

107TH CONGRESS
2D SESSION

H. R. 3956

To clarify the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2002

Ms. ESHOO (for herself, Ms. DELAURO, Mrs. LOWEY, Mr. BROWN of Ohio, Mr. GEORGE MILLER of California, Ms. BROWN of Florida, Mr. DOYLE, Mr. KILDEE, Mr. FRANK, Mr. ENGEL, Ms. RIVERS, Ms. NORTON, Mr. BONIOR, Mr. FORD, Mr. RANGEL, Mr. STRICKLAND, Mr. CROWLEY, and Ms. ROYBAL-ALLARD) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To clarify the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Meat and Poultry
3 Pathogen Reduction and Enforcement Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The primary purpose of the Federal meat
7 and poultry inspection program is to protect public
8 health.

9 (2) The Centers for Disease Control and Pre-
10 vention report that human pathogens found in raw
11 and cooked meat, meat food products, poultry, and
12 poultry products are a significant source of
13 foodborne illness.

14 (3) To reduce the public health burden of
15 foodborne illness, the Federal meat and poultry in-
16 spection system should focus on reducing the risk of
17 foodborne illness associated with the presence of
18 foodborne pathogens.

19 (4) Good public health practice requires control-
20 ling pathogens as close as practicable to the initial
21 source of contamination to reduce pathogens and
22 prevent foodborne illness.

23 (5) There is a need for strong safeguards at
24 slaughter establishments during the slaughter and
25 processing of meat and poultry products because

1 those establishments are where pathogen contamina-
2 tion often originates.

3 (6) While proper handling and cooking of meat
4 and poultry products can virtually eliminate the risk
5 of foodborne illness from the consumption of meat
6 and poultry, the presence of pathogens in raw meat
7 and poultry products leads to cross-contamination of
8 other foods and surrounding surfaces.

9 (7) To reduce the risk of foodborne illness and
10 protect public health, regulatory authorities and all
11 parties involved in the production and handling of
12 meat, meat products, poultry, or poultry products
13 should make a concerted effort to reduce, to the
14 maximum extent practicable, contamination by
15 pathogens using the best available scientific informa-
16 tion and appropriate technology.

17 (8) The distribution of meat, meat food prod-
18 ucts, poultry, or poultry products that contain
19 human pathogens—

20 (A) impairs the effective regulation of
21 wholesome meat, meat food products, poultry,
22 or poultry products in interstate and foreign
23 commerce; and

24 (B) destroys markets for wholesome prod-
25 ucts.

1 (9) All articles and other animals that are sub-
2 ject to this Act and the amendments made by this
3 Act are either in or substantially affect interstate or
4 foreign commerce.

5 (10) Regulation by the Secretary of Agriculture
6 and cooperation by the States are necessary to pre-
7 vent or eliminate burdens on interstate or foreign
8 commerce and to protect the health and welfare of
9 consumers.

10 **SEC. 3. PATHOGEN PERFORMANCE STANDARDS.**

11 (a) MEAT AND MEAT PRODUCTS.—The Federal Meat
12 Inspection Act (21 U.S.C. 601 et seq.) is amended by in-
13 serting after section 8 (21 U.S.C. 608) the following new
14 section:

15 **“SEC. 8A. PATHOGEN PERFORMANCE STANDARDS.**

16 “(a) IN GENERAL.—In order to protect the public
17 health and promote food safety, the Secretary shall pre-
18 scribe performance standards for the reduction of patho-
19 gens in raw meat and meat products processed by each
20 establishment receiving inspection services under this Act.

21 “(b) LIST OF PATHOGENS.—

22 “(1) IN GENERAL.—In consultation with the
23 Secretary of Health and Human Services, and tak-
24 ing into account data available from the Centers for
25 Disease Control and Prevention, the Secretary shall

1 identify the pathogens that make a significant con-
2 tribution to the total burden of foodborne disease as-
3 sociated with meat and meat products.

4 “(2) PUBLICATION; UPDATES.—The Secretary
5 shall—

6 “(A) publish a list of the pathogens de-
7 scribed in paragraph (1) not later than 60 days
8 after the date of the enactment of this section;
9 and

10 “(B) update and publish the list annually
11 thereafter.

