

Freedom of Information Act Officer
Freedom of Information Act Officer
USDA, Food Safety and Inspection Service
Room 2168 South Building
1400 Independence Ave., SW
Washington, DC 20250

Delivered via email at fsis.foia@usda.gov on February 23, 2018

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, I hereby submit the following FOIA request and ask that the United States Department of Agriculture (USDA or agency) process these and three other pending FOIA requests in an expedited matter, as detailed below.

First, I request that the agency provide me the following:

1. All records, including all correspondence, memos, notes of telephone calls, electronic messages transcripts, minutes and notes of meetings and/or other memorializations detailing the process and criteria for selecting the 21 non-HIMP plants studied as part of Food Safety and Inspection Service (FSIS)'s "Evaluation of the HACCP Inspection Models Project for Market Hogs" report (Hog HIMP Report) (located at <https://www.fsis.usda.gov/wps/wcm/connect/f7be3e74-552f-4239-ac4c-59a024fd0ec2/Evaluation-HIMP-Market-Hogs.pdf?MOD=AJPERES>).
2. To the extent that any exist, any records that provide the estimated line speeds for the five Hog HIMP plants and 21 non-HIMP plants studied as part of FSIS's Hog HIMP Report in calendar years (CY) 2010-2012, CY 2013, and either Fiscal Year (FY) or CYs 2014-2017.
3. To the extent that any exist, any record that provides the number of inspection procedures performed per establishment in the five HIMP and 21 non-HIMP facilities under PHIS in CYs 2012 through 2017 (along with the totals and total SSOP and HACCP procedures), as the agency's Hog HIMP Report provided for PBIS in Table 3-1 for CY 2010; and to the extent that no such records already exists, any records in spreadsheet form that detail the number of inspection procedures performed at the five HIMP and 21 non-HIMP facilities under PHIS in CYs 2012-2017.
4. Any records in spreadsheet form that provide the number of regulation verifications (for all inspections regulations) performed per establishment in the five HIMP, plants, 21 non-HIMP facilities, and all market hog establishments for CYs 2006-2017.
5. Any records in spreadsheet form that provide the number of Public Health Regulations (PHR) verifications, applicable to market hogs for each year performed, per establishment, in the five HIMP and 21 non-HIMP facilities for CYs 2013-2017, as the agency's Hog HIMP Report provided for with the 2012 and 2013 PHR verifications in Tables 3-4 through 3-5 for CY 2012-2013.

6. All records that provide the analysis for this agency conclusion on page 21 of the Hog HIMP Report: "The sorting rates in HIMP market establishments by establishment sorters are statistically significantly higher than condemnation rates in non-market Hog establishments for [2012-2013]."
7. To the extent that any exist, any records that show the sorting and condemnation rates in the five HIMP and 21 non-HIMP facilities for CYs 2014-2017, as the agency's Hog HIMP Report provided for CY 2012-2013 in Table 3-7; and to the extent that no such records already exists, any records in spreadsheet form that detail the number of carcasses sorted and condemned at the five HIMP and 21 non-HIMP facilities for CYs 2014-2017.
8. To the extent that any exist, any records that show the PHR Noncompliance Rates (NRs) in the five HIMP and 21 non-HIMP facilities for CYs 2014-2017 based on the PHRs for that particular year, as the agency's Hog HIMP Report provided for CY 2012-2013 in Table 3-10.
9. To the extent that any exist, any records that show the FS-2 NRs in the five HIMP and 21 non-HIMP facilities for CY 2014-2017, as the agency's Hog HIMP Report provided for CY 2012-2013 in Table 3-13.
10. Any records that show the OCP and FS performance standards in the five HIMP facilities for CYs 2014-2017, as the agency's Hog HIMP Report provided for CY 2009 and CY 2012-2013 in Tables 3-15 through 3-16.
11. Any records that show the National Residue Sampling Directed and Inspector-Generated Sampling in the five HIMP facilities for CYs 2014-2017, as the agency's Hog HIMP Report provided for CYs 2006-2010 and 2012-2013 in Tables 3-19 through 3-20.
12. For such chemical testing listed above in item 11 and the testing for years provided in Hog HIMP report Tables 3-19 through 3-20, all data showing the number of suspected carcasses for testing, the number of actually carcasses condemned, the number of eligible carcasses for KIS tests, and the number of KIS test actually performed for each plant by district.
13. Any copies of the agency's "Assessment of the Potential Change in Human Risk of *Salmonella* Illnesses Associated with Modernizing Inspection of Market Hog Slaughter Establishments" (Risk Assessment) currently located at <https://www.fsis.usda.gov/wps/wcm/connect/0c03ed4d-68bf-4bd9-80e0-b8f3aa6ff16e/ModernizationSwineSlaughterRiskAssessment.pdf?MOD=AJPERES> with a *complete* set of data tables where the data is not cut off (see page 55, 90, *e.g.*)
14. Any workplace injury analysis performed by the agency in support of the New Swine Inspection System proposed rule, 83 Fed. Reg. 4,780 (Feb. 1, 2018) ("NSIS proposed rules")
15. Any analysis of Humane Methods of Slaughter Act violations referenced in the NSIS proposed rules.
16. Any records detailing the analysis of the swine slaughter inspection systems of Denmark and the Netherlands, as referenced in the NSIS proposed rules.
17. Any records detailing and analyzing the operations of the Canadian establishments operating under the HACCP-based Inspection Program ("HIP") for swine slaughter, including but not limited to all import rejections since March 2006 from these plants and all records detailing the deficiencies found by FSIS audit staff of the HIP inspection system during the agency's September 12-30, 2016 Canadian Audit.

