Secretary Sonny Perdue  
U.S. Department of Agriculture  
Jamie L. Whitten Building  
Washington, DC 20250

RE: Modernization of Swine Slaughter Inspection; Proposed Rule (Docket No. FSIS-2016-0017)

Dear Secretary Perdue,

Center for Science in the Public Interest (CSPI), submits this comment urging you to withdraw the proposed rule on the Modernization of Swine Slaughter Inspection¹ (Proposed Swine Rule).

The Centers for Disease Control has estimated that over 500,000 people become ill and 82 die each year from foodborne illness attributable to pork.² The goal of modernizing swine slaughter inspection should be to reduce these numbers by enhancing food safety and making pork safer.

This proposal will not accomplish that goal. Instead, it puts consumers at risk of foodborne illness by privatizing and deregulating aspects of swine slaughter inspection, lifting line speed caps and handing important government duties to industry while also removing microbial standards needed to verify that industry is performing those duties effectively.

When the USDA finalized a similar rule for poultry in 2014, it maintained a maximum line speed cap and kept in place updated microbial performance standards. Even with these additional measures, the food-safety impact of poultry “modernization” has been uncertain.

While we support minor elements of the Proposed Swine Rule, the overall proposal will not substantially enhance food safety, and may even increase contamination and foodborne illness. We therefore urge you to withdraw the proposed rule. Any new modernization proposal offered in its place should aim to significantly reduce contamination and foodborne illness through enhanced microbial testing and the implementation of pre-harvest pathogen reduction requirements.

I. Microbial Testing and HACCP

The Proposed Swine Rule has been dubbed an effort to “modernize” swine inspection. Yet core principles of modernized food safety oversight have been in place in traditionally inspected

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swine slaughter establishments since the implementation of Hazard Analysis and Critical Control Point (HACCP) Systems Final Rule (Final HACCP Rule), issued in 1996. The proposed rule does not enhance this modernized approach to food safety. Instead, the proposal would undermine food safety by eliminating national microbial testing requirements that have long stood at the core of the HACCP model.

a. Role of Performance Standards in Modernized Inspection

Whereas the traditional meat inspection system relies heavily on organoleptic, (i.e., sensory or “poke and sniff”) inspection to detect animal diseases and visible contamination, HACCP integrated systematic, preventive process controls into every stage of production to target and reduce pathogenic microorganisms that are the source of human disease.

With HACCP, FSIS shifted its focus from extensive reliance on command and control regulations, which generally prescribe how desired objectives are to be achieved, to a greater reliance on performance standards, which generally express the objective but do not specify the means for achieving it. Microbial performance standards sit at the heart of this approach because of their direct connection to human illness, as stated in the 1996 Final HACCP Rule:

Pathogen-specific performance standards for raw products are an essential component of the FSIS food safety strategy because they provide a direct measure of progress in controlling and reducing the most significant hazards associated with raw meat and poultry products.

The 1996 Final HACCP Rule established a Salmonella performance standard for pork carcasses at 8.7 percent based on industry-wide prevalence levels at that time. In addition, the 1996 rule required meat and poultry slaughter establishments to test for generic E. coli as an indicator of the adequacy of the plant’s process control for fecal contamination.

While the role of performance standards has changed since 1996, they remain a core element of HACCP and should not be eliminated. In 2001, a judicial decision prevented the agency from using performance standards as the sole grounds for regulatory enforcement action. Yet performance standards remain useful in targeting regulatory resources and may be included as part of a body of evidence supporting regulatory action. For example, FSIS issued a notice of suspension to Mar-Jac Poultry on April 11, 2018, shortly after the establishment was re-classified for failing to meet microbial performance standards. In that letter, the agency cited failure to meet microbial performance standards as part of the body of evidence indicating that the establishment’s food safety measures were inadequate.

4 Final HACCP Rule at 38808.
5 Ibid. at 38812.
6 Ibid. at 38847.
7 Supreme Beef Processors, Inc. v. USDA, 275 F.3d 432 (5th Cir. 2001).
Performance standards are also used by FSIS in determining whether to grant or revise regulatory waivers for testing new equipment, technologies, or procedures. For example, FSIS recently announced that it will consider ability to consistently meet performance standards as a criteria in determining whether to grant poultry establishments waivers to operate above the line speeds currently allowed under regulation.  