12 “(c) PATHOGEN SURVEYS.—

13 “(1) IN GENERAL.—Not later than 180 days
14 after the date of the enactment of this section, the
15 Secretary shall initiate comprehensive, statistically
16 representative surveys to determine the current lev-
17 els and incidence of contamination of raw meat and
18 meat products with the pathogens listed under sub-
19 section (b), including the variation in levels and inci-
20 dence of contamination among establishments.

21 “(2) PUBLICATION.—Not later than 2 years
22 after the date of the enactment of this section, the
23 Secretary shall compile, and publish in the Federal
24 Register, the results of the surveys.

1 “(3) UPDATES.—At least once every 3 years
2 after the preceding surveys are conducted, the Sec-
3 retary shall—

4 “(A) conduct surveys described in para-
5 graph (1); and

6 “(B) compile and publish the results of the
7 surveys in accordance with paragraph (2).

8 “(d) PATHOGEN REDUCTION PERFORMANCE STAND-
9 ARDS.—

10 “(1) IN GENERAL.—The pathogen reduction
11 performance standards required under subsection (a)
12 shall ensure the lowest level or incidence of contami-
13 nation that is reasonably achievable using the best
14 available processing technology and practices.

15 “(2) CURRENT CONTAMINATION.—In deter-
16 mining what is reasonably achievable, the Secretary
17 shall consider data on current levels or incidence of
18 contamination, including what is being achieved by
19 establishments in the upper quartile of performance
20 in controlling the level or incidence of contamination.

21 “(3) INITIAL PATHOGENS.—Not later than 3
22 years after the date of the enactment of this section,
23 the Secretary shall propose pathogen reduction per-
24 formance standards for at least 2 pathogens from
25 the list published under subsection (b).

1 “(4) SUBSEQUENT PATHOGENS.—Not later
2 than 1 year after proposing pathogen reduction
3 standards for the initial pathogens under paragraph
4 (3), and each year thereafter, the Secretary shall
5 propose a pathogen reduction performance standard
6 for at least 1 pathogen each year from the list pub-
7 lished under subsection (b) until standards have
8 been proposed for all pathogens on the list.

9 “(5) FINAL STANDARDS.—Not later than 1
10 year after proposing a pathogen reduction standard
11 for a pathogen under this subsection, the Secretary
12 shall promulgate a final pathogen reduction stand-
13 ard for the pathogen.

14 “(e) REVIEW OF STANDARDS.—

15 “(1) IN GENERAL.—Not later than 3 years
16 after promulgation of a final pathogen reduction
17 performance standard for a pathogen under sub-
18 section (d)(5), the Secretary shall review the stand-
19 ard to determine whether the standard continues to
20 ensure the lowest level or incidence of contamination
21 that is reasonably achievable using the best available
22 processing technology and practices, taking into the
23 most recent surveys conducted under subsection (c).

1 “(2) REVISIONS.—The Secretary shall revise
2 the standard, as necessary, to comply with sub-
3 section (d).

4 “(f) ENFORCEMENT.—

5 “(1) IN GENERAL.—The Secretary shall con-
6 duct regular microbial testing in establishments pro-
7 ducing raw meat and meat products to determine
8 compliance with the pathogen reduction performance
9 standards promulgated under this section.

10 “(2) INSPECTIONS.—If the Secretary deter-
11 mines that an establishment fails to meet a standard
12 promulgated under subsection (d) and that the es-
13 tablishment fails to take appropriate corrective ac-
14 tion, as determined by the Secretary, the Secretary
15 shall refuse to allow any meat or meat product sub-
16 ject to the standard and processed by the establish-
17 ment to be labeled, marked, stamped or tagged as
18 ‘inspected and passed’.

19 “(g) REPORT ON HEALTH-BASED PATHOGEN PER-
20 FORMANCE STANDARDS.—

21 “(1) IN GENERAL.—Not later than 1 year after
22 the date of the enactment of this section, the Sec-
23 retary, in consultation with the Secretary of Health
24 and Human Services, shall submit to Congress a re-
25 port on the scientific feasibility of establishing

1 health-based performance standards for pathogens in
2 raw meat and meat products.