18. Any records identifying the 40 swine slaughter plants the agency expected to opt into the New Swine Slaughter Inspection System, along with all inspection data, microbiological and residue testing, and food safety assessments for these plants dating from CY 2006 to present.
19. Any records of *Salmonella* test results collected for the FSIS Nationwide Market Hogs Microbiological Baseline Data Collection Program.
20. Any records of *Salmonella* test results underlying Table 2 in the Risk Assessment (at p. 22), and records sufficient to identify which data were used to calculate each figure presented in the table.
21. All records, including all correspondence, memos, notes of telephone calls, electronic messages transcripts, minutes and notes of meetings and/or other memorializations detailing the process and criteria for selecting establishments from which routine microbiological data was analyzed for the following figures in Table 2 identified in item 20 above: the non-HIMP plants (16 plants), the HIMP plants (4 plants), and the 35 Large and Small non-HIMP establishments (undisclosed number of plants).
22. Any records identifying any market-hog establishment that was using antimicrobial chemicals at the end of the slaughter process and prior to the "post-chill" testing, during any of the data collection underlying the Table 2 Summary in item 20 above; the type of chemical intervention the establishment used; and the dates on which the establishment used the intervention.
23. Any records identifying which establishments, from which data was collected for Table 2 identified in item 20 above, were using a hot-boning process at the end of the slaughter process and/or any establishment at which the "post-chill" data was taken before the carcass entered the cooler.
24. Any records identifying the non-market hog slaughter plants the agency believes will convert to NSIS and the criteria the agency plans to use for conversions.
25. Any records containing data that the agency has on *Salmonella* rates in market hogs compared to non-market hogs.
26. All *Salmonella* Initiative Program (SIP) waivers granted to swine slaughter plants and the microbiological testing data provided to the agency as a result of the waivers
27. Any records providing any analysis of the plants that the agency believes will have two off-line FSIS inspectors under NSIS and the criteria to be used to make that determination.

I am requesting these records as a representative of Food & Water Watch, a non-profit consumer advocacy organization. I request a waiver of fees because my interest in the records is not primarily commercial, and disclosure of the information will contribute significantly to public understanding of USDA inspections and plant performance with these inspections under Hog HIMP and such inspections and plant performance under the recently proposed New Swine Inspection System rules.

If my request is denied in whole or in part, I expect a detailed justification for withholding the records. As part of this, FWW asks that the agency detail which records it provides are responsive to each numbered item above and, to the extent that the agency does not have responsive records for each request, that it indicates that it does not have such records. FWW also requests any segregable portions that are not exempt to be disclosed. FWW consents to a rolling release of records if necessary.

Second, I ask that this request and three of FWW's pending FOIA requests, 18-46, 18-64, and 18-149, receive expedited processing, as indicated in the attached certification.

I will expect as expedited response within 10 days, as provided by law.