FSIS has also developed a market-based strategy to enhance food safety by publicly posting the names of poultry slaughter establishments that have failed to meet performance standards for poultry. This transparency allows members of the public, including grocery stores and other major purchasers, to assess food safety performance in making purchasing decisions. In the two years following the agency’s first publication of these establishment-specific listings in 2006, Salmonella rates in poultry dropped in half. This demonstrates that even though the role of performance standards has changed over the years, these microbial testing requirements continue to serve as an effective means of enhancing food safety.

b. Failure to Update the Performance Standard for Pork

FSIS now tests poultry products under multiple updated performance standards for both Salmonella and Campylobacter, covering carcasses, parts, and comminuted chicken (including ground). By contrast, FSIS has lagged in updating performance standards for beef and pork, and currently the 1996 codified Salmonella standard for pork carcasses remains the sole performance standard applicable to swine slaughter establishments.

On April 18, 2018, the Government Accountability Office (GAO) released a report criticizing FSIS for having no clear process for updating its pathogen-specific performance standards for meat and poultry. In particular, the report criticized FSIS for failing to update the performance standard for pork, stating “[i]n the absence of pathogen standards against which the agency tests, the agency is not using a valuable tool that could be used to help verify that plants’ processing controls to prevent, eliminate, or reduce food safety hazards are working.”

It is not clear why FSIS has failed to update the pork standard for such an extended period. In 2010, the agency conducted sampling to determine that the Salmonella prevalence on pork

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13 Ibid. at 14.
15 Ibid. at 37.
carcasses had fallen to 2.7 percent, confirming that the codified standard of 8.7 percent was out of date. But rather than update the pork standard at that time, FSIS decided to stop testing entirely for Salmonella on pork carcasses. The agency never followed up with additional Salmonella sampling of pork carcasses to assess the impact of this decision. Instead, FSIS decided to focus on “exploratory” sampling of raw pork parts (as opposed to whole carcasses) for pathogens and indicator organisms.16

Initial results from that exploratory pilot (which the agency did not commence until 2015) have revealed substantial rates of Salmonella on pork products, including intact cuts (>9 percent), non-intact cuts (>7 percent), and comminuted (>22 percent).17 These rates are comparable or higher than the codified 8.7 percent standard for pork carcasses. Yet even with these initial results in hand, FSIS has not committed to developing a new performance standard for pork, stating that it will continue gathering samples and wait until 2019 before determining “whether standards or additional policies (e.g., training, guidance to industry, or instructions to field personnel) are needed to address Salmonella in pork products.”18

In the meantime, rather than focusing agency resources on swiftly updating the Salmonella performance standard needed to verify the effectiveness of modernized inspection under HACCP, the agency has proposed to “modernize” swine slaughter inspections by eliminating the sole codified performance standard for pork.

c. Inadequacy of a “Tailored” Microbial Testing Alternative

In addition to eliminating the codified Salmonella performance standard for pork carcasses, the Proposed Swine Rule would also eliminate uniform national microbial testing requirements for E. coli as an indicator of fecal contamination.19 Instead, FSIS proposes that each establishment develop a “tailored” microbial sampling plan, specifying the points when sampling will occur (pre-evisceration and post-chill) but not the organisms to be tested or the threshold of contamination that would be considered actionable.

As justification for removing the generic E. coli testing requirement, the agency suggests that a similar requirement was rescinded for poultry establishments in 2014, and that individual swine slaughter establishments commonly test other indicator organisms (e.g. aerobic plate count bacteria (APC)) in addition to generic E. coli, as relevant indicators of fecal contamination.20 CSPI previously objected to removing the generic E. coli testing requirement for poultry, arguing that a uniform national requirement was essential and that the generic E. coli standard was supported by recommendation from the National Academy of Sciences.21

