



Consumer Federation of America

August 15, 2017

The Honorable George “Sonny” Perdue III
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Re: Eligibility of the People’s Republic of China (PRC) To Export to the United States Poultry Products From Birds Slaughtered in the PRC [Docket No. FSIS–2016–0002]

SUBMITTED VIA REGULATIONS.GOV

Dear Secretary Perdue:

The Consumer Federation of America (CFA) appreciates the opportunity to submit these comments on the above-referenced proposed rule to allow export to the United States of poultry products (“Chinese chicken”) from the People’s Republic of China (“China”). We strongly urge you to abandon this rulemaking, and to rescind your earlier eligibility determination allowing exports of cooked chicken products from China made from raw chicken sourced in other countries.

Despite the agency’s claims to the contrary, Chinese insistence on a *quid pro quo*, demanding access to the United States for Chinese chicken in exchange for reopening its markets to U.S. beef imports, has exerted an inappropriate influence on this rulemaking process. China continues to experience high-profile food safety problems, and the country’s food safety system is in a state of flux. Indeed, this equivalence determination is predicated on a promise to adopt a “demo” inspection system rather than evaluation of the system that is actually in operation, as FSIS regulations require. To comply with its legal mandate and to protect American consumers, FSIS should start over. A new review of China’s application for eligibility should be based on a broader range of establishments and government offices, and the actual practices in the country, rather than what Chinese authorities propose to do once eligibility is granted.

China’s food safety problems are systemic.

China’s ongoing saga of food safety scandals makes clear that poultry products, and food in general there, are not “subject to inspection, sanitary, quality, species verification, and residue standards,” nor “processed in facilities and under conditions,” that “achieve a

level of sanitary protection equivalent to that achieved under United States standards.”¹ Rather, the latest food safety news out of China suggests deep-seated problems that will only resolve slowly, if ever, with broad cultural change.

Most recently, Chinese officials report having found more than 500,000 food safety violations in just the first nine months of 2016, including intentional adulteration of foods with industrial gelatin and counterfeit salt.² These violations fit a pattern that has persisted since FSIS first cleared China to export poultry to the United States in 2006. In 2007, imports of melamine-contaminated pet food from China killed at least 16 cats and dogs in the United States. In 2008, melamine-contaminated baby formula and milk products killed at least six Chinese infants and caused the hospitalization of some three hundred thousand others.³ In 2012, frozen strawberries imported from China infected over 11 thousand children in Germany with Norovirus.⁴ In 2014, a major meat processor supplied Chinese outlets of McDonald’s, KFC, Pizza Hut, Starbucks, and Burger King with expired and rotting meat.⁵ In 2016, the U.S. Food and Drug Administration reported that Chinese origin chicken, duck and sweet potato “jerky treats” have been associated with the deaths of more than 1,140 dogs in the United States.⁶

The susceptibility of even sophisticated corporate buyers to food fraud in China reflects the deep-seated nature of the country’s food safety problems. The enormous Chinese market is highly fragmented, and “barcode tracking systems” that are common in the United States and Europe, “are largely absent” in China. As a result, even multinational corporations like Walmart and Heinz have struggled to maintain the integrity of their supply lines.⁷ Indeed, a recent report by the Institute of Food Technologists, examining the food traceability regulations of 21 countries, ranked China at the bottom, with a grade of “poor,” the only country to receive such a designation.⁸

To its credit, in recent years China has adopted new legislation, regulations, and policies to improve its dismal food safety record. This reform activity, however, only underscores how far the country’s food safety inspection system falls short of “equivalence.” For example, earlier this summer, Chinese officials announced a sweeping new meat safety rule that aims to establish “demonstration” supermarkets in each town and municipality, with “higher standards of food safety and traceability,” a designation expected to support significant price premiums “given consumer concern in China over food safety.”⁹ By contrast, the United States meat and poultry inspection system has long provided assurance to consumers that *all* meat and poultry sold in stores is safe to eat. Basic food safety

¹ 21 U.S.C. §466(d)(1)(A)&(B).

² <http://www.reuters.com/article/us-china-food-safety-idUSKBN14D046>

³ The toll of the tainted milk outbreak was exacerbated by Chinese central government’s efforts to gag any reporting of “negative” news in the run-up to the Olympics.