Thank you for your prompt attention to this matter. Please contact me at (202) 683-2451 or zcorrigan@fwwatch.org if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Z. Corrigan', with a stylized flourish at the end.

Zachary B. Corrigan
Senior Staff Attorney
Food & Water Justice Program
Food & Water Watch
zcorrigan@fwwatch.org

Certification by Zachary B. Corrigan
that a Compelling Need Exists for Expedited Processing

1. I, Zachary B. Corrigan, declare as follows:

- Pursuant to 7 C.F.R. § 1.9(b)(1) (2018), I believe that a failure to expedite the attached Freedom of Information Act (“FOIA”) requests could reasonably be expected to pose an imminent threat to the life or physical safety of an individual based on the following information:
 - The USDA Food Safety and Inspection Service (“FSIS” or “the agency”) has proposed new rules that would establish a new system deemed the New Swine Inspection System (“NSIS”) for the ante- and post-mortem inspection of swine at slaughter plants. *See* 83 Fed. Reg. 4780 (Feb. 1, 2018).
 - The rule, if finalized, would allow the agency to reduce the number of federal government inspectors performing ante-mortem and online postmortem inspections and condemnations, allowing slaughter-company employees to evaluate the animals for indicia of disease and perform so-called “sorting” to remove adulterated carcasses prior to federal government inspection. *Id.* at 4781.
 - The proposed rules eliminate line speed limits, allow companies to set their own. *Id.* According to the agency’s “Evaluation of HACCP Inspection Models Project (HIMP) for Market Hogs Final Report, November 2014,” (“Hog HIMP Report”) (located at <https://www.fsis.usda.gov/wps/wcm/connect/f7be3e74-552f-4239-ac4c-59a024fd0ec2/Evaluation-HIMP-Market-Hogs.pdf?MOD=AJPERES>), which evaluated slaughter plants in the HIMP pilot in order to assess how NSIS plants would perform, in Calendar Year (“CY”) 2013—the most recent year’s data that the agency makes available—the estimated average line speeds at the 5 HIMP market-hog establishments were 12.49% faster than the 21 non-HIMP comparison plants (1,099 heads per hour (“hph”) vs. 977 hph). *Id.* at 4812. The preamble to the agency’s proposal anticipates that plants opting into the NSIS would raise their line speeds by this same amount, *id.*, while decreasing the total number of online inspectors from 365 by more than a third of that (40%) to 218. *Id.* at 4814. Just looking at the 21 comparator plants evaluated in agency’s Hog HIMP report, they will go from 5-7 inspectors, depending on configuration, to 3 each. This means that

instead of inspecting an average of 163 heads per hour per inspector (approximate 2.7 per minute) at each plant, each inspector will be tasked with inspecting an average of 366 slaughtered animals per hour (6.1 per minute) under the new system. A mere 12.49% increase in line speeds results in close to *2-and-1/4 reduction* in average inspector resources dedicated to performing a critical appraisal of hog carcasses, heads, and viscera and close to *a 2-and-1/4 increase* in *effective* line speeds.

- The agency's data also indicates that in Hog HIMP plants poultry-plant employees dispose the nearly same percentage of adulterated swine carcasses as do inspectors, *see* Hog HIMP Report at 21, meaning online inspectors at NSIS plants won't be tasked with inspecting fewer carcasses compared to in traditional plants. The number of animals that they will be tasked to inspect will increase as line speeds go up, even putting aside the smaller online-inspection force. Plus, since plant-sorter employees receive no mandatory training whatsoever under the new system, this will result in a greater burden to online inspectors to ferret out contaminated swine. And because there will be no line-speed limits at all for these plants, online inspectors could have a much greater burden under the new system than even existed in the HIMP pilot.
- Moreover, the agency's data from the Hog HIMP pilot does not demonstrate that the new system will in fact be more protective of public health than the traditional system. Far from it. Even the five plants that volunteered for the HIMP pilot and whose data has been made public have had a number of serious problems, strongly indicating the proposed NSIS will jeopardize public health. For example, the agency's analysis shows that there were statistically significant differences in the weighted, health-related SSOP and HACCP noncompliance rates ("NRs") for Hog HIMP plants for a combined 4 years. HIMP Report 23. This includes large differences for violation of certain inspection procedures as well, such as 03J01, which is a critical snapshot of one or more components of plant's HACCP plan and for which a noncompliance triggers the comprehensive 03J02 evaluation of the plant's entire HACCP plan. While the agency indicates that the total NRs for SSOP and HACCP Public Health Regulations are lower in CYs 2012 and 2013 for the agency's public health regulations for those years, this is not true across the board for the all regulatory violations that the agency evaluated. In fact, for certain regulations

