

Congress of the United States

Washington, DC 20515

September 30, 2024

Dr. José Emilio Esteban
Under Secretary for Food Safety
Food Safety and Inspection Service
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, D.C. 20250

Mr. Paul Kiecker
Administrator
Food Safety and Inspection Service
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, D.C. 20250

Dear Under Secretary Esteban and Administrator Kiecker:

We remain deeply concerned regarding the deadly *Listeria* outbreak linked to deli meats from a Boar's Head Facility in Jarratt, Virginia. In the largest listeriosis outbreak since 2011, 19 states have been affected, 59 persons hospitalized, and 10 have died.¹

This outbreak could have and should have been prevented. What is especially troubling is how egregious sanitation problems occurred despite supposed regular oversight; oversight which typically includes at least one inspection per shift.

According to records released by the United States Department of Agriculture (USDA), inspectors turned up 69 records of "noncompliances" at this individual facility in the year leading up to the outbreak. USDA and more specifically, the Food Safety and Inspection Service (FSIS) are responsible for overseeing operations at the Virginia plant. Through the Talmadge-Aiken Cooperative Inspection Program, the Secretary is authorized to enter into cooperative arrangements with State departments of agriculture and other State agencies to assist the Secretary in the administration and enforcement of relevant Federal laws and regulations.² To that end, FSIS contracts with state inspectors to act as federal inspectors, charging these inspectors with ensuring compliance with Federal laws in which FSIS still has oversight. While administered by the state, these inspection programs still operate at the discretion and under the supervision of USDA.

It is appalling that seemingly no enforcement actions have been taken against Boar's Head despite the reported repeated records of major noncompliance. Inspectors found and documented the following: mold and mildew around the hand washing sinks for staff working with meats that are supposed to be ready to eat; mold in holding coolers between the site's smokehouses; blood in puddles on the floor; insects in and around deli meats at the plant, and "heavy meat buildup" on walls and machinery.³

Earlier this month, the New York Times reported that two years prior, "U.S. inspectors warned that conditions at [the] Boar's Head plant posed an "imminent threat" to public health, citing extensive rust, deli meats exposed to wet ceilings, green mold and holes in the walls."⁴ If an investigator identifies an imminent threat, the agency must take immediate action to protect the public. Yet over a two-year period, apparently no immediate action was taken to fully correct this "imminent threat," and we are now responding to one of the worst *Listeria* outbreaks in recent decades.

¹ <https://www.cdc.gov/listeria/outbreaks/delimeats-7-24.html>

² <https://www.fsis.usda.gov/policy/fsis-directives/5720.2>

³ <https://www.cbsnews.com/news/bugs-mold-mildew-inspection-boars-head-plant-listeria/>

⁴ <https://www.nytimes.com/2024/09/10/health/boars-head-deli-meat-listeria.html>

The conditions at this facility were unacceptable and highlight a disregard for public health and food safety. In order to better comprehend what happened and prevent another deadly outbreak like this in the future, we request answers to the following questions:

- 1) FSIS had a contract for inspection in place with Virginia State to inspect the Boar's Head Facility. What was the scope and nature of that contract, and what activities were conducted by the State versus USDA inspectors? Did contracted state inspectors perform all of the duties or just some duties as part of the contract? Who do the state inspectors report to and who manages Corrective Action Procedures, ensuring noncompliances are properly escalated and completely remedied? Please provide the results of any onsite reviews of the Virginia inspection program that have been conducted by USDA in the past three years.
- 2) USDA inspectors are required by law to visit meat and poultry processing facilities at least once per shift. How often did a USDA inspector (not a contracted state inspector acting as a federal inspector) visit the facility in Jarratt, Virginia? Please provide documentation of the length of these visits, activities conducted during each visit, and noncompliances identified for the period August 30, 2022 through August 30, 2024.
- 3) According to news reports⁵, USDA has not taken any enforcement actions against the Boar's Head Facility in the past year, despite over 69 records of "noncompliances" flagged by inspectors during that period, including reports of "dirty" machinery, flies in pickle containers, "heavy meat buildup" on walls, blood in puddles on the floor, and multiple instances of leaking pipes, clogged drains, and heavy dust buildup in certain areas. What enforcement actions are available to USDA to address the type of noncompliance issues identified in the Boar's Head facility? Why were these actions not taken against Boar's Head Facility despite repeated violations? Were all records of noncompliance addressed and remedied before operations resumed?
 - a) Where is the inspection data managed, and is the data managed in a manner so FSIS can see food safety risks and trends?
 - b) Can FSIS shut down a facility for being unsanitary? And by extension, do state inspectors acting at the discretion of FSIS have the authority to shut down a facility for being unsanitary? If yes, why was the plant not shut down despite repeated and similar noncompliances. If no, who has the authority to shut down the plant to protect public health?
- 4) According to the *Listeria* Rule⁶, an establishment may sample for *Listeria monocytogenes* or an indicator organism (e.g., *Listeria* spp.) to verify the effectiveness of its sanitation program. The establishment is not required to perform further confirmatory testing on *Listeria* spp. positives to determine whether they are positive for *Listeria monocytogenes*. Will FSIS consider amending this rule to ensure that establishments must conduct routine testing for *Listeria monocytogenes* or at bare minimum, to require confirmatory testing on *Listeria* spp. Positives for sanitation verification testing?⁷