3 “(2) FACTORS.—In preparing the report, the
4 Secretary shall consider—

5 “(A) the scientific feasibility of deter-
6 mining safe levels for pathogens in raw meat
7 and meat products;

8 “(B) the scientific and public health cri-
9 teria that are relevant to determining the safe
10 levels; and

11 “(C) other factors determined by the Sec-
12 retary.

13 “(h) RELATIONSHIP TO ADULTERATION PROVI-
14 SIONS.—Nothing in this section effects the applicability to
15 pathogens of the provisions of this Act relating to adulter-
16 ation.”.

17 (b) POULTRY AND POULTRY PRODUCTS.—The Poul-
18 try Products Inspection Act (21 U.S.C. 451 et seq.) is
19 amended by inserting after section 7 (21 U.S.C. 456) the
20 following new section:

21 **“SEC. 7A. PATHOGEN PERFORMANCE STANDARDS.**

22 “(a) IN GENERAL.—In order to protect the public
23 health and promote food safety, the Secretary shall pre-
24 scribe pathogen performance standards for the reduction
25 of pathogens in raw poultry and poultry products proc-

1 essed by each establishment receiving inspection services
2 under this Act.

3 “(b) LIST OF PATHOGENS.—

4 “(1) IN GENERAL.—In consultation with the
5 Secretary of Health and Human Services, and tak-
6 ing into account data available from the Centers for
7 Disease Control and Prevention, the Secretary shall
8 identify the pathogens that make a significant con-
9 tribution to the total burden of foodborne disease as-
10 sociated with poultry and poultry products.

11 “(2) PUBLICATION; UPDATES.—The Secretary
12 shall—

13 “(A) publish a list of the pathogens de-
14 scribed in paragraph (1) not later than 60 days
15 after the date of the enactment of this section;
16 and

17 “(B) update and publish the list annually
18 thereafter.

19 “(c) PATHOGEN SURVEYS.—

20 “(1) IN GENERAL.—Not later than 180 days
21 after the date of the enactment of this section, the
22 Secretary shall initiate comprehensive, statistically
23 representative surveys to determine the current lev-
24 els and incidence of contamination of raw poultry
25 and poultry products with the pathogens listed

1 under subsection (b), including the variation in lev-
2 els and incidence of contamination among establish-
3 ments.

4 “(2) PUBLICATION.—Not later than 2 years
5 after the date of the enactment of this section, the
6 Secretary shall compile, and publish in the Federal
7 Register, the results of the surveys.

8 “(3) UPDATES.—At least once every 3 years
9 after the preceding surveys are conducted, the Sec-
10 retary shall—

11 “(A) conduct surveys described in para-
12 graph (1); and

13 “(B) compile and publish the results of the
14 surveys in accordance with paragraph (2).

15 “(d) PATHOGEN REDUCTION PERFORMANCE STAND-
16 ARDS.—

17 “(1) IN GENERAL.—The pathogen reduction
18 performance standards required under subsection (a)
19 shall ensure the lowest level or incidence of contami-
20 nation that is reasonably achievable using the best
21 available processing technology and practices.

22 “(2) CURRENT CONTAMINATION.—In deter-
23 mining what is reasonably achievable, the Secretary
24 shall consider data on current levels or incidence of
25 contamination, including what is being achieved by

1 establishments in the upper quartile of performance
2 in controlling the level or incidence of contamination.

3 “(3) INITIAL PATHOGENS.—Not later than 3
4 years after the date of the enactment of this section,
5 the Secretary shall propose pathogen reduction per-
6 formance standards for at least 2 pathogens from
7 the list published under subsection (b).

8 “(4) SUBSEQUENT PATHOGENS.—Not later
9 than 1 year after proposing pathogen reduction
10 standards for the initial pathogens under paragraph
11 (3), and each year thereafter, the Secretary shall
12 propose a pathogen reduction performance standard
13 for at least 1 pathogen each year from the list pub-
14 lished under subsection (b) until standards have
15 been proposed for all pathogens on the list.

