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Acting Administrator  
Food Safety and Inspection Service, USDA  
Docket Clerk  
Patriots Plaza 3  
1400 Independence Avenue SW  
Mailstop 3782, Room 9-163 A,  
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Re: Public Comment in response to Docket ID: FSIS-2016-0017, RIN: 0583-AD62

Public Citizen is a national consumer advocacy organization with more than 400,000 members and supporters. We advocate in an array of issue areas to advance the public interest, including for the health and safety of workers and for whistleblower protections. We appreciate the opportunity to comment on this rulemaking.

We write in opposition of the Food Safety and Inspection Service (FSIS) proposed rule, “Modernization of Swine Slaughter Inspection” (swine proposal), Docket ID: FSIS-2016-0017, RIN: 0583-AD62.<sup>1</sup> The swine proposal would dangerously increase the current maximum limits on line speeds in hog slaughter plants, and would largely privatize the inspection process. Extensive documentation by government agencies and civil society caution that faster line speeds and fewer government inspections will result in greater worker injuries, food safety threats for consumers, and a predictable spike in whistleblower retaliation against employees attempting to shine a light on dangerous practices at slaughtering facilities.

### **Background**

The swine proposal seeks to establish a new optional inspection system for hog slaughter plants, known as the New Swine Slaughter Inspection System (NSIS) that is modeled after the contentious pilot program HACCP-Based Inspection Models Project (HIMP). Specifically, under the swine proposal, plants that choose to participate in NSIS will have the option to increase line speeds in hog plants from the existing rate of approximately 1,100 hogs per hour to speeds as high as 1,300 to 1,500 hogs per hour, while transferring inspection duties from trained FSIS inspectors to plant employees that have received inadequate to no inspection training.<sup>2</sup> FSIS states that the “proposed regulation is expected to reduce

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<sup>1</sup> Modernization of Swine Slaughter Inspection, 83 Fed. Reg. 4780 (Feb. 1, 2018) (to be codified at 9 C.F.R. 301, 9 C.F.R. 309, 9 C.F.R. 310), <https://bit.ly/2EWxd8o>.

<sup>2</sup> Deborah Berkowitz, Suzanne McMillan, *High-Speed Pig Slaughter will be Disastrous for Everyone Involved*, The Guardian (April 17, 2018), <https://bit.ly/2qD6clw>.

the regulatory burden on establishments,” as evidenced by the fact that HIMP hog plants average line speeds at 12.49 percent faster than non-HIMP plants, and “this increase in line speed is synonymous with industrial efficiency.”<sup>3</sup> Reductions in perceived industry regulatory burden must not form the basis for determining public policy. Instead public health and worker safety need to be of paramount concern for food safety agencies.

The United States Department of Agriculture (USDA) states its role is to “provide leadership on food ... based on public policy, the best available science, and effective management.”<sup>4</sup> Relatedly, FSIS “[e]nhances public health and well-being by protecting the public from foodborne illness and ensuring that the nation’s meat, poultry and egg products are safe, wholesome, and correctly packaged.”<sup>5</sup> As detailed below, extensive analysis and documentation demonstrate that the swine proposal is in direct conflict with USDA’s role to ensure safe hogs through responsible public policy, as it places workers and consumers directly in harm’s way in an effort to increase companies’ profits.

HIMP was established in 1997 “to determine whether applying new Government slaughter inspection procedures, along with new plant responsibilities, could promote innovation and provide at least the same food safety and consumer protection”.<sup>6</sup> Five hog plants participate in HIMP, along with young poultry and turkey plants. Since HIMP was established it has failed to demonstrate its viability, and it has come under widespread criticism from labor and consumer groups for an increase in worker injuries and food safety violations at those plants.<sup>7</sup> USDA whistleblowers have provided grueling firsthand accounts of the rapid decline in inspection standards at HIMP plants, and HIMP efficacy has been called into question throughout the federal government.<sup>8</sup> Further, the proposal comes on the heels of a recent decision by the USDA to reject increased line speeds for poultry plants, and a new report by the Government Accountability Office (GAO) that confirms long-standing concerns that meatpacking workers may not report occupational hazards due to fear of retaliation.<sup>9</sup>

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<sup>3</sup> Modernization of Swine Slaughter Inspection, 83 Fed. Reg. 4780 (Feb. 1, 2018) (to be codified at 9 C.F.R. 301, 9 C.F.R. 309, 9 C.F.R. 310), <https://bit.ly/2EWxd8o>.