16 Proposed Swine Rule at 4786.
17 Sampling Results for FSIS Regulated Products: Calculations. www.fsis.usda.gov/wps/wcm/connect/68f5f6f2-9863-41a5-a5c4-25cc6470c09f/Sampling-Project-Results-Data.pdf?MOD=AJPERES. Pork carcasses were not sampled in the pilot that began in 2015. The fact that prevalence of Salmonella is higher for parts and comminuted pork sampled in 2015 than for whole carcasses sampled in 2010 could reflect either an increase in prevalence over time or a higher prevalence for parts and comminuted pork than for whole pork carcasses.
18 Proposed Swine Rule at 4786.
19 Proposed Swine Rule at 4785.
20 Ibid.
Our concerns about the decision to eliminate the generic *E. coli* standard for poultry have only grown in the years since, as it has become clear that FSIS lacks a rigorous process for ensuring that the “tailored” microbial testing programs developed by poultry slaughter establishments are based on an evidence-based standard that is equivalent or superior to the former codified *E. coli* standard as a means of detecting fecal contamination. In some instances it appears that FSIS has taken action to address inadequate microbial testing plans only following an establishments’ failure to meet pathogen-specific performance standards – standards the agency is proposing to eliminate for swine. For example, in its recent notice of suspension to Mar-Jac Poultry, FSIS noted that the establishment had implementing a tailored microbial testing program that was not evidence-based. Yet the notice of suspension was issued only after the establishment failed to meet its *Salmonella* performance standard, and it is not clear FSIS would have taken regulatory action in absence of that failure.

FSIS must have an adequate procedure in place to vet and approve an establishment’s microbial testing program before it is put into effect and contributes to food safety risk. Failure to carry out such a rigorous review leaves the door open for testing programs that allow for higher levels of fecal contamination than would have been permitted under the former *E. coli* standard.

d. Microbial Testing Recommendations

We urge FSIS not to move forward with any further effort to “modernize” swine slaughter inspection without a pathogen-specific performance standard for pork. Modernized, HACCP-based inspection cannot function adequately without such a performance standard in place. Uniform microbial testing is also necessary to evaluate the impact of the agency’s plan to privatize and deregulate aspects of traditional inspection. Specifically, without an effective national testing program, the agency will have no way to verify whether pathogen rates go up, down, or remain neutral as a result of any regulatory changes.

In addition, while we do not per se oppose substitution of another indicator organism for *E. coli*, FSIS must ensure that any “tailored” testing program utilized by slaughter establishments is evidence-based and equal or superior to the prior codified *E. coli* standard as a means of detecting fecal contamination. We therefore urge the agency to maintain the current, codified *E. coli* standard. Establishments that wish to substitute a “tailored” testing program may then apply for a regulatory waiver, which will allow for review of the new standard by FSIS before the standard is put into effect.

II. New Swine Inspection System

In addition to eliminating national microbial testing requirements, the Proposed Swine Rule also creates a new, voluntary inspection system for swine slaughter, the new swine slaughter inspection system (NSIS). NSIS is projected to save money for FSIS and enhance profits for industry by privatizing and deregulating elements of the traditional inspection system. Specifically, the rule saves costs for FSIS by shifting inspection duties from federal inspectors to slaughter establishment employees, and it enhances profits for industry by removing current

23 Ibid.
maximum limits on slaughter line speeds.

Slaughter establishments could either choose to operate under NSIS or stay in the traditional inspection system. Under NSIS, establishment “sorters,” rather than FSIS inspectors, would be responsible for identifying animal diseases, sorting out unfit carcasses and parts, trimming defects, and identifying fecal contamination. Unlike FSIS inspectors, who must meet specific training and education requirements and are employed independently by the federal government, establishment sorters are required to have no specific training or education and are directly dependent for their employment on the slaughter establishment.

The proposed rule also lifts caps on line speeds, which under traditional inspection rules are capped to ensure that each inspector has sufficient time to perform his or her inspection duties. For swine establishments, the maximum speed allowed under current regulations is 1,106 head per hour (hph) on a line staffed by seven FSIS inspectors. Rather than set specific caps, the NSIS proposal would allow each establishment to determine its own line speed based on equipment, size and condition of animals, and staffing, as well as its ability to maintain “process control.” (“Process control” is not clearly defined in the proposed rule but appears to refer broadly to an establishment’s ability to produce meat that is safe, wholesome, and unadulterated).

Notably, the NSIS proposal to lift line speed caps is a departure from the final action taken by FSIS in its 2014 final rule creating the New Poultry Inspection System (NPIIS). In that case, FSIS opted to maintain the maximum line speed cap allowed under traditional inspection, indicating that it intended to gather more information on the impact of lifting the cap prior to any further decision. The agency also recently denied a petition by the National Chicken Council to waive the line speed cap in the 2014 rule.24 Instead, the agency will continue to review regulatory waivers on a case-by-case basis.25

a. Uncertain Projected Benefits

FSIS projects that the NSIS rule will provide “at least the same food safety and consumer protection” as traditional inspection.26 It also predicts that the changes may allow FSIS inspectors to better prioritize time during inspections, resulting in health benefits in the range of $0.19 million to $18.97 million.27 The agency has not sufficiently supported this prediction with evidence.

