secretary [of Agriculture] may require . . . to assure that [the products] will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the product in a wholesome condition.”<sup>56</sup> Current regulations require the application of the official inspection legend on all meat and poultry products and handling instructions on all raw meat and poultry products. In the absence of truthful disclosures regarding the presence of feces in the products, these labels are false and misleading and unduly confusing to the consumer, constituting misbranding.

The USDA inspection legend, which has been applied to meat for more than a century and to poultry since 1957, is intended to convey to consumers that meat and poultry products are wholesome and fit for eating. Consumers have become accustomed to this guarantee. Yet, the guarantee is a ruse that lulls consumers into a false sense of security about the meat and poultry they purchase and consume.

Consumers deserve truthful, unambiguous labels. Labels should disclose to consumers that USDA has not, and cannot, guarantee any meat or poultry product is free of contamination. To do so honestly and effectively, USDA should unequivocally require producers to warn of the likely presence of feces in meat or poultry.

The time is ripe for such a warning label. In the 1974 case American Public Health Association v. Butz,<sup>57</sup> the court held that USDA inspection labels on meat and poultry that had been inspected and passed were not false and misleading so as to constitute misbranding even though the products did not contain a warning about foodborne pathogens and instructions for safe handling. The court determined that a consumer education campaign was sufficient to address the problems associated with foodborne illness. In support, the court presumed that the presence of salmonella did not make meat or poultry adulterated,<sup>58</sup> that microscopic examination of meat and poultry was unrealistic, and that “American housewives and cooks normally are not ignorant or stupid and their methods of preparing and cooking of food do not ordinarily result in salmonellosis.”<sup>59</sup> Under those circumstances, the court held that warning labels were unnecessary. Present circumstances make the Butz ruling inapplicable today.

Since Butz, USDA has conducted a massive and targeted food safety campaign to inform consumers about the handling and cooking of meat and poultry products. USDA instituted a toll-

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<sup>56</sup> 21 U.S.C. §§ 453(h)(12), 601(n)(12).

<sup>57</sup> 511 F.2d 331 (D.C. Cir. 1974).

<sup>58</sup> The conclusion that “the presence of salmonella in meat does not constitute adulteration within the meaning of the [FMIA] was plainly dictum which did not reflect consideration of any factual basis or legal analysis of the adulteration provision of that Act.” Seabrook International v. Harris, 501 F. Supp. 1086, 1092 (D.D.C. 1980).

<sup>59</sup> Butz, 511 F.2d at 334.

free, nationwide food-safety hotline and conducts myriad food-safety campaigns directed at such specialized audiences as food handlers, institutions, health professionals, and at-risk populations, as well as food handlers in the home.<sup>60</sup> USDA also reversed its position that handling instructions were unnecessary, mandating their application on all raw meat and poultry products in 1994.<sup>61</sup> Additionally, USDA has imposed various microbial testing programs.

Eating habits also have changed over the decades, resulting in reduced personal control over the safety of the food consumed. Compared to their 1974 counterparts, Americans today consume more of their meals in restaurants, eat significantly more “consumer-ready” products, and prepare their own food considerably less often. Americans today consume far more meat and poultry than ever before, thereby increasing their potential exposure to fecal contamination in these products.<sup>62</sup> Thus, the circumstances relied upon by the Butz court are as far as can be from the situation today.

Given the continued unavoidable fecal contamination of meat and poultry, USDA must exercise its authority under the Federal Meat Inspection Act and the Poultry Products Inspection Act to ensure that meat and poultry labels uniformly exclude all misleading language regarding inspection and affirmatively disclose the potential presence of feces. Otherwise, current inspection labels are false and misleading under the Federal Meat Inspection Act and the Poultry Products Inspection Act, constituting misbranding.

USDA should amend sections 317.2(l)(2) and 381.125(b)(2)(i) of the Code of Federal Regulations to exclude from the current mandatory label the sentence that reads, “This product was prepared from inspected and passed meat and/or poultry.” USDA should amend sections 317.2(l)(2), 381.125(b)(2)(i), and 381.125(b)(2)(ii) of Title 9 to include in the mandatory label the following as the second-to-last sentence: “This product may be permeated with feces, which cooking does not remove.”

### **III. USDA Should Amend the Authorized Poultry Inspection Legend to Exclude the Word “Wholesome” and to Explicitly Warn About Feces**

USDA has regulatory discretion over the text of the poultry inspection legend, which currently reads, “Inspected for wholesomeness by U.S. Department of Agriculture.” Although USDA regulations proclaim that this inspection legend informs consumers that the inspected poultry is unadulterated and fit for human consumption, the USDA Food Safety and Inspection Service

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<sup>60</sup> Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products, 58 Fed. Reg. 43,478 (Aug. 16, 1993).

<sup>61</sup> Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products, 59 Fed. Reg. 14,528 (Mar. 28, 1994). In fact, USDA reversed its 1974 opinion on handling instructions to settle a subsequent lawsuit filed to enjoin USDA from affixing the official inspection legend to poultry and meat unless it was accompanied by a warning and handling label. See Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products, 58 Fed. Reg. 43,478, 43,482 (Aug. 16, 1993).

<sup>62</sup> USDA, Food Availability (Per Capita) Data System (Aug. 22, 2012), <http://www.ers.usda.gov/data-products/food-availability-%28per-capita%29-data-system.aspx>.

internet site suggests a much lower standard, namely that “the chicken is free from visible signs of disease.”<sup>63</sup> This is a new and distorted interpretation of the poultry inspection legend.

USDA should not, and cannot, affix a seal that misleads consumers. As shown above, USDA cannot assure that the poultry it inspects is unadulterated, free from fecal contamination, or wholesome. Because fecal contamination is common and even expected, USDA must amend section 381.96 of Title 9 of the Code of Federal Regulations to discontinue the use of the word “wholesome” and explicitly disclose the risk of fecal contamination. The following example inspection legends<sup>64</sup> would protect consumers from unwitting exposure to feces:



<sup>63</sup> Food Safety & Inspection Service, USDA, Chicken from Farm to Table (July 2012), [http://www.fsis.usda.gov/PDF/Chicken\\_from\\_Farm\\_to\\_Table.pdf](http://www.fsis.usda.gov/PDF/Chicken_from_Farm_to_Table.pdf).

<sup>64</sup> Establishment number P-42 appears only as an example.

## **CONCLUSION**

USDA regulations allow meat and poultry products contaminated by feces to reach consumers' dinner plates so long as the feces are not visible to the human eye. The result is that consumers purchase and consume USDA-approved products that are adulterated and misbranded, in violation of federal law. Accordingly, the Physicians Committee for Responsible Medicine hereby requests that USDA:

1. Declare feces an adulterant and regulate feces as an adulterant.
2. Amend sections 317.2(l)(2), 381.125(b)(2)(i), and 381.125(b)(2)(ii) of Title 9 of the Code of Federal Regulations such that all meat and poultry product labels uniformly disclose the presence of feces.
3. Amend section 381.96 of Title 9 of the Code of Federal Regulations to remove the word "wholesome" from the official inspection legend such that the legend reads as follows: "Inspected by U.S. Department of Agriculture."