INSTITUTE FOR AGRICULTURE AND TRADE POLICY
COMMENTARY

About Rod Leonard

Rod Leonard is a former IATP board member and special assistant to U.S. Department of Agriculture Secretary Orville Freeman.

About IATP

Institute for Agriculture and Trade Policy works locally and globally at the intersection of policy and practice to ensure fair and sustainable food, farm and trade systems. IATP is headquartered in Minneapolis, Minnesota with an office in Washington D.C..

The USDA plan for deregulating and privatizing meat and poultry inspection: A short history

MINNEAPOLIS, DECEMBER 5, 2013 — In early November, the European Commission (EC) posted on its website a report evaluating Australian meat inspection. The upshot of the report will be to ban imports of Australian beef, pork and lamb because Australia allows companies producing meat products to also inspect them for safety. A Food and Water Watch press release alerted the U.S. public to the EC decision.

The EC said the Australian policy creates a conflict of interest that violates EC regulations that inspectors "have no direct commercial interests in the animals or products being certified." The decision was an outcome of a May 2012 audit of Australia's meat inspection system that had adopted new procedures and policies in 2011 that represented the introduction of "equivalency" in global standards of trade.

The U.S., for example, had certified the privatized Australian system in 2011 as equivalent to U.S. rules that meat and poultry carcasses must be inspected and approved as safe by federal inspectors. Australian transferred inspection to industry based on earlier changes in global standards that said national policies could differ on food safety measures but still be equivalent.

The EC decision to reject the Australian application of equivalency surprised Australia but shocked the U.S. The reason for the shock? Not only has the U.S. approved the Australian decision to rely on company employees to inspect and certify meat as safe, but the Obama administration is also ready to adopt the Australian system in the U.S. for chicken and poultry.

In effect, food safety standards adopted over a century ago are being proposed to be changed without review and discussion by the American people. Food safety is not a difficult issue. Food safety in meat and poultry in the U.S. is based on a simple concept: Inspection verifies that industry and government food safety management programs are working to protect consumers.

Meat and poultry food is produced and processed in thousands of plants owned by hundreds of individual companies and corporations. The products that enter the marketplace are considered by U.S. regulators as uniformly safe—i.e., equally safe—because of federal inspectors who work in those plants daily, inspecting those products before they leave the plant. The concept is boots on the ground, as in infantry and police, and the purpose is to protect the American people from disease, illness and injury.

The concept of equal protection originated in the U.S. Department of Agriculture (USDA) shortly after the 20th century began, and its demise was initiated there just as the 20th century was ending. The demise began seemingly as wordplay, substituting the word "equivalent" in food safety standards for "equal," a casual argument to divert attention from the real goal of deregulating and privatizing food safety. The deregulation goal has been the steadfast mission of every president since Ronald Reagan, of Bush, father and son, of Clinton and now of Obama.

A Government Accountability Office (GAO) report in August and a USDA inspector general audit in May are the latest in more than a decade of performance audits of U.S. meat and poultry safe management to give deregulation and privatization of inspection a failing grade.[1] Despite these harsh critiques, the USDA has announced it will expand its pilot program for privatized inspection of poultry.[2] How did we get to this point in U.S. food safety history?

No President was more zealous than Clinton in creating food safety policies based on equivalency that increase the risk of illness and death from contaminated food. Deregulation that undermined the concept of equal protection was proposed in 1996 midway in the Clinton presidency as the basis for domestic policy. Changes in domestic food safety were preceded in 1994 early in the Clinton era by forceful U.S. government support for an international standard governing food safety in global trade policy to replace equal protection with "equivalent" protection. The international standard would be used to justify the domestic policy revolution.

In 1994, the Codex Alimentarius Commission, the international body defining standards for foods, food additives and regulatory terms globally, said national policies on food safety should be equivalent but need not be equal in food safety process and outcomes. Codex explained that every country shared the equal objective of safe food for its citizens but each country could reach the goal through different but equivalent measures.

The issue of equivalent production methods and procedures are not the same as the question of equal standards of safe food. To claim otherwise is an audacious attempt to assume the purposes of production methods are a perfect substitute for the objectives of public health policy. Even more puzzling is that while USDA's Food Safety Inspection Service (FSIS) may impose its requirement for equivalency on nations exporting meat and poultry to the U.S. as the price for entering U.S. markets, the agency has no legislative authority to adopt equivalency as the basis of food safety policy in the U.S.

As the global norm in food safety, however, "equivalence" was intended to start the race to the bottom of food safety standards globally.

If the reality was not obvious to American observers in 1994, the conclusion was inescapable when the FSIS declared in 1996 that it would change food safety standards guiding U.S. meat and poultry inspection for the past century. Henceforth, FSIS said the meat and poultry industry was expected to offer for inspection only those products that would pass inspection. Further, FSIS said the agency would leave to company discretion the methods, procedures and measures to process meat and poultry, nor would FSIS offer any guidance on these matters. Each company would adopt its own policy and operational manual.