The agency’s health benefits prediction is based on a model described in an agency document entitled Assessment of the Potential Change in Human Risk of Salmonella Illnesses Associated with Modernizing Inspection of Market Hog Slaughter Establishments (Market Hog Risk Assessment).28 The model appears to assume that because NSIS may increase performance of
certain “offline” inspection tasks, and these offline tasks have been shown historically to correlate with lower Salmonella contamination rates, it follows that NSIS will reduce Salmonella contamination.29

FSIS issued the Proposed Swine Rule without first awaiting a peer review of the Market Hog Risk Assessment ordinarily required for such documents by the Office of Management and Budget (the agency obtained a waiver in this case).30,31 While our ability to comment meaningfully is impaired in light of this lack of transparency, we suggest that the overall predictive value of the assessment is limited due to the fact that it apparently relies on an historical correlation between certain offline inspection tasks and Salmonella rates to predict future benefits. These two variables may have been correlated historically, but it is not clear that modifying one will affect the other moving forward. Alternatively, the prior association could be simply due to chance (or some relationship of both variables to a third, unmeasured factor).

A similar risk assessment previously performed by FSIS in developing the New Poultry Inspection System (NPIS) also predicted food safety benefits.32 But microbial sampling conducted since NPIS was implemented has failed to document benefits from that rule. In a preliminary assessment of NPIS to stakeholders last fall, FSIS indicated that Salmonella and Campylobacter contamination rates were similar between 39 large establishments that opted to participate voluntarily in NPIS and 126 large traditionally-inspected establishments that opted not to participate. The results show no clear benefits from NPIS:33

| Table 1. Salmonella and Campylobacter Positive Percentages, NPIS and Traditional |
|-----------------------------------|---------------------------------|---------------------------------|---------------------------------|
|                                   | Salmonella Positive Percentage  | Campylobacter Positive Percentage |
|                                   | Chicken carcasses | Chicken parts | Turkey carcasses | Chicken carcasses | Chicken parts | Turkey carcasses |
| NPIS                              | 4.5% (67)         | 14.5% (147)   | 0.4% (3)         | 1.5% (22)         | 3.2 (32)      | 0.3% (2)       |
| Traditional                       | 4.1% (214)        | 13.3% (494)   | 0.4% (3)         | 1.6% (79)         | 2.6% (96)     | 0.0% (0)       |

Moreover, it is not possible reliably interpret these data or even to rule out the possibility that conversion to NPIS worsened food safety outcomes, because selection into NPIS is voluntary and non-random. With such non-random selection, it is possible that establishments that opted into NPIS were those most motivated to reduce contamination rates, independent of NPIS. Moreover, because we do not know their baseline contamination rates, they could have begun with lower rates of contamination than traditional establishments.34

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29 Ibid. at 12, 14.
34 FSIS also presented data to stakeholders on pre- and post-conversion rates at NPIS establishments, but these results did not include a comparison with comparable traditional establishments. Also, they are complicated by the
Food safety performance also appears to vary depending on when an establishment opted into NPIS. Specifically, looking at data from a 12 month period in 2016-2017, the 23 establishments that participated in the HACCP-Based Inspection Models Project (HIMP) pilot program, which served as the prototype for NPIS and now NSIS, display significantly lower contamination rates than traditionally inspected establishments. By contrast, the 16 non-HIMP establishments that entered NPIS after the pilot ended had numerically higher rates, a sharp contrast:35

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<th>Table 2. <em>Salmonella</em> and <em>Campylobacter</em> Positive Percentages, NPIS (including HIMP and Non-HIMP) and Traditional</th>
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<td><strong>Salmonella Positive Percentage</strong></td>
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<td>Chicken carcasses</td>
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* Statistically significant compared to Non-NPIS (chi-squared, p<0.05)

Because NPIS establishments may not be comparable to each other or to traditional establishments, it is not possible to determine whether food safety had benefited or worsened under “modernized” poultry inspection.