such as 9 C.F.R 417.3(a)(2), HIMP plants had dramatically higher and statistically significant NRs compared to non-HIMP establishments. *Id.* at 24. HIMP plants had an 11-times and three-times higher rate of violating this regulation in 2012 and 2013, respectively. *Id.* This regulation is a measure of whether the plant was maintaining control over a critical control point in the plant. The fact that for two years, HIMP plants had far higher NRs for this regulation shows that the HIMP plants were not adhering to their HACCP plans and, thus, that these plants were out of control far more frequently than in the ostensibly comparable non-HIMP plants.

- This is corroborated by other agency data. The agency's Assessment of the Potential Change in Human Risk of *Salmonella* Illnesses Associated with Modernizing Inspection of Market Hog Slaughter Establishments" (Risk Assessment") (currently located at <https://www.fsis.usda.gov/wps/wcm/connect/0c03ed4d-68bf-4bd9-80e0-b8f3aa6ff16e/ModernizationSwineSlaughterRiskAssessment.pdf?MOD=AJPERES>), shows that HIMP plants had far higher NRs than the comparator non-HIMP plants. Risk Assessment at 83. The Risk Analysis shows that NRs are the strongest indicator of human illnesses related to consuming contaminated pork. *Id.* at 50.
- Other analysis of USDA's data shows similar problems at HIMP plants. Food & Water 's analysis of noncompliance reports requested under the Freedom of Information Act for the five hog HIMP plants as well as five comparably-sized hog plants operating under traditional inspection, for the period from January 1, 2012 through November 30, 2016, found that:
 - HIMP plants received 84% of the non-compliance reports filed for problems with food safety plans; 73% of the reports filed for carcass contamination with feces, bile, hair or dirt; 65% of the reports filed for general carcass contamination; and 61% of the reports filed for equipment sanitation.
 - Over the five-year period, there were 22 instances—all occurring in the HIMP plants—in which a USDA on-line inspector discovered that a plant employee failed to identify a carcass so infected that consumption of the meat could cause food poisoning.
 - -The 3,562 non-compliance reports filed in HIMP plants included 7,169 regulatory violations. (Analysis located at

<https://www.foodandwaterwatch.org/insight/translating-new-swine-inspection-system.>)

- Similarly, a 2013 USDA Office of Inspector General (“OIG”) audit (located at , <https://www.usda.gov/oig/webdocs/24601-0001-41.pdf>, (“OIG Audit”)) found that found that the of the 10 plants cited with the most non-compliances from Fiscal Years from 2008 to 2011 were HIMP plants. (OIG report at 17.) In fact, the swine plant with the most noncompliances during this timeframe was a HIMP plant, with nearly 50% more violations than the plant with the next highest number. *Id.* At one of the five HIMP plants that slaughtered about 8,100 swine per day and produced and shipped more than 50,000 pounds of finished product per day, the OIG observed that neither HIMP sorters nor FSIS inspectors manually inspected viscera for signs of disease or contamination. *Id.* at 18.
- These problems mirror those found operating under the agency’s similar New Poultry Inspection System, which is the template for the NSIS rule. FWW’s recent analysis of chicken plants operating under NPIS found that out of 43 NPIS young chicken plants for which the agency posted *Salmonella* standards violations, 30% failed the standard compared to 18% of non-NPIS plants. Thirteen of the 32 plants violating the standards, or 42% were NPIS facilities. (located at <https://www.foodandwaterwatch.org/news/privatized-inspection-system-produces-more-contaminated-chicken>.)
- While ostensibly voluntary, FSIS estimates that thirty-five small- and high-volume plants and the existing HIMP plants, will adopt NSIS. The agency estimates that this will result in 92% of all swine slaughtered under the new system. 83 Fed. Reg. at 4,801.
- This will have a dramatic impact on public health. Food contaminated with *Salmonella* causes significant morbidity and mortality, with disease severity ranging from mild-to-moderate diarrhea to death. In 2016, CDC identified 24,029 cases, 5,512 hospitalizations, and 98 deaths confirmed to be caused by food borne illnesses. See Centers for Disease Control, *Incidence and Trends of Infections with Pathogens Transmitted Commonly Through Food and the Effect of Increasing Use of Culture-Independent Diagnostic Tests on Surveillance — Foodborne Diseases Active*

