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August 17, 2022

Sandra Eskin
Deputy Under Secretary
Office of Food Safety
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Re: Poultry Modified Line Speed Waivers

Dear Ms. Eskin,

I am writing on behalf of the National Chicken Council (NCC) to urge the Office of Food Safety and the Food Safety and Inspection Service (FSIS) to allow for establishments with existing line speed waivers additional time to comply with the information requested in the letters dated July 29, 2022, that were sent to said establishments. NCC is the national, non-profit trade association that represents chicken companies that produce and process more than 95 percent of the chicken marketed in the United States. NCC and our member companies share FSIS's commitment to not only producing safe chicken products, but also providing a safe working environment for FSIS employees and company employees alike.

We reviewed with great interest FSIS's letters to establishments with existing line speed waivers, and we are concerned with the amount of data requested, the lack of details regarding the information requested, and the specifics of the study discussed in those letters. We urge FSIS to provide establishments additional time to both obtain clarifying information to make adequately informed decisions regarding participation and to compile the vast amount of information requested. We summarize this request further in this letter, which we would also like to discuss with your office.

Letters received by NCC member companies contain three distinct dates of compliance. The first date, September 1, 2022, is the date by which establishments must agree to participate in a third-party worker safety study and agree to provide worker safety data to receive a modified waiver to continue operating at current line speeds. By this date, establishments must also provide their establishment number, confirm that the establishment continues to meet the criteria described in 83 FR 49048, and provide a point of contact for submission and participation in modified line speed waivers, if approved. We respectfully ask that the Agency extend this timeframe by 60 days – until October 31, 2022. This is necessary because the July 29, 2022, letters do not provide enough detail for establishments to make informed decisions about whether to participate in the study. For example, much of the information requested is vague or unclear and some of the information requested appears to be inconsistent with OSHA policy. Moreover, it is not clear how data submitted through the program will be managed and what confidentiality protections will apply. Additionally, FSIS has not provided specifics about the study protocol and how the data will be analyzed. This and other information are essential for establishments to determine whether to participate in this program, and without it, establishments simply cannot make adequately informed decisions.

Requiring establishments to decide whether to participate without this type of information will force establishments to make decisions without a full understanding of the parameters of the program. This will increase the likelihood of future confusion over what data should be provided, and risk establishments opting to discontinue participation in the study once more details are provided. We urge FSIS to extend the commitment date and to use this additional time to expeditiously provide additional details about the study so that establishments may make informed decisions.

The second date, September 30, 2022, is the date by which establishments must submit the requested worker safety information initially listed in the appendix of the modified line speed waiver letter. This information is very extensive and many of the parameters have no relationship to evisceration line speeds. In addition, some of the items lack specificity, so establishments may be uncertain as to exactly what the Agency is requesting. To ensure that establishments provide the exact data that is being requested, we are asking that the Agency also extend this date by 60 days – until November 30, 2022. Again, this will allow the industry time to both obtain clarification from the Agency as well as the much-needed time to assimilate the information in a meaningful and organized manner.

The final date, November 1, 2022, is the date by which establishments are to provide the last four years of “ongoing” worker safety-related data also found in the appendix of the letter. These parameters also lack details and industry would benefit from clarity so that establishments can provide the correct information on the first submission to avoid back-and-forth discussions between those establishments and FSIS. This will help streamline the process as well as work to save valuable time and resources for the industry and the Agency alike. Moreover, companies maintain information in various formats, platforms, etc. Asking the industry to accumulate four years of historical information is a significant undertaking – particularly for those large establishments with thousands of employees. It will take months to identify, collate, and review for personally identifiable and other sensitive information in the four years of historical information. Therefore, we request that the Agency also extend this date by 90 days – until February 1, 2023.

Given the importance of this issue to both our members and the Agency, we would like to request a meeting with your office to discuss these requests further. Critically, establishments need both additional time to make decisions and assemble data as well as further clarity as to what the study will entail and what specific data is being requested. For example, we would like to better understand how this information will be used, who will have access to the information, and how the Agency plans to keep the information confidential. Much of this information will be extremely sensitive in nature and will constitute personally identifiable information, medical information, and confidential commercial information. Industry needs to understand how such sensitive data will be handled. Moreover, the requested data is very extensive and covers plant operations well beyond the evisceration line, which is the only part of the plant impacted by line speed waivers. It is unclear why this extensive information is necessary for this study and additional clarification on this information request would be appreciated. In addition, FSIS’s letters could be read as requesting information that ordinarily would be provided to OSHA only under very limited circumstances and through special procedures to protect patient confidentiality, which also requires clarification. Further, basic scientific principles require that study parameters be fully designed before data is analyzed, but establishments have not been provided the actual study protocol. No establishment should be expected to decide whether to contribute data to a study without understanding precisely how that data will be analyzed, how establishment safety will be evaluated, and how success and failure are defined in the study. Finally, we would appreciate the opportunity to further discuss the scope of the information, why the information that is being requested from the chicken industry is much broader than that information requested of the swine industry, the reference to previous OSHA citations, and more.

We believe that a discussion on these matters will help provide the industry much-needed clarity and allow the industry to make informed decisions regarding next steps. We would be pleased to follow up with your office to coordinate such a meeting.

Thank you for your consideration, and please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ashley B. Peterson".

Ashley B. Peterson, PhD
Senior Vice President, Scientific and Regulatory Affairs
National Chicken Council

cc. Paul Kiecker, FSIS Administrator
Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development
Dr. Phil Bronstein, Assistant Administrator, Office of Field Operations