July 7, 2011

Docket Clerk
U.S. Department of Agriculture
Food Safety and Inspection Service
Room 2-2127 George Washington Carver Center
5601 Sunnyside Avenue
Beltsville, MD 20705

RE: Not Applying the Mark of Inspection Pending Certain Test Results;

The Center for Science in the Public Interest (CSPI)¹ appreciates this opportunity to comment on the Food Safety and Inspection Service’s (FSIS) proposed change to inspection procedures of meat and poultry products, by withholding the mark of inspection until after a determination of non-adulteration.

CSPI supports the concept of test and hold, and is gratified that the Agency has begun to take a more preventive posture with regard to contamination of meat and poultry products. We recognize, however, that test and hold is but a small step forward in a complex system of food safety protocols, and has both strengths and weaknesses, as outlined below.

I. A Preventive Posture Helps Consumers

FSIS’s current practice is to allow meat and poultry products to be packaged and labeled with the mark of inspection pending receipt of tests done by FSIS. The Agency requests, but does not require, that firms maintain control of the relevant product until testing is complete. If the establishment chooses—as is its option under the current system—to introduce product into commerce while it is still being tested for adulterants, and the product is later found to have been contaminated, FSIS will request a recall of the contaminated product.

¹ CSPI is a non-profit consumer advocacy and education organization that focuses largely on food safety and nutrition issues. It is supported principally by the 900,000 subscribers to its Nutrition Action Healthletter and by foundation grants.
From 1994 to 2009, this system produced over 450 million pounds of FSIS-regulated product that was subject to recall. Of these, less than 10 percent were recovered, as illustrated in the chart below.

These recalls dramatically affect consumer confidence in the safety of the food supply. A February 2009 Harris poll found that over 60% of U.S. adults rate that the U.S. food recall process only as “fair” or “poor."

Even more significant than the loss of consumer confidence, however, is the effect that adulterated food in commerce has on public health. Of the recalls conducted over that 1994 – 2009 period, at least 180 of them were linked to *E. coli*. Another 270 were linked to *Listeria*, and at least 39 recalls were linked to *Salmonella*. These numbers indicate that a substantial amount of contaminated food made its way to the marketplace, putting consumers at increased risk from dangerous foodborne pathogens.

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2 It should be noted that some of these recalls may be formally classified as Class II recalls, which would not be addressed by this proposal.
It is likely that at least some of these recalls and the resulting outbreaks may have been avoided with a test-and-hold policy in place. This type of preventive posture is what is needed to protect consumers, and the Agency should consider other ways to expand its program to better address risks before contaminated food enters the marketplace.

II. Test-and-hold has more value with comprehensive traceback

While test-and-hold can certainly provide an additional safeguard against contaminated product entering commerce, it is not in itself an effective barrier, in part because of the complexities of meat and poultry production. Currently, once contamination is found through testing, the Agency requires immediate action to prevent the adulterated product from entering commerce, or the Agency issues a recall if the product has already left the plant. However, under normal distribution practices, lots of product are often subdivided and may be distributed to tens or even hundreds of purchasers. When contamination is detected in one of these sublots, it may compromise only a small fraction of the original lot. Since pathogenic contamination is most likely to occur before processing, adulteration of a sublot could be evidence of adulteration of the original production lot. Absent contrary evidence, products associated with the contaminated lot must be presumed to be contaminated. However, agency policy currently does not require FSIS or the implicated processor to investigate where all of the potentially
contaminated product was distributed. This loophole in traceback leaves significant amounts of potentially-contaminated product free to circulate in commerce—and leaves consumers vulnerable to outbreaks and illnesses. The Agency must consider improving its traceback activities to trace all positives back to the source—often the slaughterhouse.

III. To Make Test-and-Hold More Effective, the Definition of Adulteration Should be Expanded

The current definition of adulteration encompasses only two pathogens: *E. coli* O157:H7 and *Listeria monocytogenes*. Any changes to the inspection protocol, such as those outlined in the test-and-hold proposal, are thus necessarily limited to those declared adulterants. Unfortunately for consumers, outbreaks and illnesses conclusively linked to other pathogens in FSIS-regulated products persist. CSPI believes that the Agency must revisit the definition of adulteration and make changes to reflect emerging—and emerged—threats to public health. As such, CSPI petitioned the Agency in May 2011, to include several strains of antibiotic-resistant *Salmonella* under the definition of adulteration. These strains are currently not detected by Agency sampling protocol, nor would they be declared as adulterants when detected. Notably, however, the Agency has requested recalls of products contaminated with these strains from commerce after they have caused illness. CSPI’s petition calls on the Agency to better perform its public health mandate by adopting a preventive posture toward these strains, and declaring them as adulterants under the law. They would then be subject to the test-and-hold procedures being contemplated by the Agency, adding robustness to the program and an additional safeguard for consumers.

IV. Costs

The cost of implementing the proposed change is reasonable. FSIS estimates that the first-year industry costs will be below $2 million dollars—far less than billions of dollars U.S. industry and consumers spend related to foodborne illness outbreaks and recalls each year. The burden of holding product while awaiting test results is significantly offset by the savings in reducing the likelihood of an outbreak.

Further, this policy poses no additional operation costs for FSIS. Sampling and testing is
already part of existing inspection protocol, and notification of test results will not change under the proposal. Additionally, many establishments may already be practicing test-and-hold protocols, making the proposed change more reflective of existing procedures in the industry.

Sincerely,

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