Surveillance Network, 10 U.S. Sites, 2013–2016, Morbidity and Mortality Report, Apr, 21, 2017 (located at

<https://www.cdc.gov/mmwr/volumes/66/wr/mm6615a1.htm>). *Salmonella* was responsible for the second largest proportion of such illness, responsible for more than a third. *Id.* FSIS’s Risk Assessment estimates that more than 69,000 cases of *Salmonella* are attributable to market hogs. Risk Assessment at 44. Simply increasing enforcement and NRs at these plants would have the effect of reducing illnesses by 3,893, or 4.7%. *Id.* at 52. This is 1.5 times greater than the agency contends will be able to reduced (2,533) by increasing offline verifications tasks under NPIS. *Id.*

- Given the likely harm to public health from dramatically reducing the amount of online government inspection of hogs and the likelihood of adoption by the component of the swine industry producing a vast majority of pork—as demonstrated by all of the problems outlines above—FWW has a number of dues-paying members who regularly consumer pork and have serious concerns about the harms to themselves and their families from eating pork produced under NSIS.
- Yet, despite the serious implications of the proposed NSIS rules, the agency has only publicly disclosed a limited amount of data indicating how HIMP plants have performed, and much it is 4 or more years old.
- The attached FOIA requests would allow FWW members and the public to gain a better understanding of how Hog HIMP plants have performed and the agency’s Hog HIMP Report and Risk Assessment, all of which supposedly support the proposed NSIS rules. The requested information would illuminate on how the non-HIMP plants were selected as part of the Hog HIMP report’s assessment of the pilot, for example. Further, the requested information would shed light more recent HIMP-plant performance, in the key categories the agency originally studied in its HIMP Report and Risk Assessment. Moreover, it would disclose the performance of plants with other metrics not evaluated in the HIMP Report, such as worker safety, which are discussed in the preamble to the proposed rules. None of the requested information has been made public thus far.
- In sum, the information requested would confirm the need for immediate regulatory

action to protect the health and safety of workers, the public, and FWW's identified members. This is clearly of the type that courts have found that agencies must process on an expedited basis.¹ Moreover, even if the agency disagrees with the above analysis of the likely harms from the proposed NSIS rules—such as because it can point to other data suggesting that the NSIS rules will increase offline verification tasks—the test for expedited processing is merely whether FWW has established whether there are circumstances where a failure to expedite the request “*could reasonably be expected* to pose an imminent threat to the life or physical safety of an individual.” 7 C.F.R. § 1.9(b)(1) (emphasis added). Reasonable persons might disagree about the consequences of the proposed rules, but that does not mean that FWW's members would be unreasonable in seeking expedited release of this information shedding light on it. For example, much of what FWW has sought is an update of information already in FSIS's Hog HIMP Report. It would be completely unreasonable for the agency to move forward on its proposal without releasing more recent data demonstrating that some of the problems already identified above at HIMP plants will likely not occur at NSIS facilities. Indeed, as part of its audit, the USDA's OIG concluded that FSIS needs to review the program “to determine its suitability as a permanent program. FSIS should evaluate HIMP plants' noncompliance histories and allow only those plants with a strong history of regulatory compliance to remain in the program. Without a review, HIMP plants that are continually noncompliant—such as the swine plant with the most [noncompliances] nationwide—have less assurance of food safety than a traditional plant.” OIG Audit at 18. The agency's Hog HIMP Report and proposed rules, however, do not demonstrate that the agency has taken any measures to ensure that only the plants with the strongest regulatory compliance are allowed to enter NSIS. The information that FWW is requesting would update and allow the agency and the public to evaluate HIMP plants prior to the NSIS rules becoming final. This is a more than reasonable basis for expedited processing.