16 “(5) FINAL STANDARDS.—Not later than 1
17 year after proposing a pathogen reduction standard
18 for a pathogen under this subsection, the Secretary
19 shall promulgate a final pathogen reduction stand-
20 ard for the pathogen.

21 “(e) REVIEW OF STANDARDS.—

22 “(1) IN GENERAL.—Not later than 3 years
23 after promulgation of a final pathogen reduction
24 performance standard for a pathogen under sub-
25 section (d)(5), the Secretary shall review the stand-

1 ard to determine whether the standard continues to
2 ensure the lowest level or incidence of contamination
3 that is reasonably achievable using the best available
4 processing technology and practices, taking into the
5 most recent surveys conducted under subsection (c).

6 “(2) REVISIONS.—The Secretary shall revise
7 the standard, as necessary, to comply with sub-
8 section (d).

9 “(f) ENFORCEMENT.—

10 “(1) IN GENERAL.—The Secretary shall con-
11 duct regular microbial testing in establishments pro-
12 ducing raw poultry and poultry products to deter-
13 mine compliance with the pathogen reduction per-
14 formance standards promulgated under this section.

15 “(2) INSPECTIONS.—If the Secretary deter-
16 mines that an establishment fails to meet a standard
17 promulgated under subsection (d) and that the es-
18 tablishment fails to take appropriate corrective ac-
19 tion, as determined by the Secretary, the Secretary
20 shall refuse to allow any poultry or poultry product
21 subject to the standard and processed by the estab-
22 lishment to be labeled, marked, stamped or tagged
23 as ‘inspected and passed’.

24 “(g) REPORT ON HEALTH-BASED PATHOGEN PER-
25 FORMANCE STANDARDS.—

1 “(1) IN GENERAL.—Not later than 1 year after
2 the date of the enactment of this section, the Sec-
3 retary, in consultation with the Secretary of Health
4 and Human Services, shall submit to Congress a re-
5 port on the scientific feasibility of establishing
6 health-based performance standards for pathogens in
7 raw poultry and poultry products.

8 “(2) FACTORS.—In preparing the report, the
9 Secretary shall consider—

10 “(A) the scientific feasibility of deter-
11 mining safe levels for pathogens in raw poultry
12 and poultry products;

13 “(B) the scientific and public health cri-
14 teria that are relevant to determining the safe
15 levels; and

16 “(C) other factors determined by the Sec-
17 retary.

18 “(h) RELATIONSHIP TO ADULTERATION PROVI-
19 SIONS.—Nothing in this section effects the applicability to
20 pathogens of the provisions of this Act relating to adulter-
21 ation.”.

22 **SEC. 4. NATIONAL ADVISORY COMMITTEE FOR MICROBI-**
23 **LOGY CRITERIA FOR FOODS.**

24 (a) ESTABLISHMENT.—

1 (1) IN GENERAL.—In consultation with the Sec-
2 retary of Health and Human Services, the Secretary
3 of Agriculture (referred to in this section as the
4 “Secretary”) shall establish a National Advisory
5 Committee for Microbiology Criteria for Foods (re-
6 ferred to in this section as the “Committee”).

7 (2) ADMINISTRATION.—The Committee shall
8 report to—

9 (A) the Secretary of Agriculture, acting
10 through the Under Secretary for Food Safety;
11 and

12 (B) the Secretary of Health and Human
13 Services, acting through the Assistant Secretary
14 for Health.

15 (b) MEMBERSHIP.—

16 (1) COMPOSITION.—The Committee shall be
17 composed of not fewer than 9 nor more than 15
18 members appointed by the Secretary, including a
19 Chairperson designated by the Secretary.

20 (2) QUALIFICATIONS.—In appointing members
21 of the Committee, the Secretary shall appoint indi-
22 viduals who—

23 (A) are qualified by education, training,
24 and experience to evaluate scientific and tech-

1 nical information on matters referred to the
2 Committee; and

3 (B) to the maximum extent practicable,
4 represent the fields of microbiology, risk assess-
5 ment, epidemiology, public health, food science,
6 veterinary medicine, and other relevant dis-
7 ciplines.