<sup>4</sup> *About the U.S. Department of Agriculture*, U.S. Department of Agriculture (viewed on April. 16, 2018), <http://bit.ly/2Ba5wuF>.

<sup>5</sup> *Agencies*, U.S. Department of Agriculture (viewed on April. 16, 2018), <http://bit.ly/2BTedGc>.

<sup>6</sup> Modernization of Swine Slaughter Inspection, 83 Fed. Reg. 4780 (Feb. 1, 2018) (to be codified at 9 C.F.R. 301, 9 C.F.R. 309, 9 C.F.R. 310), <https://bit.ly/2EWxd8o>.

<sup>7</sup> Alvin Sewell, *The HACCP Inspection Models Project Has More Problems than Solutions*, Food Safety News (February 7, 2014), <https://bit.ly/2HOP57W>.

<sup>8</sup> U.S. Government Accountability Office, MORE DISCLOSURE AND DATA NEEDED TO CLARIFY IMPACT OF CHANGES TO POULTRY AND HOG INSPECTIONS (August 2013), <https://bit.ly/2HGzAlY>; U.S. Department of Agriculture, Office of Inspector General, FOOD SAFETY AND INSPECTION SERVICE—INSPECTION AND ENFORCEMENT ACTIVITIES AT SWINE SLAUGHTER PLANTS, AUDIT REPORT 24601-0001-41 17 (May 2013) <https://bit.ly/2q11zXF>; Letter from 63 Congressional Representatives to Sonny Perdue, Secretary of Agriculture, U.S. Department of Agriculture (April 23, 2018).

<sup>9</sup> Letter from Carmen Rottenberg, Acting Deputy Under Secretary for Food Safety, U.S. Department of Agriculture, to Michael J. Brown, President, National Chicken Council (January 29, 2018), <https://bit.ly/2nzOdu1>; U.S. Government Accountability Office, BETTER OUTREACH, COLLABORATION, AND INFORMATION NEEDED TO HELP PROTECT WORKERS AT MEAT AND POULTRY PLANTS (November 2017), <http://bit.ly/2AxcjPi>.

## Worker Health and Safety Impacts

Decades of findings by the federal government, worker rights organizations and meat workers demonstrate that increased line speeds lead to greater worker injuries. Meatpacking workers already suffer from injuries at a rate nearly two and a half times higher than the average national rate, their injury rate is nearly three times higher for injuries that require them to lose time from work or restrict their job duties, and they experience work-related illnesses at a rate nearly 17 times higher than other industries, according to the Bureau of Labor Statistics.<sup>10</sup> These statistics are particularly alarming given that employers often underreport injuries to disguise the full extent of the problem, and workers underreport injuries due to fear of retaliation.<sup>11</sup>

In February 2018 a coalition of 35 organizations, including Public Citizen, urged the USDA to withdraw the proposal and put an end to its high-speed slaughter program. The letter cautioned that HIMP plants “have the highest line speeds in the country and therefore may pose the greatest risk of injury to workers.”<sup>12</sup> Our warnings were echoed by a recent Congressional letter from more than 60 Representatives to the USDA that cautioned, “Even at current line speeds, pork slaughter and processing workers face many job risks that can lead to severe injury, illness and death. An increase in line speeds will result in an already dangerous industry becoming more dangerous.”<sup>13</sup>

In more evidence that the current line speeds are unsafe, consistent with reports by nonprofits and Congress, in 2016 the Government Accountability Office (GAO) reported that Occupational Safety and Health (OSHA) and National Institute for Occupational Health and Safety (NIOSH) officials “told us line speed—in conjunction with hand activity, forceful exertions, awkward postures, cold temperatures, and other factors such as rotation participation and pattern—affects the risk of both musculoskeletal disorders and injuries among [meat and poultry] workers.”<sup>14</sup> Further, workers interviewed directly by GAO reported that the repetitive nature of meat and poultry work results in injuries.<sup>15</sup> GAO also found that employers do not want the line to slow down even when the plant is understaffed.<sup>16</sup>

In the fall of 2013, a network of worker safety groups petitioned OSHA and USDA to regulate and reduce assembly line speeds in meat and poultry processing plants, with a goal of minimizing ergonomic injuries

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<sup>10</sup> Deborah Berkowitz, *At a Glance: The Trump USDA’s Proposed New Swine Slaughter Inspection System Will Greatly Endanger Meatpacking Workers*, NELP (viewed on April 12, 2018), <https://bit.ly/2HjNY3e>.