<https://www.usnews.com/news/world/articles/2008/10/09/the-story-behind-chinas-tainted-milk-scandal>

⁴ <http://shanghaiist.com/2012/10/12/contaminated-strawberries-from-chin.php>

⁵ <https://www.usatoday.com/story/money/business/2014/07/21/mcdonalds-kfc-china-scandal/12929885/>

⁶ <https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm500776.htm>

⁷ <http://www.businessinsider.com/r-heinz-recall-brings-food-tracking-issue-to-the-fore-in-china-2014-8>

⁸ <http://onlinelibrary.wiley.com/doi/10.1111/1541-4337.12101/full> (Russia was not given a ranking because of insufficient data).

⁹ <http://www.globalmeatnews.com/Safety-Legislation/China-rolls-out-meat-safety-rule>

assurances are not for sale, they are a right.¹⁰ Sadly, this is not the case in China.¹¹

Throughout this process, FSIS has failed to conduct a frank assessment of the Chinese poultry inspection system's "equivalence."

The history of this rulemaking makes clear that a better process is needed to protect consumers from adulterated meat and poultry from abroad.¹² As noted above, this rule is best understood as a response to China's decision in 2003 to close its borders to American beef imports following the detection of a cow in Washington state that tested positive for bovine spongiform encephalopathy or "mad cow" disease. China has sought to export poultry to the United States since 2004, and FSIS has sought to accommodate those ambitions, despite congressional opposition and glaring evidence that the Chinese meat and poultry inspection system does not measure up to U.S. standards.

In 2004, FSIS somehow concluded that Chinese poultry inspection "laws, regulations, control programs, and procedures were equivalent to those of the United States," even though on-site audits later revealed that the Chinese system relied on company employees, rather than government inspectors, to screen animals for disease before and after slaughter.¹³ Despite that fundamental discrepancy in the inspection of slaughter establishments, in 2005, FSIS made the determination that China's inspection of processed poultry was equivalent to the United States', and later that year, it proposed a rule to allow the country to export processed poultry to the United States, so long as the poultry came from birds slaughtered in a country approved to export raw poultry to the United States. A few months later, FSIS finalized the proposed rule, just days after then Chinese president Hu Jintao met with President George W. Bush at the Whitehouse. Congress intervened to stop the process, but China convinced a World Trade Organization panel that the intervention was "arbitrary or unjustifiable,"¹⁴ a ruling that dissuaded further legislation.

In the meantime, hundreds of thousands of melamine poisoned babies and other food safety catastrophes had led China to pass a new food safety law, and FSIS inspectors

¹⁰ Some evidence indicates that consumers may accrue a food safety benefit—specifically less exposure to antibiotic resistant foodborne pathogens—by spending more on organic or "no antibiotics ever" meat and poultry products. See, e.g., Sapkota et al., "Lower prevalence of antibiotic-resistant Salmonella on large-scale U.S. conventional poultry farms that transitioned to organic practices." *Science of the Total Environment* (Apr. 2014); Kempf et al. "Campylobacter coli in Organic and Conventional Pig Production in France and Sweden: Prevalence and Antimicrobial Resistance." *Front. Microbiol.* (May 2017). Prohibitions on pesticides and other chemicals, which recent polling has shown to be a primary motivator of organic purchases, are associated with long-term health impacts. See, e.g., "Americans are eating more organic food than ever, survey finds." *StarTribune* (May 24, 2017), <http://www.startribune.com/americans-are-eating-more-organic-food-than-ever-survey-finds/424061513/>. Other polls confirm that avoiding acute illness, however, is not a significant consideration in where American consumers shop. See, e.g. Food Marketing Institute. *U.S. Shopper Trends, 2016* (noting that ninety-four percent of shoppers trust their grocery store to ensure that the food they purchase is safe).

¹¹ According to a March 2015 survey by the China Food and Drug Administration (CFDA), "75 percent of Chinese have no confidence in domestic food safety." <https://www.cnbc.com/2015/06/30/food-fight-the-next-battle-for-china-e-commerce.html>

¹² See generally Citizen Petition of Food & Water Watch (Jan. 19, 2011), https://www.fsis.usda.gov/wps/wcm/connect/c3a47213-4b40-4507-9348-530656c4140f/Petition_Food_Water_Watch.pdf?MOD=AJPERES.