FSIS assured the public that the new policy was science based, and would supplement current inspection programs for red meat and poultry, but not replace the inspection policy required by federal statute. Federal inspectors would continue to examine each carcass individually, and inspectors would be assigned daily to be the cop on the block, to work in each plant. Every carcass or product would leave a plant with the USDA seal of approval.

This assurance notwithstanding, the writing was on the wall. Federal inspectors would become redundant in the equivalence framework. Inspection would be given to products already approved by company employees in an equivalent system as meeting U.S. food safety standards, redefining Federal inspection as a task of observing company employees as they work. The meat and poultry industry would be accorded the rights and privileges of sovereign nations to regulate food safety. In fact. FSIS would look at, but not judge or regulate the operational features of individual plants, or company policies.

All along FSIS has touted the benefits of deregulation and privatization, estimating earlier this year that the agency operating budgets could be reduced by $100 million annually and industry profits improved by as much as $300 million a year.[3] When put in terms of normal budget conventions of a 10-year framework, FSIS is promising the White House and Congress savings of $1 billion in federal budget costs and the meat and poultry industry $3 billion in additional profits.

The only problem with agency speculation, of course, is whether the cost to public health will exceed projected government savings and industry profits and whether the purpose of food safety policy is to evaluate government spending in terms of industry goals and objectives. FSIS has already telegraphed its bias to foster industry goals by touting savings of deregulation that assume a substantial increase in poultry production line speeds, in raising hourly meat and poultry output while decreasing federal inspection.

Based on the time honored survival practice of not surprising the president, or congressional leaders especially, FSIS was confident the White House and Congress supported (or did not oppose) deregulation. However, since the term deregulation had studiously been absent in any public discussion of food safety, FSIS feared that legislation to recognize company employees as equivalent to federal inspectors as the standard for U.S. food safety would be strongly opposed by the American public.

Defeat of equivalency, or deregulation, would raise a more dreaded question: Why is the U.S. allowing the domestic sale of meat and poultry from abroad that is produced under standards not equal to those for American producers? The only option for FSIS and USDA (and the White House and congress) to answer the question was to change U.S. standards while denying the intent of momentous change.

In 1996, FSIS said it was modernizing food safety programs for meat and poultry in the U.S. by adopting Hazard Analysis Critical Control Point (HACCP).[4] Although the nomenclature was new, the system had long been used in production plants of informally managing critical locations that were likely sources of food contamination. FSIS said it was testing a new system called HACCP-based Inspection Model Production (HIMP) to operate initially in poultry slaughter plants before being extended to beef and pork. If HACCP puts a new gloss on old practices, everything was new about HIMP.

Under HIMP, most federal inspectors would be replaced by company employees who would inspect carcasses for contamination and evidence of disease conditions. The remaining federal inspectors would observe company inspectors and examine carcasses approved by industry as meeting U.S. standards. Those products would be sold in the marketplace with the USDA seal of approval as safe. Hourly output levels would rise substantially, allowing production to materially increase while claiming stable health risks. FSIS said HIMP would be adopted after pilot projects in beef, pork and poultry plants were completed demonstrating the feasibility of future regulation.

Almost immediately rain began to fall on the parade to equivalency. The union of organized federal employees and a lone consumer advocacy organization as plaintiffs filed a lawsuit asking the Federal courts to enjoin, or stop, the HACCP/HIMP initiative.[5] HIMP violated Federal statutes creating U.S. food safety policy that required federal inspectors to be present during daily operations in plants to examine and approve individual carcasses as safe and wholesome to consume, the plaintiffs said.

A legal battle ensued over the next five years in the District of Columbia Circuit Court as the case bounced back and forth between the District Court and the Circuit Court of Appeals. The District Court judge, sympathetic to government agency powers, held that USDA had the obligation to propose actions to benefit the public and the legal authority to act. The District judge rejected the plaintiff argument, holding the law was vague and did not clearly define inspection or specify who would perform inspections.

The plaintiffs appealed. A three-judge panel of the appeals court in Washington, D.C. reversed the district court decision, noting, "The government does not deny that since 1907 "inspection" has been taken to mean an organic examination of the carcass. Now the government tells us a federal employee has performed an inspection of the carcass when he has watched the kind of

examination, organic or otherwise, that is necessary to determine whether the carcass is fit for human consumption….in other words, the government believes that federal employees fulfill their statutory duty to inspect by watching others perform the task. One might as well say umpires are pitchers because they carefully watch others throw baseballs. The statutes clearly contemplate that when inspections are done, it will be federal inspectors—rather than private employees—who will make the critical determination whether a product is adulterated or unadulterated. To the extent federal employees are doing any systematic inspection under HIMP they are inspecting people not carcasses."[6]

The district court judge responded angrily, perhaps feeling bruised by the sarcastic humor of the appeals court. He implied the appeals court did not fully understand the intent of HIMP was to address the problem of pathogen organisms in red meat and poultry, a new and unforeseen risk that was not present when organoleptic, i.e., physical, inspection was adopted as a policy, but is not effective in identifying bacterial contamination. Somewhat mournfully, the District court noted that any rule making is subject to judicial review, and if the HIMP project fails to support deregulation "the reviewing court will have full power to act."