<sup>11</sup> U.S. Government Accountability Office, *BETTER OUTREACH, COLLABORATION, AND INFORMATION NEEDED TO HELP PROTECT WORKERS AT MEAT AND POULTRY PLANTS* (November 2017), <http://bit.ly/2AxcjPi>.

<sup>12</sup> Letter from 63 Congressional Representatives to Sonny Perdue, Secretary of Agriculture, U.S. Department of Agriculture (April 23, 2018).

<sup>13</sup> Letter from 35 public interest organizations to Sonny Perdue, Secretary of Agriculture, and Carmen Rottenberg, Acting Deputy Under Secretary for Food Safety, U.S. Department of Agriculture (February 6, 2018), <https://bit.ly/2F14Fu8>.

<sup>14</sup> U.S. Government Accountability Office, *ADDITIONAL DATA NEEDED TO ADDRESS CONTINUED HAZARDS IN THE MEAT AND POULTRY INDUSTRY 30* (April 2016), <http://bit.ly/1NSleLl>.

<sup>15</sup> *Ibid.*, 22

<sup>16</sup> U.S. Government Accountability Office, *ADDITIONAL DATA NEEDED TO ADDRESS CONTINUED HAZARDS IN THE MEAT AND POULTRY INDUSTRY 30* (April 2016), <http://bit.ly/1NSleLl>.

related to high line speeds.<sup>17</sup> While OSHA ultimately denied the petition due to “a lack of resources,” it found the line speed affects the risk of musculoskeletal disorders and injuries among workers. Further, in response to the petition, the USDA chose not to increase the maximum line speed in young chicken plants – a decision that it affirmed in January 2018 when it rejected the National Chicken Council’s petition to waive slaughter inspection line speeds for poultry plants.<sup>18</sup>

For over 30 years OSHA has been aware that faster line speeds results in greater workplace injuries within meatpacking plants. In a 1993 publications, OSHA reported that musculoskeletal injuries and disorders are particularly prevalent in the meatpacking industry. In effect, it recommended that plants should “adjust line speeds” and implement solutions such as “reducing the total number of repetitions per employee by such means as decreasing production rates” in order to decrease the high injury rates of meatpacking workers.<sup>19</sup> In its consideration of NSIS, FSIS should depend on the decades of evidence-based findings that oppose increased line speeds in meatpacking plants, and should instead work to reduce line speeds to promote better worker safety conditions in these plants.

### **Food Safety Threats**

Despite FSIS assertions that NSIS “will be more effective in ensuring food safety” than the traditional inspection process, findings by government entities, consumer organizations and USDA inspectors conclusively demonstrate that faster line speeds and privatization of the inspection process will result in greater food safety threats to the public.<sup>20</sup> Dismembering and gutting up to 1,500 hogs per hour leaves insufficient time for all but the most cursory examinations for contamination, which eventually finds its way to the consumer.

In 2013 GAO published a food safety report on the HIMP pilot programs that concluded, “faster line speeds allowed under the pilot projects raise concerns about food safety and worker safety” and concluded that additional data is needed to determine the efficacy of the pilot project.<sup>21</sup> Further, the USDA Office of Inspector General found that FSIS did not provide adequate oversight of the HIMP pilot

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<sup>17</sup> Petition from 15 public interest organizations to Thomas Perez, Secretary of Labor, U.S. Department of Labor, David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Tom Vilsack, Secretary of Agriculture, U.S. Department of Agriculture, Elisabeth Hagen, Under Secretary Food Safety, U.S. Department of Agriculture (September 3, 2013), <https://bit.ly/2KpndYR>.