¹³ Proposed rule at 27626.

¹⁴ https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds392sum_e.pdf

conducted on-site audits in 2010 “to determine whether FSIS could reaffirm that [China’s] food safety system governing poultry processing is equivalent to that of the United States.” They could not. Among the obstacles to such a determination: a largely provincial, rather than national, inspection system, and reliance on private, establishment-paid inspectors in the processing facilities. How these obstacles failed to prevent FSIS from making its earlier equivalence determination is mind-boggling. FSIS had noted that slaughter inspectors were establishment employees in its 2005 audit, but nevertheless pushed ahead with greenlighting processed imports from foreign sourced chicken. In any event, China pursued “corrective actions” and FSIS conducted more verification audits in 2013, which eventually led to another conclusion that the Chinese poultry processing inspection system is equivalent, but not the slaughter inspection system.

The 2013 determination once again paved the way for Chinese firms to buy raw poultry from the U.S. or another country approved to import poultry here, and export it back to the United States after cooking it. No company pursued this strategy, however, despite historically low global shipping costs. In May of 2015, FSIS conducted another round of audits and at long last recommended “moving forward with the proposed rulemaking process for poultry slaughter equivalence.” The Obama Administration did not move immediately act on the recommendation. However, soon after President Trump met with Chinese president Xi Jinping, a joint release from the Secretaries of Commerce and Treasury announced:

The United States and China are to resolve outstanding issues for the import of China origin cooked poultry to the United States as soon as possible, and after reaching consensus, the United States is to publish a proposed rule by July 16, 2017, at the latest, with the United States realizing China poultry exports as soon as possible.

FSIS moved ahead of schedule in publishing this rule on June 16. Shortly thereafter, the Qingdao Nine-Alliance Group exported the first shipment of processed Chinese chicken, made from Chilean chicken, to the United States.¹⁵

The proposed rule would pave the way for the export of raw chicken from China, should USDA’s Animal and Plant Health Inspection Service (APHIS) reclassify China’s animal health risk. The APHIS restrictions are intended to protect domestic poultry producers from disease that tends to wipe out entire flocks. By recent counts, however, the H7N9 bird flu virus has killed 281 people in China since last October.¹⁶ According to the CDC, infection with the H7N9 virus typically occurs “after close contact with infected birds (both live and dead) or exposure to environments contaminated with bird flu virus, such as visiting a live poultry market” and “[t]here has been no evidence of increased person-to-person transmission of H7N9 virus.” Nevertheless, the CDC cautions that “the H7N9 virus

¹⁵ Caitlin Dewey. “The Dark Side of Trump’s much-hyped China trade deal” *Washington Post*, (July 7), https://www.washingtonpost.com/news/wonk/wp/2017/07/07/the-dark-side-of-trumps-much-hyped-china-trade-deal-it-could-literally-make-you-sick/?utm_term=.983778ff42bb (“The first known shipment of cooked chicken from China reached the United States last week, following a much-touted trade deal between the Trump administration and the Chinese government.”).

¹⁶ <http://www.shanghaidaily.com/nation/Death-toll-from-bird-flu-raises-concerns/shdaily.shtml>

continues to have the greatest potential to cause a pandemic of known emerging influenza A viruses . . .”¹⁷

The likelihood that such a pandemic affects American consumers is hard to measure, but it seems only likely to increase with the importation of raw meat from poultry infected with bird flu virus. Bird flu, moreover, is not the only pathogen of concern associated with raw poultry from China. Researchers continue to discover new “superbugs” born out of the rampant overuse of antibiotics in Chinese animal agriculture.¹⁸ Unfortunately, FSIS has not directly addressed such concerns in this evaluation. American consumers worried about superbugs and avian flu, not to mention other risk factors associated with raw Chinese poultry, may soon have to rely on restrictions designed to protect animals.

FSIS has failed to provide adequate assurance that Chinese poultry achieves an equivalent “level of sanitary protection.”