Consequently, the projected benefit of the NSIS proposal remain uncertain, leaving open the possibility that the program could worsen food safety, as further detailed below.

b. *Ante-mortem Inspection Risks*

Food safety concerns with NSIS begin with ante-mortem inspection, the inspection stage where diseased animals are identified prior to slaughter. The Proposed Swine Rule would allow establishment employees to take over ante-mortem inspection duties currently performed by FSIS inspectors. In particular, the proposal appears to remove the current requirement that only FSIS inspectors may direct the application and removal of “U.S. Condemned” tags on animals that are unfit for human consumption.36 Instead, establishments would perform this sorting semi-independently, reporting daily totals to FSIS inspectors and “maintain[ing] records that could be verified by FSIS, as appropriate.”37

William James, former chief veterinarian for FSIS, recently spoke out against the ante-mortem portion of the proposal, suggesting that it would increase the risk that FSIS veterinarians miss the

35 Ibid.
36 Proposed Swine Rule at 4784.
37 Ibid.
early signs of a large-scale animal disease outbreak. Such an outbreak could impact food safety while having devastating economic consequences for U.S. animal producers. For example, a large outbreak of Food and Mouth Disease has the potential to shut off all foreign markets to U.S. beef and pork, costing American producers an estimated $128 billion over a 10-year period.

FSIS has asserted that the proposed rule still provides federal inspectors and veterinarians a role in reviewing animals that have been retained. The rule also directs establishment personnel to notify FSIS inspectors if they see signs of a reportable or foreign animal disease. However, this level of review may be insufficient, particularly if establishment employees are poorly trained or poorly motivated to identify and highlight signs of animal disease.

One FSIS inspector working in a HIMP establishment shared anonymous concerns to the Government Accountability Project’s Food Integrity Campaign in 2014 suggesting that employees working under HIMP may at times be motivated to conceal or avoid reporting signs of animal disease:

…[T]he owners want to make sure that no negative data (specifically noncompliance reports or “NRs”) about their operations are released, as these might suggest the program is not working. To ensure this, they have convinced plant employees to do all they can to keep defective products out of sight for federal inspectors. For example, I have witnessed company employees personally condemn the plant’s products and then attempt to sneak the condemned carcasses past me when I turned away. The company threatens plant employees with terminations if they see them condemning too many carcasses or carcass parts.

We are generally concerned that the Proposed Swine Rule increases the risk that federal employees will miss signs of animal disease and other important food safety issues. We therefore urge FSIS to consider how ante-mortem inspection may be modified to avoid this risk, including by continuing to require that FSIS inspectors direct the application and removal of all “U.S. Condemned” tags on animals unfit for human consumption.

c. Post-mortem Inspection Risks

Animals not retained during ante-mortem inspection enter the slaughter line, where further steps are taken to identify disease and defects post-mortem. As noted above, the NSIS proposal would privatize and deregulate this post-mortem phase of inspection by lifting line speed caps and shifting “online” inspection duties from federal inspectors to establishment employees.

Both the removal of the maximum line speeds cap and the move to privatize certain online inspection duties under the Proposed Swine Rule have the potential to negatively impact food

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39 Ibid.

40 Proposed Swine Rule at 4781.

safety. Specifically, these elements of the proposal increase the chances for human error during postmortem inspection, where inspectors and establishment personnel employ their senses of sight, smell, and touch to detect fecal contamination, animal disease, and other defects.

Organoleptic, “poke and sniff” online inspections continue to play an important role even with a HACCPP-based inspection system in place. For example, fellow food safety organization Food and Water Watch recently shared with CSPI a non-compliance report obtained under the Freedom of Information Act involving an event at a HIMP pilot establishment in which a federal inspector flagged and retained a highly diseased carcass at the “final government rail” (i.e., the final review by a federal inspector): 42

I observed the following abnormalities bilaterally along the cut surface of the spine several places where the ligament of spine was a brownish-gray color. After palpation this area was friable and able to be breached with a finger. There was a significant communication between vertebrae in these areas along with areas of hyperemic, decomposing loin muscle. When probed with finger a large pocket was exposed and a very foul odor of rotten flesh was detected on my finger. I found this carcass to be unfit for human consumption due to an anaerobic Clostridium infection all along the length of the spine and strap muscles……”

Fortunately, a vigilant government inspector intervened in this case. However, the report also indicates a failure of the establishment’s internal controls (in at least this one instance), as establishment sorters should have detected and retained such a highly diseased carcass before it reached the final government rail.