8 (3) PROHIBITION ON FEDERAL GOVERNMENT
9 EMPLOYMENT.—A member of the Committee ap-
10 pointed under paragraph (1) shall not be an em-
11 ployee of the Federal Government.

12 (4) DATE OF APPOINTMENTS.—The appoint-
13 ment of an initial member of the Committee shall be
14 made not later than 90 days after the date of the
15 enactment of this Act.

16 (5) TERM.—A member of the Committee shall
17 be appointed for a term established by the Sec-
18 retary.

19 (c) MEETINGS.—

20 (1) INITIAL MEETING.—Not later than 30 days
21 after the date on which all members of the Com-
22 mittee have been appointed, the Committee shall
23 hold the initial meeting of the Committee.

1 (2) MEETINGS.—The Committee shall meet at
2 the call of the Chairperson, in consultation with the
3 Secretary.

4 (3) QUORUM.—A majority of the members of
5 the Committee shall constitute a quorum, but a less-
6 er number of members may hold hearings.

7 (4) CONFLICTS OF INTEREST.—

8 (A) IN GENERAL.—Notwithstanding sec-
9 tions 201 through 209 of title 18, United
10 States Code, a conflict of interest involving the
11 appointment of a member of the Committee
12 shall be waived under section 208(b)(3) of that
13 title only if the member with the conflict of in-
14 terest is essential to the completion of the work
15 of the Committee.

16 (B) VOTING.—Notwithstanding subpara-
17 graph (A), a member of the Committee with a
18 conflict of interest on a matter before the Com-
19 mittee shall not be allowed to vote on the mat-
20 ter.

21 (d) DUTIES.—

22 (1) IN GENERAL.—The Committee shall provide
23 such independent, impartial, scientific advice to Fed-
24 eral food safety agencies as may be requested by the
25 Secretary for use in the development of an inte-

1 grated national food safety systems approach from
2 farm-to-final consumption to ensure the safety of do-
3 mestic, imported, and exported foods and reduce the
4 public health burden of foodborne illness.

5 (2) FOOD SAFETY STANDARDS AND REGULA-
6 TIONS.—

7 (A) IN GENERAL.—At the time at which
8 the Secretary submits to any Federal agency
9 for formal review and comment any standard or
10 regulation proposed under the Federal Meat In-
11 spection Act (21 U.S.C. 601 et seq.), the Poul-
12 try Products Inspection Act (21 U.S.C. 451 et
13 seq.), or any program administered by the
14 Under Secretary for Food Safety, the Secretary
15 shall make available to the Committee—

16 (i) the standard or regulation; and

17 (ii) relevant scientific and technical
18 information possessed by the Secretary on
19 which the proposed standard or regulation
20 is based.

21 (B) ADVICE AND COMMENTS.—Not later
22 than a date specified by the Secretary that is
23 not later than 90 days after receipt of the
24 standard or regulation, the Committee may
25 make available to the Secretary the advice and

1 comments of the Committee on the adequacy of
2 the scientific and technical basis for the pro-
3 posed standard or regulation, together with any
4 additional information the Committee considers
5 appropriate.

6 (C) CONTEMPORANEOUS REVIEW.—To the
7 maximum extent practicable, the review by the
8 Committee under subparagraph (A) shall be
9 conducted contemporaneously with review by
10 other Federal agencies.

11 (e) POWERS.—

12 (1) HEARINGS.—The Committee may hold such
13 hearings, sit and act at such times and places, take
14 such testimony, and receive such evidence as the
15 Committee considers advisable to carry out this sec-
16 tion.

17 (2) INFORMATION FROM FEDERAL AGENCIES.—

18 (A) IN GENERAL.—The Committee may
19 secure directly from a Federal agency such in-
20 formation as the Committee considers necessary
21 to carry out this section.

22 (B) PROVISION OF INFORMATION.—On re-
23 quest of the Chairperson of the Committee, the
24 head of the agency shall provide the informa-
25 tion to the Committee.