<sup>18</sup> U.S. Government Accountability Office, ADDITIONAL DATA NEEDED TO ADDRESS CONTINUED HAZARDS IN THE MEAT AND POULTRY INDUSTRY 29 (April 2016), <http://bit.ly/1NSleLj>; Letter from Carmen Rottenberg, Acting Deputy Under Secretary for Food Safety, U.S. Department of Agriculture, to Michael J. Brown, President, National Chicken Council (January 29, 2018), <https://bit.ly/2nzOdu1>; *USDA Denies Poultry Industry’s Request to Speed Up the Slaughter Line*, NPR (January 31, 2018) <https://n.pr/2nosG8g>.

<sup>19</sup> *Ergonomics Program Management Guidelines for Meatpacking Plants*, Occupational Safety and Health Administration (viewed on April 17, 2018), <https://bit.ly/2HzTvSx>.

<sup>20</sup> Modernization of Swine Slaughter Inspection, 83 Fed. Reg. 4780 (Feb. 1, 2018) (to be codified at 9 C.F.R. 301, 9 C.F.R. 309, 9 C.F.R. 310), <https://bit.ly/2EWxd8o>.

<sup>21</sup> U.S. Government Accountability Office, MORE DISCLOSURE AND DATE NEEDED TO CLARIFY IMPACT OF CHANGES TO POULTRY AND HOG INSPECTIONS (August 3013), <http://bit.ly/2AMvy4h>.

plants, and in turn, “HIMP plants may have a higher potential for food safety risks”.<sup>22</sup> Specifically, it found that three of the five HIMP plants had some of the highest rates of non-compliance reports nationwide.<sup>23</sup> Those warnings were confirmed by USDA inspectors at HIMP plants. Given the failure of the pilot program, it should not be expanded to all plants.

In 2014 a series of affidavits from USDA inspectors at HIMP hog plants detailed alarming food safety violations.<sup>24</sup> Repeated concerns ranged from inadequate time to identify fecal matter and diseases due to the fast line speeds, to plant employees’ insufficient training and the pressure they received to turn a blind eye to contaminated meat. For instance, the USDA whistleblowers reported:

*“USDA inspectors ... are only present in establishments as a precautionary measure, to ensure that plant inspectors are catching everything...USDA inspectors are under much more stress under HIMP...When I was at the plant, in some cases USDA inspectors would monitor the activities of up to 4 different employees at a time, all while also checking the carcass for defects. What’s more is that the line speeds make it impossible to monitor everyone all at once.”*<sup>25</sup> - USDA Hog Inspector

*“To remain in the HIMP program, pilot plants are supposed to exceed or at least meet the USDA’s standards for food safety and quality. I can say without a doubt that this plant is not meeting, and certainly is not exceeding these standards. The only way this plant could possibly be meeting these standards is by manipulating plant employees, USDA inspectors, and their own records and processes. I have personally witnessed all three ... The company is even reworking products that contain grease, abscesses, and fecal contamination to sell later ... For the sake of consumers across the country, I hope that others will speak out to prevent the program from expanding nationwide.”*<sup>26</sup> – USDA Hog inspector

These disturbing firsthand accounts, paired with cautionary government reports, demonstrate how the swine proposal violates FSIS’ mission to uphold food safety and will put the public at greater risk of consuming contaminated pork.

### **Whistleblower Retaliation**

Occupational and food safety problems within the meatpacking industry are compounded by its pervasive culture of intimidation and silence, with a workforce that is treated as expendable. Meat workers are disproportionately people of color and immigrants, and they face risks of termination or even threats of deportation for reporting safety concerns or if they become permanently disabled due

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<sup>22</sup> U.S. Department of Agriculture, Office of Inspector General, FOOD SAFETY AND INSPECTION SERVICE—INSPECTION AND ENFORCEMENT ACTIVITIES AT SWINE SLAUGHTER PLANTS, AUDIT REPORT 24601-0001-41 17 (May 2013) <https://bit.ly/2q1zXF>.

<sup>23</sup> Ibid., 19

<sup>24</sup> *Public Resources*, Government Accountability Project (viewed on April 15, 2017), <http://bit.ly/2iT9ltk>.

<sup>25</sup> Affidavit – USDA Hog Inspector #1, Government Accountability Project (September 29, 2014), <https://bit.ly/2HhaTvZ>.

