Ms. Sandra Eskin
Deputy Under Secretary for Food Safety
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, D.C. 20250

Re: FSIS Regulatory Framework to Reduce Salmonella Illnesses Attributable to Poultry

Dear Ms. Eskin,

STOP Foodborne Illness is pleased to submit this comment in response to the FSIS Proposed Regulatory Framework to Reduce *Salmonella* Illnesses Attributable to Poultry, which FSIS issued on October 14, 2022. We write on behalf of STOP's constituency of individuals and families who have been seriously injured or have lost loved ones to foodborne illness, including from *Salmonella* in poultry.

Noah, the son of our board member Amanda Craten, was one of the youngest victims of the Foster Farms *Salmonella* Heidelberg outbreak in 2013. He was 18 months old when the *Salmonella* seeded in his brain and doctors had to perform a craniotomy to remove the large abscesses that threatened to kill him. Fortunately, he survived but every day is a struggle for Noah to speak as he grapples with neurocognitive disorder, sensory motor deficits, learning disabilities, and expressive language disorder.

Noah and his family, and many others like them, are why STOP considers it imperative and urgent that USDA do everything it can with the substantial regulatory authority it has to set enforceable standards for preventing the sale to consumers of dangerously contaminated chicken and turkey. We are pleased that some of the largest poultry companies have joined with STOP and other consumer groups in calling for USDA to set such standards.

We applaud you and Secretary Vilsack for your food safety leadership and your commitment to establishing strong, prevention-oriented regulatory standards to protect consumers from *Salmonella.* We also support the overall direction of the regulatory framework you have proposed, including its three major elements addressing: (1) supplier verification to understand and monitor the microbial quality of incoming live birds, (2) in-process verification testing, and (3) enforceable finished product standards.

We consider appropriately rigorous finished product standards to be the linchpin of the proposed regulatory framework because they will provide accountability for poultry companies and assurance to consumers that everything that reasonably can be done to make poultry safe has been done.

Focus of This Comment

Our primary reason for commenting on the framework at this stage of the process is to clarify the legal and policy framework for setting product standards that will be both protective and enforceable. The proposed FSIS framework references the Healthy People 2030 goal of reducing *Salmonella* infections from all food sources by 25% and states that "FSIS has adopted the same target and aims to reduce *Salmonella* infections linked to FSIS-regulated products by 25%." While we affirm and share the goal of reducing *Salmonella* infections at least below the Healthy People 2030 targets, we also believe it is critical that FSIS clearly ground its product standards in the statutory authority of the Poultry Products Inspection Act (PPIA).

The USDA mark of inspection provides assurance to consumers that the particular poultry product they are purchasing meets USDA's standards for safety and quality. In USDA's own words, "An inspection mark on the label lets you [the consumer] know that the meat or poultry product has been inspected and that it is safe, wholesome, and correctly labeled."[1] As explained below, this essential guiding principle – that USDA inspection means the food should be "safe" – is expressed in the PPIA as a mandate to inspect and pass only products FSIS finds not to be adulterated, as defined by the PPIA.

To be enforceable, any finished product standard must be based on the applicable statutory adulteration provision, not on a population-level percentage reduction goal. There is no statutory basis for the HP2030 target. Moreover, we think a finished product standard that faithfully implements USDA's statutory authority has the potential to reduce poultry-related *Salmonella* illnesses by significantly more than the 25% HP2030 target.

Legal Framework

We consider the following to be key elements of the legal framework for setting enforceable finished product standards for *Salmonella* in poultry.

1. Poultry products can be lawfully marketed only if they have been inspected and passed by FSIS and bear the USDA mark of inspection based on FSIS having found the product NOT to be adulterated.

2. The applicable definition of adulteration deems a poultry product adulterated "if it bears or contains any [added] poisonous or deleterious substance which may render it injurious to health."

3. In at least some forms and at some levels *Salmonella* is indisputably deleterious, and it is "added" because its presence and levels are due at least in part to human action during production and processing.

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[1]USDA, "What does an inspection mark on a meat or poultry product mean?" (https://ask.usda.gov/s/article/What-does-an-inspection-mark-on-a-meat-or-poultry-product-mean).

4. To be enforceable, finished product standards must define the circumstances in which FSIS will deem product NOT to be adulterated, and thus eligible for the mark of inspection, because they either contain no detectable *Salmonella* or contain types and levels of *Salmonella* that FSIS finds do not violate the law's "may render" injurious standard for adulteration.

We see nothing in USDA's statutory authority that empowers FSIS to set enforceable product standards on the basis that they meet some population goal for reducing *Salmonella* illnesses.

Policy Framework for Implementing the Statutory Standard

From a consumer protection and public health policy perspective, the FSIS *Salmonella* standards should be guided by the goal of assuring consumers that everything that reasonably can be done to make poultry safe has been done. We believe this goal is compatible with the overall prevention purpose of the FSIS inspection program and the statutory "may render injurious" safety standard. We also recognize that zero risk is not achievable and that feasibility of compliance plays into applying the "may render" standard.

In the case of *Salmonella* in poultry, the feasibility consideration does not mean sticking with the status quo or avoiding the cost of change needed to protect consumers. Rather, it should take into account how emerging technology and foreseeable innovation can make compliance possible. It could also mean considering the percentage of raw poultry production that would need to be diverted to cooking or some other kill step in order to meet the new finished product standard. For example, if FSIS determines that a small number of *Salmonella* serotypes account for a significant percentage of the illnesses associated with poultry products, and has evidence that these same serotypes are detected in just a few percent of sampled product, a zero tolerance, or an equally rigorous quantitative standard for those serotypes based on risk assessment, could be deemed feasible and appropriate under the PPIA's "may render injurious" adulteration provision. Such an approach has the potential to achieve a significantly greater than 25% reduction in illnesses associated with *Salmonella* in poultry.

We appreciate your consideration of this comment and would welcome the opportunity to discuss it with you and the FSIS team.

Sincerely,

Mitzi D. Baum, CEO
STOP Foodborne Illness