

[Date]

The Honorable Tom Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Secretary Vilsack,

We are writing to direct your attention to a recent U.S. district court decision which vacated a portion of the Department of Agriculture (“USDA”) New Swine Inspection System (“NSIS”) rule relating to line speeds at NSIS packing plants. By removing this provision six plants will be forced to reduce their output, and by extension, their purchase of hogs.

While the economic impact to these packers will be significant, it is the nation’s small and medium-sized hog farmers who will suffer the greatest harm from upstream impacts. It is imperative that USDA act quickly to move for a stay of the judge’s order and an appeal to prevent this reduction in packing capacity which is set to take place at the end of June.

Although NSIS is relatively new, it is based upon a pilot program that operated successfully for decades. Its predecessor, the Hazard Analysis and Critical Control Point (“HACCP”) Inspection Models Project (“HIMP”) program was developed during the Clinton administration and ran continuously through 2019. As a result of HIMP’s success, USDA began consideration of a permanent program during your first term as Secretary under the Obama administration and was finalized during the Trump administration.

Worker safety is of the utmost importance, yet the order to vacate the NSIS line speed provisions was due to the rulemaking process. The court determined the agency failed to satisfy the Administrative Procedure Act’s (“APA”), claiming it did not address certain comments raising worker safety concerns. Adherence to the APA is crucial to preserve sound and reasoned rulemaking by federal agencies. However, there is compelling evidence about the safety of workers in NSIS. Specifically, FSIS data comparing injury data between 2002 and 2010 shows that the NSIS program led to fewer worker injuries over time and fewer injuries when compared to their non-NSIS counterparts.

If USDA fails to act, American hog farmers will face significant harm. Research from Dr. Dermot Hayes at Iowa State University indicates that the decision would reduce national packing capacity by 2.5% which will create a surplus of hogs on the market—dropping prices by

\$10.70/cwt or roughly \$23.22 per animal. The total economic loss of this decision on U.S. hog farmers is estimated at \$80 million in 2021.

As the hog production cycle spans nearly a year, hogs set to enter this reduced-capacity market are already being raised. Farmers have little ability to alter their supply in the next year. Many farmers supplying these NSIS plants will need to find alternative destinations for their hogs.

The resulting surplus and reduced demand in a concentrated geographic region will shift economic power to pork processing companies. The culmination of economic losses from the pandemic, multiple years of trade retaliation, and the court's decision may result in some producers selling their operation. By failing to act, USDA will drive consolidation in the pork industry.

To avoid these consequences, the Department must defend the NSIS program by appealing and requesting an extended stay, beyond the current 90-day deadline and pursue an expedited rulemaking while the stay is in place. Failure to do so will leave our nation's hog producers to bear the brunt of the consequences due to no fault of their own. Thank you for your consideration.

Sincerely,

[Date]

The Honorable Elizabeth Prelogar
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Acting Solicitor General Prelogar,

We are writing to direct your attention to a recent U.S. district court decision which vacated a portion of the Department of Agriculture (“USDA”) New Swine Inspection System (“NSIS”) rule relating to line speeds at NSIS packing plants. By removing this provision six plants will be forced to reduce their output, and by extension, their purchase of hogs.

While the economic impact to these packers will be significant, it is the nation’s small and medium-sized hog farmers who will suffer the greatest harm from upstream impacts. It is imperative that the U.S. government (“USG”) act quickly to move for a stay of the judge’s order and an appeal to prevent this reduction in packing capacity which is set to take place at the end of June.

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