1 (3) SUBCOMMITTEES AND INVESTIGATIVE PAN-
2 ELS.—

3 (A) IN GENERAL.—The Committee may
4 establish such subcommittees and investigative
5 panels as the Secretary and the Committee de-
6 termine necessary to carry out this section.

7 (B) CHAIRPERSON.—Each subcommittee
8 and investigative panel shall be chaired by a
9 member of the Committee.

10 (4) POSTAL SERVICES.—The Committee may
11 use the United States mails in the same manner and
12 under the same conditions as other agencies of the
13 Federal Government.

14 (5) GIFTS.—The Committee may accept, use,
15 and dispose of gifts or donations of services or prop-
16 erty.

17 (f) COMMITTEE PERSONNEL MATTERS.—

18 (1) COMPENSATION OF MEMBERS.—A member
19 of the Committee shall be compensated at a rate
20 equal to the daily equivalent of the annual rate of
21 basic pay prescribed for level IV of the Executive
22 Schedule under section 5315 of title 5, United
23 States Code, for each day (including travel time)
24 during which the member is engaged in the perform-
25 ance of the duties of the Committee.

1 (2) TRAVEL EXPENSES.—A member of the
2 Committee shall be allowed travel expenses, includ-
3 ing per diem in lieu of subsistence, at rates author-
4 ized for an employee of an agency under subchapter
5 I of chapter 57 of title 5, United States Code, while
6 away from the home or regular place of business of
7 the member in the performance of the duties of the
8 Committee.

9 (3) STAFF.—

10 (A) IN GENERAL.—The Chairperson of the
11 Committee may, without regard to the civil
12 service laws (including regulations), appoint
13 and terminate an executive director and such
14 other additional personnel as are necessary to
15 enable the Committee to perform the duties of
16 the Committee.

17 (B) CONFIRMATION OF EXECUTIVE DIREC-
18 TOR.—The employment of an executive director
19 shall be subject to confirmation by the Com-
20 mittee.

21 (C) COMPENSATION.—

22 (i) IN GENERAL.—Except as provided
23 in clause (ii), the Chairperson of the Com-
24 mittee may fix the compensation of the ex-
25 ecutive director and other personnel with-

1 out regard to the provisions of chapter 51
2 and subchapter III of chapter 53 of title 5,
3 United States Code, relating to classifica-
4 tion of positions and General Schedule pay
5 rates.

6 (ii) MAXIMUM RATE OF PAY.—The
7 rate of pay for the executive director and
8 other personnel shall not exceed the rate
9 payable for level V of the Executive Sched-
10 ule under section 5316 of title 5, United
11 States Code.

12 (4) PROCUREMENT OF TEMPORARY AND INTER-
13 MITTENT SERVICES.—The Chairperson of the Com-
14 mittee may procure temporary and intermittent serv-
15 ices in accordance with section 3109(b) of title 5,
16 United States Code, at rates for individuals that do
17 not exceed the daily equivalent of the annual rate of
18 basic pay prescribed for level V of the Executive
19 Schedule under section 5316 of that title.

20 (g) AUTHORIZATION OF APPROPRIATIONS.—

21 (1) IN GENERAL.—There are authorized to be
22 appropriated such sums as are necessary to carry
23 out this section, to remain available until expended.

24 (2) EXISTING FUNDS.—Any funds that are
25 available to the National Advisory Committee on

1 Microbiological Criteria in existence on the date of
2 the enactment of this Act shall be made available to
3 the Committee.

4 **SEC. 5. REGULATIONS.**

5 (a) IN GENERAL.—Consistent with section 553 of
6 title 5, United States Code, the Secretary of Agriculture
7 shall have the authority to enforce the pathogen perform-
8 ance standards of the Secretary in effect on January 1,
9 2000.

10 (b) CHALLENGES.—Subsection (a) does not prevent
11 a challenge to the standards described in subsection (a)
12 on any basis other than the basis that the Secretary lacks
13 the authority to issue and enforce pathogen performance
14 standards promulgated in accordance with section 553 of
15 title 5, United States Code.

○