⁵ <https://www.pbs.org/newshour/nation/records-show-boars-head-plant-linked-to-deadly-outbreak-broke-food-safety-rules-dozens-of-times>

⁶ <https://www.fsis.usda.gov/policy/fsis-directives/10240.4>

⁷ <https://www.fsis.usda.gov/policy/fsis-directives/10240.4>

- 5) FSIS Directive 10300.1 requires companies to schedule Intensified Verification Testing (IVT) for cause, including sampling of *Listeria monocytogenes*.⁸ Was IVT conducted on the Boar's Head Facility associated with this outbreak? If so, please provide the full results of such testing.
- 6) FSIS can schedule a Food Safety Assessment to verify that products are being produced in accordance with FSIS standards. Please provide the findings of any Food Safety Assessment conducted by FSIS in the Boars Head Facility between for the period 8/30/2022 to 8/30/2024 and indicate whether enforcement action was recommended as a result of such assessment.
- 7) FSIS stated in a 2015 rulemaking on *Listeria monocytogenes* that "the percent positive in FSIS testing for *Lm* in RTE products has decreased from 0.76 percent in calendar year (CY) 2003 to 0.34 percent in CY 2013," citing this as evidence that new regulations for *Listeria* were effective in controlling contamination.⁹ Can the agency provide data from CY 2014 to present showing the percentage of positives for *Listeria monocytogenes* in RTE products? Does the agency believe it collects sufficient product samples annually to detect statistical changes in the trend of product positives? Does the agency have other measures that show whether the current Listeria Rule is or is not effective in controlling *Listeria* in RTE products?
- 8) Did the Boar's Facility conduct its own testing for *Listeria monocytogenes* or *Listeria spp*? Please provide the data from such testing and a summary of inspectional findings related to such testing. Please include information on where test results are stored and who had access to them.

As this matter is of immense public concern and the outbreak is still ongoing, we appreciate your timely attention to this important matter and look forward to your prompt response.

Sincerely,



Rosa L. DeLauro
Member of Congress



Richard J. Durbin
United States Senator



Cory A. Booker
United States Senator



Richard Blumenthal
United States Senator

⁸ <https://www.fsis.usda.gov/policy/fsis-directives/10300.1>

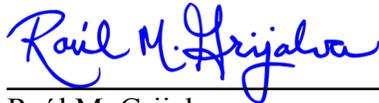
⁹ <https://www.federalregister.gov/documents/2015/06/19/2015-13507/control-of-listeria-monocytogenes-in-ready-to-eat-meat-and-poultry-products>



Eleanor Holmes Norton
Member of Congress



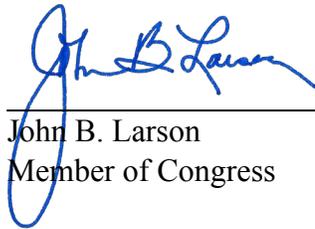
Jennifer L. McClellan
Member of Congress



Raúl M. Grijalva
Member of Congress



Dan Goldman
Member of Congress



John B. Larson
Member of Congress



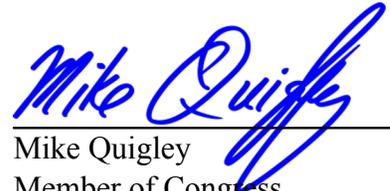
David Scott
Member of Congress



Raja Krishnamoorthi
Member of Congress



Grace Meng
Member of Congress



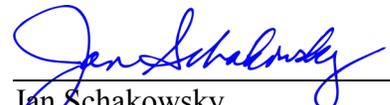
Mike Quigley
Member of Congress



Rashida Tlaib
Member of Congress



Bonnie Watson Coleman
Member of Congress



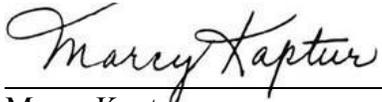
Jan Schakowsky
Member of Congress



Nydia M. Velázquez
Member of Congress



Julia Brownley
Member of Congress



Marcy Kaptur
Member of Congress



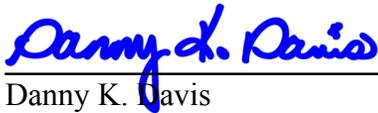
Robert C. "Bobby" Scott
Member of Congress



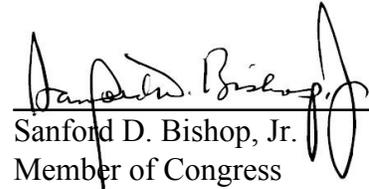
Barbara Lee
Member of Congress



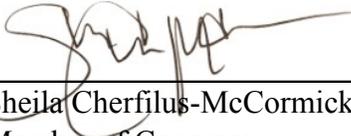
Mark DeSaulnier
Member of Congress



Danny K. Davis
Member of Congress



Sanford D. Bishop, Jr.
Member of Congress



Sheila Cherfilus-McCormick
Member of Congress



Gabe Amo
Member of Congress

CC:

The Honorable Thomas J. Vilsack
Secretary
U.S. Department of Agriculture
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