¹ Cf. Bloomberg L.P. v. U.S. FDA, 500 F. Supp. 2d 371, 377-378 (S.D.N.Y. 2007) (finding that an FOIA request for expedited processing was merited in its request for correspondence from drug companies to FDA concerning the potential for those drugs to contribute to suicidal thoughts or actions.).

- Finally, in February 8, FWW submitted a request for an extension of the comment period on the proposed NSIS rules by 60 days on the grounds that “[n]ot all of the information that is used to support the proposed rule has been made available by the agency. Further disclosure and discussion are necessary so that substantive comments can be made[.]” (Attached as Ex. A.) Moreover, FWW indicated that it had already filed two FOIA requests prior to the publication of the proposed rule for which it had received no response, other than the fact that agency has received the requests. *Id.* These two FOIA request are two of those for which FWW is now seeking expedited processing. FWW indicated that the information covered by these FOIA requests would be pertinent to the formulation of its comments and that the quantity of information from one of these FOIA requests would be voluminous and require weeks to organize and analyze it. *Id.* That the agency has now only extended the comment period by 30 days but has yet to answer FWW’s FOIA requests, makes it even more important that USDA expedite processing of all of the listed requests.
- In addition, or in the alternative, pursuant to 7 C.F.R. § 1.9(b)(1), FWW is primarily engaged in disseminating information, and I believe an urgency exists to inform the public about an actual or alleged Federal Government activity based on the following information:

 - As demonstrated above, the need for the public to have this information is urgent, as it reflects an exigency for the American public threatened by the increased risk of adulterated pork coming from NSIS facilities should the agency finalize its proposed rules.
 - The public has a strong interest in the information. Since the agency proposed the NSIS rules, regulations.gov already indicates it has received more than 22,000 comments in a few short weeks. There have been dozens of newspaper stories about the proposal. Attached as Exs. B, C, D, E, F, and G are just some of the articles written by international, national, state, local, and trade publications. They include prominent mainstream publications such as the Wall Street Journal and The Guardian. These articles show that there is a strong general interest in the story and that the estimated impacts of the proposed rules of are a breaking interest. If the agency delays on releasing the requested information, there will no longer be as great an interest in the effects of the proposed rules because they will be finalized.

- FWW is a representative of the news media because primarily, and not incidentally, “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience,”² through means such as books, newsletters, the internet, email, and our website.³ Specifically, FWW publishes newsletters quarterly covering various issues.⁴ FWW’s firm intent to disseminate the requested information and FWW’s derivative analysis in our newsletters, alone, serves to qualify FWW as a representative of the media because these serve to communicate news regularly to our members.⁵ The organization also regularly publishes factsheets, which it distributes widely. It uses email to convey much of this information, through email updates and action alerts. The organization has hundreds of thousands of people on its email lists, many of whom are decision-makers, legislators, scientists, activists, and members of the general public. For example, it emailed more than 400,000 people about the National Chicken Council’s recent petition to revoke line-speed limits for some poultry slaughter plants. The organization also distributes much of this information through its website, including through its blog, which is updated regularly.⁶ In January 2018 alone, the organization had an average of 6,178 daily visits to its website with a total of 191,527 visits during the month. That same month, the organization’s website had a total of 411,191 hits, or pages viewed. It had close to double the visits compared to September last year.

2. I certify that the foregoing is true and correct to the best of my knowledge and belief.

Executed on February 23, 2018.



Zachary B. Corrigan

² Elec. Privacy Info. Ctr. v. Dept. of Def., 241 F. Supp. 2d 5, 11 (D.D.C. 2003) (internal quotation omitted).

³ See Natl. Sec. Archive v. U.S. Dept. of Def., 880 F.2d 1381 (D.C. Cir. 1989); Ctr. for Pub. Integrity v. U.S. Dept. of Health and Human Serv., 2007 U.S. Dist. LEXIS 56172 (D.D.C. 2007).

⁴ <https://www.foodandwaterwatch.org/about/newsletter>.

⁵ C.f. Tax Analysts v. U.S. Dept. of Justice, 965 F.2d 1092, 1094 (D.C. Cir. 1992); Elec. Privacy Info. Ctr., 241 F. Supp. 2d 5.

⁶ See <http://foodandwaterwatch.org/blog>.