The Poultry Products Inspection Act requires that imported poultry meet standards that are as rigorous as those that apply to domestic products. Specifically, the law requires that:

[A]ll poultry, or parts or products of poultry, capable of use as human food offered for importation into the United States shall—

(A) be subject to inspection, sanitary, quality, species verification, and residue standards that achieve a level of sanitary protection equivalent to that achieved under United States standards; and

(B) have been processed in facilities and under conditions that achieve a level of sanitary protection equivalent to that achieved under United States standards.¹⁹

FSIS has implemented this law with a regulatory scheme that allows foreign governments to certify a subset of establishments as having met U.S. equivalent standards.²⁰

This means that FSIS may authorize poultry imports from countries where the vast majority of slaughter establishments are not inspected by government officials, nor subject to microbiological and residue testing, nor required to operate a Hazard Analysis and Critical Control Point (HACCP) system, nor required to comply with any other fundamental food safety controls. Rather, the equivalence determination is based only on the rules that apply to establishments certified for export to the United States. Therefore, the FSIS equivalence determination process disregards whether the standards applicable to most Chinese poultry establishments, and the conditions in those establishments, give rise to serious food safety risks. In fact, the available evidence indicates that the standards between Chinese poultry establishments producing for export versus domestic market are drastically different. For example, Chinese food safety laws do not appear to require government inspectors at

¹⁷ <https://www.cdc.gov/flu/avianflu/h7n9-faq.htm>

¹⁸ <http://www.cidrap.umn.edu/news-perspective/2017/06/new-colistin-resistance-gene-identified-china>

(“Up until recently, colistin was widely used in Chinese agriculture, and MCR-1 is thought to be a product of selection pressure caused by that use. China banned use of the drug in animal feed in 2016, based in part on the discovery of MCR-1.”).

¹⁹ 21 U.S.C. §466(d)(1)(A)&(B).

²⁰ See 9 C.F.R. § 381.196.

domestic poultry slaughter establishments, but rather only those establishments producing poultry for export to the United States. So long as the standards applicable to certified export establishments approximate those of U.S. establishments, however, FSIS will sign off.

This dichotomy raises several concerns. First, fraud or even poor recordkeeping may result in imports of poultry from non-certified establishments entering the United States, despite the absence of basic safeguards like inspection by government employees and standard microbiological testing. Second, the existence of a parallel, less rigorous food safety inspection system seems bound to undermine strict adherence to the requirements that apply only to certified export establishments. Third, there are spillover effects of poor food safety controls at non-export certified firms. For example, overuse of antibiotics in food animals and inadequate residue and pathogen testing across the food system in China have heightened the risk of antibiotic resistant bacteria even at establishments with comparatively rigorous controls.²¹

Finally, once FSIS has added China to the list of approved countries, the Chinese government would be authorized to certify as many establishments as it sees fit for export to the United States. If food safety controls break down at those establishments, few safeguards are available to American consumers. FSIS re-inspection at U.S. ports-of-entry is limited in its scope and coverage, with only a small subset of imported products subjected to pathogen and residue testing.²² FSIS has also indicated that it would conduct “annual scheduled audits” to verify that the Chinese government is applying U.S. requirements in certified establishments, should this rule become final. However, recent experience indicates that such audits would take place much less frequently.²³ This rule is based on just five poultry slaughter establishments that China intends to certify for export to the United States. The failure to incorporate a more holistic view of China’s poultry inspection system casts serious doubt on FSIS’ capacity to assure a “level of sanitary protection equivalent to that achieved under United States standards” as China certifies more establishments.

The Equivalence Determination fails to comply with FSIS’ own regulations

FSIS regulations allow importing countries to apply looser standards to establishments that are not certified for export to the United States. They do not, however, contemplate that looser standards may apply to a certified establishment depending on which market it happens to be producing for at a given moment. Rather, the regulations require “complete separation” of certified establishments and “maintenance of a single standard of inspection and sanitation throughout all certified establishments.”²⁴

²¹ <http://www.cidrap.umn.edu/news-perspective/2017/06/new-colistin-resistance-gene-identified-china>

²² According to FSIS’ 2017 Residue Sampling Plans, the agency “intends to collect approximately 1,100 import samples, similar to FY 2016,” to detect violations among over 4 billion pounds of meat imports. See <https://www.fsis.usda.gov/wps/wcm/connect/1808d9c3-414f-4019-a31c-8454854ab66e/2017-Blue-Book.pdf?MOD=AJPERES>

²³ See F&WW Letter to Secretary Tom Vilsack (Jan. 28, 2016), https://www.foodandwaterwatch.org/sites/default/files/vilsack_equivalency_letter_jan_2016_1.pdf (noting lack of clear policy on how frequently FSIS conducts on-site audits and apparent decision to reduce frequency from once a year to once every two or three years.).