<sup>26</sup> Affidavit – USDA Hog Inspector #3, Government Accountability Project (October 22, 2014), <https://bit.ly/2F1aurj>.

to injuries incurred on the line.<sup>27</sup> Unlike USDA inspectors, plant employees do not have viable legal channels to challenge whistleblower retaliation. These factors lead to underreporting of both worker injuries and threats to consumers.<sup>28</sup>

In a November 2017 GAO report on workplace safety and health for meat and poultry plants, it concluded “OSHA faces challenges identifying and addressing worker safety concerns because workers may be reluctant to contact OSHA for fear of employer retaliation.”<sup>29</sup> GAO acknowledged that to the extent workers are afraid to report concerns, OSHA may not be able to identify or address unsafe working conditions.<sup>30</sup> Those findings are consistent with a 2016 GAO report that cautioned meat and poultry workers “may underreport injuries and illnesses because they fear losing their jobs.”<sup>31</sup> Consistently, in their affidavits USDA hog inspectors recounted the daily pressures that plant workers faced between job security and upholding consumer safety:

*“[P]lant inspectors don’t actually want to shut off the line to deal with problems they spot on the job. When I was working at the plant, they scrambled to try to rail out carcasses as fast as they could and it sometimes seemed like there was mass confusion. 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”<sup>32</sup> – USDA Hog Inspector*

*“[HIMP plant] 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 defensive 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 termination if they see them condemning too many carcasses or carcass parts.”<sup>33</sup> – USDA Hog Inspector*

In addition to the threat of reprisal for reporting workplace injuries or food contamination, workers are denied basic human dignities in order to maintain production and keep up with the line speed. GAO’s November 2017 report found that meat and poultry workers identified bathroom access as a concern

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<sup>27</sup> U.S. Government Accountability Office, ADDITIONAL DATA NEEDED TO ADDRESS CONTINUED HAZARDS IN THE MEAT AND POULTRY INDUSTRY 33 (April 2016), <http://bit.ly/1NSleLl>; *Working the ‘Chain,’ Slaughterhouse Workers Face Lifelong Injuries*, NPR (August 11, 2016), <https://n.pr/2HG808d>.

<sup>28</sup> Ibid.

<sup>29</sup> U.S. Government Accountability Office, BETTER OUTREACH, COLLABORATION, AND INFORMATION NEEDED TO HELP PROTECT WORKERS AT MEAT AND POULTRY PLANTS (November 2017), <http://bit.ly/2AxcjPi>.

<sup>30</sup> Ibid.

<sup>31</sup> U.S. Government Accountability Office, ADDITIONAL DATA NEEDED TO ADDRESS CONTINUED HAZARDS IN THE MEAT AND POULTRY INDUSTRY 30 (April 2016), <http://bit.ly/1NSleLl>.

<sup>32</sup> Affidavit – USDA Hog Inspector #1, Government Accountability Project (September 29, 2014), <https://bit.ly/2HhaTvZ>.

<sup>33</sup> Affidavit – USDA Hog Inspector #3, Government Accountability Project (October 22, 2014), <https://bit.ly/2F1aurj>.

and said they fear speaking up at work.<sup>34</sup> To the extent plant owners are able to determine their line speeds and self-police, workers will experience greater pressure to keep pace at the expense of their own health and that of consumers, or risk retaliation.

### **Conclusion**

Extensive documentation by government agencies, nonprofits and workers entrusted with safeguarding the U.S. meat supply demonstrate the meat industry's 1) deplorable track record maintaining worker health and safety, 2) inability to adequately inspect hogs at increased line speeds, and 3) inability to self-police, as plants place production and increased profit over worker and consumer safety, and use fear tactics to stifle dissent among an already vulnerable workforce.

NSIS would expand and institutionalize an extremely questionable pilot program, placing already at-risk workers and consumers in greater harm's way. Based on these conclusions, FSIS should immediately rescind its swine proposal.

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<sup>34</sup> U.S. Government Accountability Office, BETTER OUTREACH, COLLABORATION, AND INFORMATION NEEDED TO HELP PROTECT WORKERS AT MEAT AND POULTRY PLANTS (November 2017), <http://bit.ly/2AxcjPi>.