Because organoleptic, online inspections remain important even under a HACCP-based inspection system, it is vital that the individuals carrying out such tasks have sufficient time, training, and independence to perform their duties effectively. The NSIS model has the potential to undermine that effectiveness. As one anonymous FSIS inspector from a HIMP pilot establishment described to an investigator for the Government Accountability Project’s Food Integrity Campaign in 2014: 43

Under the HIMP model,… [t]here aren’t enough eyes on the lines to monitor carcasses coming by at such high speeds. This makes it easy for employees to fail to notice flaws on the animals … Monitoring company inspectors is a lot more work for the USDA inspectors because lines are going way too fast. It’s almost impossible to recognize problems with both carcasses and play employees’ activities at the high speed of a HIMP line.

What I have learned from watching the company inspectors is that unlike the USDA inspectors, they don’t seem to have much training… On numerous occasions, I witnessed them fail to spot abscesses, lesions, fecal matter, and other defects that would render an animal unsafe or unwholesome.

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Furthermore, plant inspectors don’t actually want to shut off the line to deal with problems they spot on the job… Unlike USDA personnel, I don’t feel that they truly have the authority to shut off the line. Obviously their employer will terminate them if they do it too many times. This alone is reason enough to show that HIMP is a bad idea….

Another inspector voiced similar concerns anonymously to the Government Accountability Project:44

I have some doubts about the plant inspectors’ ability to conduct inspection as well as [the] USDA inspectors because their training is severely lacking. While most of the USDA-trained staff receives a week’s worth of training before being put on the slaughter line, plant process control workers only go through a short orientation and are given a small booklet illustrating various pathologies on a carcass before starting on the line. The company management is more production-oriented so they do not focus much on food safety and removing adulterated product. Actually, employees are discouraged from removing adulterated products from the line. Of course, plant process control workers are going to do what their bosses tell them to since they do not have a lot of job security.

FSIS argues that privatizing and deregulating under NSIS will not impact food safety. This assessment is based in large part on the results of the Evaluation of HACCP Inspection Models Project (HIMP) for Market Hogs Final Report (Market Hog Report) from November 2014.45 The Market Hog Report indicated that the five establishments that opted to enter the HIMP pilot have generally been able to meet standards for food safety and performed as well or similarly to a set of 21 comparable non-HIMP market hog establishments, considering data from two time periods (2006-07 and 2012-13).

This report is hard to interpret because, as noted above, the establishments that opted into the HIMP pilot are a self-selecting group that may not be directly comparable to other establishments on measures of food safety. Moreover, because HIMP establishments represent a select group of early-adopters, the Market Hog Report is not necessarily useful for predicting potential outcomes when the HIMP/NSIS, model is expanded industry-wide. Regulations that did not prove necessary to preserve food safety outcomes under HIMP may nevertheless be vital to prevent potential abuses when the system is extended beyond the original narrow pilot.

FSIS itself has noted that HIMP establishments have engaged in a form of self-regulation by limiting their line speeds to an average of 1,099 hph, not generally reaching speeds significantly faster than the traditional inspection maximum of 1,106 hph:

[A]lthough they are authorized to do so, market hog HIMP establishments do not operate at line speeds that are significantly faster than the current maximum line speeds for market hogs. Establishments determine their line speeds based on their equipment, animal size and herd condition, and their ability to maintain process control when

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operating at a given line speed.\textsuperscript{46}

This statement acknowledges that HIMP establishments sometimes self-regulate to maintain process control, reducing their line speeds when necessary to ensure that their products remain safe, wholesome, and unadulterated.

Facilities operating under NSIS may not necessarily self-regulate in a similar manner, particularly once expansion of NSIS across industry introduces additional competitive pressure. Nevertheless, if the Proposed Swine Rule is finalized, any establishment participating in NSIS would be permitted to operate at unlimited line speeds up to and above those observed in the HIMP pilot—even establishments with a poor history of microbial testing performance or regulatory compliance.

The Proposed Swine Rule indicates that FSIS inspectors can intervene in the event that an establishment compromises food safety. Yet the agency fails to provide a clear framework for determining when food safety has been compromised sufficiently to command regulatory intervention. In particular, the agency has proposed eliminating the two microbial testing requirements that could have served as relatively clear indicators of loss of process control.