²⁴ 9 C.F.R. 381.196(a)(2)(ii)(E).

This means that certified establishments may not, among other things, run at line speeds that exceed FSIS regulations when they are producing chicken destined for non-U.S. markets. However, shortly after FSIS conducted its audit of the single chicken slaughter facility upon which this determination is based—Cargill Animal Protein Co. Ltd. in Chuzhou, Anhui (“the Cargill plant”)—a trade journal reported that the establishment was processing chicken at line speeds far exceeding the FSIS caps.²⁵ In response, FSIS told consumer groups:

“After the equivalence determination has been finalized and the final rule published, FSIS will require that the [Chinese central competent authority] ensure that the establishment modify its production rate to meet our standards.”²⁶

The response implies that FSIS may determine a country’s eligibility to import poultry into the United States on the basis of how the country plans to run its inspection system, not how it actually does so. However, the rules indicate otherwise.

In particular, the rules provide that “[d]etermination of eligibility is based on a study of the documents and other information presented and an initial review of the system *in operation* by a representative of the Department using the criteria listed in paragraphs (a)(2)(i) and (ii) of this section.”²⁷ The referenced criteria include requirements related to post mortem inspection of carcasses, which line speed caps are meant to accommodate, and separation of certified establishments. In other words, the equivalence determination must be based on a review of whether the foreign government is *currently operating* a system that ensures adequate post-mortem inspection at certified establishments, and that employs a single standard of inspection and sanitation at certified establishments, among other requirements.

By contrast, this equivalence determination is based on review of a sort of demonstration of inspection procedures and standards that apparently will only be adopted once China receives authorization to send poultry to the United States. The 2015 FSIS audit report, and in particular its observations at the Cargill plant, make this clear. On the one hand, it describes how “[p]ost-mortem inspection is being performed in accordance with [requirements] that each government inspector inspect the carcass, viscera, and outside of the birds with the assistance of a mirror, at a line speed of 35 birds per minute.” But it also appears to acknowledge the absence of a fixed standard by concluding that the establishment “is capable to adjust their operations to meet Chinese regulatory requirements pertaining to importing countries requirements, including those of the United States,” and “that the establishment is able to meet FSIS finished product standards.”²⁸ The regulations, however, do not direct FSIS to assess whether a country is capable of implementing an effective

²⁵ *Poultry World*. “Cargill’s new processing plant running in China” (Mar. 9, 2016), <http://www.poultryworld.net/Meat/Articles/2014/9/Cargills-new-processing-plant-running-in-China-1600450W/> (“The plant is now running at its full design speed of 13,500 bph / 225 bpm.”). By contrast, FSIS does not allow line speeds to exceed 35 bird per minute (bpm) per inspector, or 140 bpm under a standard operating layout.

²⁶ July 13, 2016 email from Greg DiNapoli, FSIS to Thomas Gremillion (on file with author).

²⁷ 9 C.F.R. 381.196(a)(2)(iii)(emphasis added).

²⁸ <https://www.fsis.usda.gov/wps/wcm/connect/bd2f2159-63b2-4846-a738-7983f38f297f/2015-China-Slaughtered-Poultry-FAR.pdf?MOD=AJPERES> at 18.

inspection system, but whether the country *has* an effective inspection system. This determination therefore lacks an adequate legal basis.

Conclusion

For the reasons above we urge you to rescind FSIS' earlier determination that China meets eligibility requirements for importation of processed poultry and to abandon any rulemaking to authorize imports of raw or processed poultry from China until the Chinese government has given credible assurances that its food safety standards are actually equivalent to those of the United States.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Gremillion', with a stylized flourish extending to the right.

Thomas Gremillion
Director, Food Policy Institute
Consumer Federation of America