



United States Department of Agriculture

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Food Safety and  
Inspection Service

1400 Independence  
Avenue, SW,  
Washington, D.C.  
20250

[Insert address]

[Insert date]

Dear [Insert Establishment Rep Name]:

As you are aware, on March 31, 2021, the U.S. District Court for the District of Minnesota found that USDA violated the Administrative Procedure Act by eliminating line speed limits in its New Swine Slaughter Inspection System (NSIS) Final Rule without meaningfully considering comments on how this could impact worker safety. The judge vacated the NSIS Final Rule only insofar as it eliminated line speed limits for establishments operating under NSIS. When the Court's Order went into effect on June 30, 2021, all NSIS establishments were required to operate at evisceration line speeds that do not exceed 1,106 head per hour (hph) (the maximum inspection rate with heads attached allowed under existing regulations for traditional swine inspection).

After consulting with the Occupational Safety and Health Administration (OSHA), FSIS has decided to invite existing NSIS establishments to apply for a time-limited trial that would allow them to operate at an increased evisceration line speed for a period of up to 12 months. The time-limited trial is intended to facilitate experimentation with different ergonomics, automation, and crewing to design custom work environments that increase productivity and protect food safety while, at the same time, decreasing the probability of worker injuries. It would also allow FSIS to collect data to share with OSHA, which could inform a future rulemaking in this area.

If your establishment would like to participate in the time-limited trial, you would need to implement worker safety measures included in an agreement with the workers' union or worker safety committee that represents your employees. Your application should include the mechanism by which your establishment would collect data that measure the impact of line speed on workers.

FSIS is interested in receiving requests for time-limited trials from NSIS establishments that:

- Have been operating under the NSIS for at least 120 days and have followed all NSIS requirements during that time; have demonstrated a history of regulatory compliance (i.e., the establishment has not received a public health alert for the last 120 days); have not had an enforcement action as a result of a Food Safety Assessment conducted in the last 120 days; have not received an enforcement action for humane handling in the last 120 days; and have not been the subject of a public health related enforcement action in the last 120 days; and

- Have not received an OSHA citation in the prior three years, are not the subject of a current OSHA inspection, and are not currently contesting any OSHA citation.

FSIS recommends that any request for a time-limited trial include:

- A fully executed agreement related to worker safety with a union or worker safety committee, particularly an agreement that meets the requirements of a certified health and safety management system like OSHA's Voluntary Protection Programs (VPP), ISO 45001, or American National Standards Institute ANSI Z10 (if/when certification for ANSI Z10 is available).
- Detailed information about safety protocols and line configurations.
- Details about the establishment's Hazard Analysis and Critical Control Point (HACCP) plan.
- Information about how the establishment maintains process control, including one year of microbial data, methodology for evaluating that microbial data (e.g., upper and lower control limits), correlation of that microbial data to the establishment's sanitary dressing process control data, correlation of that microbial data to FSIS' *Salmonella* data and interventions to address seasonality.
- Information on how the establishment will maintain or improve food safety while operating at higher line speeds.
- Information on the type of records that will be maintained that will assist FSIS in performing appropriate rulemaking analysis (e.g., laboratory results, weekly or monthly summary production reports).
- Information on the type of records that will be maintained related to worker safety (e.g., past and future establishment employee injury numbers from employee reports of symptoms, OSHA logs and workers' compensation reports, recordable rates, time and motion study data, and data on injury type, root cause analysis, implementation of controls, and line location). In addition, information related to leading and lagging metrics for worker safety should be maintained. Lagging metrics are: trends in the numbers and rates for injuries reportable on OSHA Form 300 (location, cause, area of the body), workers compensation reports, first aid reports, employee turnover, and results of root cause analyses performed for those injuries with a focus on engineering controls. Leading metrics are: symptom surveys; updated job hazard analyses including ergonomics

(i.e., quantitative measures of hazard assessment, including strain index, National Institute for Occupational Safety and Health (NIOSH) lift equation, Liberty Mutual push/push/carry tables, American Conference of Governmental Industrial Hygienists; (ACGIH) hand activity Threshold Limit Value (TLV), upper limb localized fatigue TLV); and amputation hazards (e.g., machine pinching, knife and saw use); regular meetings of the safety and health teams that identify/and control hazards (mostly through engineering controls) and employee training in hazard identification/control and recognition of symptoms; periodic (at least annual) safety audits that include interviews with employees and supervisors; tracking of safety recommendations and whether they lead to controls; and assessment of the medical unit, as well as training, licensing and scope of practices to ensure staff have the appropriate skill level, professional scope of practice, and supervision, together with adequate infrastructure available in the first aid stations or employee/medical clinics, recordkeeping staff responsible for relevant recordkeeping that can manage appropriate OSHA documentation and clinician decisions being made independent of recordability.

- A description of policies designed to ensure that no one, including companies and third-party contractors, discriminates or takes adverse action against any worker or other person who raises a concern about meatpacking operation safety practices or hazards to the employer, the employer's agent, other workers, a government agency, or to the public, including through print, online, or social media.
- A description of policies designed to ensure that no policies, programs, or procedures are in place or implemented during the period of the time-limited trial that discourage or penalize the reporting of injuries or illness by workers to their employer.

Consistent with existing policy, if an establishment is granted the time-limited trial, FSIS would require establishments to notify the FSIS inspector-in-charge (IIC) when they are operating at evisceration line speeds higher than 1,106 hph to allow FSIS to evaluate the establishment's ability to maintain process control at a given line speed. In addition, FSIS would require that establishments submit information on their intended maximum line speed.

[insert last name]

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If your establishment is interested in applying for the time-limited trial, please submit your request through [askFSIS](#). Applications will be reviewed by FSIS on a case-by-case basis under 9 CFR 303.1(h); this notification does not entitle any NSIS establishment to obtain authorization for a time-limited trial. Additionally, all labor-management agreements and worker safety data-collection plans will be reviewed by the appropriate OSHA Regional Administrator.

Sincerely,

Rachel Edelstein  
Assistant Administrator,  
Office of Policy and Program Development