In the absence of clear criteria triggering regulatory action, attention to food safety may depend heavily on the management culture within a slaughter establishment. This opens the door to overly lax enforcement under NSIS. As one of the FSIS inspectors quoted anonymously above told the Government Accountability Project:\textsuperscript{47}

\begin{quote}
HIMP might work better if USDA inspectors actually had the authority to engage in real oversight, meaning the ability to do something when the company was violating regulations. This certainly is not the case in the plant where I am stationed. If USDA inspectors try to engage in any enforcement, company management personnel criticize us. USDA upper-management takes the industry’s side and supports their decisions over those of federal inspectors…
\end{quote}

We urge the agency to consider alternatives to the Proposed Swine Rule that would ensure that the individuals charged with detecting disease, fecal contamination, and other defects have adequate time, training, and independence to carry out those duties effectively. In particular, any new proposal should establish a line speeds cap at or below the current maximum allowed under traditional inspection (1,106 hph).

In addition, prior to moving forward with NSIS, the agency should propose a clear framework directing regulatory action should an establishment’s HACCP plan be found deficient. Ideally, this definition will incorporate new evidence-based microbial performance standards for pork, as already recommended above.

\textsuperscript{46} Proposed Swine Rule at 4796.
III. Contamination of the Pre-operation Environment

In addition to establishing NSIS and removing microbial performance standards, the Proposed Swine Rule would also require all swine slaughter establishments to include in their HACCP plans written procedures, including microbial sampling and analysis, to prevent contamination of the pre-operational environment by enteric pathogens.

CSPI supports this aspect of the rule. Requiring facilities to monitor and assess contact surfaces is a reasonable measure given that recent investigations of foodborne illness outbreaks revealed food contact surfaces to be contaminated with the outbreak strain. Requiring such monitoring should help to ensure that surfaces are sanitary and free of enteric pathogens. This element of the proposed rule should therefore be maintained.

IV. Enhancing Food Safety

The Proposed Swine Rule promises to save money for government and increase profits for industry while maintaining food safety and consumer protection. Even assuming food safety could be guaranteed under the proposal (which CSPI disputes), the goal of “modernization” should not be to maintain food safety, but to substantially enhance it. An estimated 500,000 people become ill and 82 die each year from foodborne illness attributable to pork. Any further effort to modernize meat inspection should be targeted at substantially reducing those numbers.

Food safety experts have long advocated for measures to address pathogenic contamination pre-harvest, and CSPI has worked to document how other countries successfully incorporated such measures into their inspection systems. Any effort to modernize meat inspection in the United States should also include such measures to improve food safety pre-harvest.

FSIS’s statutory authority does not preclude the agency from addressing pre-harvest risks as part of an effort to modernize inspections. For example, establishments could be authorized to participate in NSIS only after demonstrating they have measures in place to reduce pathogenic contamination pre-harvest. This could include demonstrating that each establishment has methods to categorize incoming animals based on disease risk, or has minimum food safety standards for suppliers to ensure low levels of pathogenic contamination among animals arriving for slaughter.

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48 Proposed Swine Rule at 4799.
49 Ibid. at 4780.
V. Conclusion

The Proposed Swine Rule puts consumers at risk of foodborne illness by weakening traditional inspection measures, while also removing important microbial testing requirements needed to ensure the effectiveness of modernized inspection.

We urge you to withdraw the current proposal and design a new rule that prioritizes food safety by aiming to significantly reduce contamination and foodborne illness.

Such an alternative rule should:

- Be issued only following implementation of an updated pathogen-specific performance standard for pork.
- Maintain codified generic *E. coli* testing requirements. Establishments could still be permitted to apply alternative testing methods via regulatory waiver.
- Establish a line speed cap at or below the current maximum allowed under traditional inspection (1,106 hph).
- Ensure that individuals charged with carrying out post-mortem inspection are provided adequate time, training, and independence to carry out their duties.
- Ensure that signs of animal disease are appropriately reviewed by FSIS inspectors, including by retaining the requirement that FSIS inspectors direct the application and removal of “U.S. Condemned” tags.
- Propose a clear framework directing regulatory action should an establishment’s HACCP plan be found deficient, ideally incorporating updated microbial testing standards.
- Implement measures to mitigate disease risk pre-harvest.

CSPI appreciates your consideration of these comments,

Sincerely,

Sarah Sorscher, J.D., M.P.H.
Deputy Director of Regulatory Affairs