The five-year legal battle was a muddled draw. The appeals court ruling that inspection of carcasses by federal inspectors remains the law, and that company employees are not inspectors. But the determination of the district court to allow HIMP as a test for future food safety standards means FSIS retains the authority to propose how the law should be interpreted.

The lawsuit put HIMP in the headlights, warning that deregulation was not a slam dunk. If FSIS wanted to proceed further, the case for HIMP would need to be sheathed in heavy statistical armor coupled with an argument based on carefully evaluated scientific data. The long delay of 15 years between the litigation beginning in 1997 and the anticipation in 2013 of a renewal of HIMP regulatory proposals suggests FSIS may have been carefully preparing its case.

Two recent, aforementioned assessments of HIMP pilot projects suggests otherwise. One is a report from USDA Office of Inspector General (OIG), an agency of the Office of Secretary created to warn the secretary when and if USDA agencies are malfunctioning. The other is the Government Accountability Office (GAO), an agency of Congress, authorized to evaluate Federal programs operating with questionable competency. The GAO report, citing a significant number of HIMP deficiencies, said the poultry test was not designed to produce statistical information capable of determining whether the regulatory proposal could provide equivalent, if not better, levels of food safety than current chicken slaughter plants not in the test program.

The OIG report raised profound concern about FSIS management itself, noting that FSIS had never conducted a pilot program of hog plants promised to the Federal court in 1997 because FSIS later concluded its study would not produce statistical data powerful enough to support proposed HIMP regulations. Further, OIG found that three of the 10 plants planned for the HIMP swine evaluation were cited as among the swine slaughter plants with the most violations of food safety rules.

Embarrassingly, these reports also identify a profound gap in what the secretary of agriculture and the president are being told. Several days before the GAO and OIG evaluations were released, Dr. Elizabeth Hagan, USDA undersecretary for food safety, told Food Chemical News that the pilot studies had produced results that USDA is comfortable with and confident in.[7] Hagen's judgment provides neither reason for confidence in the leadership of USDA nor assurance that the health and safety of the American people are in good hands.

HACCP/HIMP is a failure of epic proportions. Its continued implementation poses a threat to food safety. Deregulation and equivalency are in conflict with U.S. food safety policy, while FSIS has lost the capacity to regulate a 21st century meat and poultry industry or lead an experienced and dedicated team of federal inspectors.

This conclusion was emphatically, if inadvertently, endorsed this month by FSIS when the agency hoisted itself on its own petard in the ongoing case of Foster Farms, a California chicken processor. The company operates three processing plants that have produced salmonella-contaminated chicken since March 2013, linked to food poisoning outbreaks in 18 states. Only in October 2013 did FSIS acknowledge that nearly 300 people—40 percent of whom were hospitalized—had been sickened by poultry sold under the Foster label or under labels of other retailers, warning consumers to handle or cook poultry properly.

FSIS said it could do no more than blame consumers if they are sickened by Foster Farm products because the law prevented the agency from requesting or ordering a recall. The agency said it had negotiated an agreement with Foster to modify its processing methods, but only after threatening to pull Federal inspectors from the company's processing plants.

Oddly, the same action could have insured the absence of Foster products from the 17 states where consumers were sickened by contaminated chicken at any time over the previous seven months. FSIS refused to reveal the details of the agreement with Foster, claiming the information was privileged communication of proprietary information. For its part in this charade, Foster has refused to voluntarily recall the contaminated chicken, citing the agreement with FSIS that allows its three plants to remain open, urging consumers to handle and cook chicken properly.

Rather than grasp the Foster case as an opportunity to demonstrate the agency retains its historic commitment to protecting food safety and the public health, FSIS and USDA have chosen to obscure vital public information, welcome inaction and accept a mission as a servant of industry.

The Foster case raises the question implicit in the GAO and OIG reports: is this the time to reevaluate management goals and performance? After 15 years of failed effort to deregulate food safety programs and policy, is this the best of the brightest?

Endnotes

1. U.S. Government Accountability Office, "More Data and Disclosure Needed to Clarify Impact of Changes to Poultry and Hog Inspections", GAO-13-775, August 2013 and USDA Office of the Inspector General, "Food Safety and Inspection Service – Inspection and Enforcement Activities at Swine Slaughter Plants." Audit report 24601-0001-41, May 2013.
2. Amber Healy, "FSIS using outdated, incomplete information to support HIMP expansion, GAO says," Food Chemical News, September 6, 2013.
3. Statement of Alfred V. Almanza, Administrator, Food Safety and Inspection Service, Before the Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, March 13, 2013.
4. The Pathogen Reduction [HACCP] System Final Rule, 61 Fed. Reg. 388807 (July 25,1996)
5. AFGE v. Glickman, No.98-0893, Memorandum and Order (DDC. January 17, 2011)
6. AFGE v. Glickman, 215 F.3d 7 (D.C.Cir.2000)
7. Amber Healy, "OIG slams FSIS for inaction on hog plants with repeat NRs," Food Chemical News, May 17, 2013