

Congress of the United States

Washington, DC 20515

August 31, 2022

The Honorable Thomas Vilsack
U.S. Secretary of Agriculture
Jamie L. Whitten Building
1400 Independence Avenue, SW
Washington, D.C. 20250

Re: Poultry Modified Line Speed Waivers

Dear Secretary Vilsack,

We are writing today to express concern regarding the U.S. Department of Agriculture (USDA, or “the Department”) Office of Food Safety and the Food Safety and Inspection Service’s (FSIS) recent proposal to modify existing line speed waivers for chicken processing establishments currently operating under said waivers—especially considering the entire proposal is predicated on unfounded worker safety concerns. We are requesting USDA extend any compliance dates associated with the proposed modifications to the waiver process until no sooner than the Department has provided answers to the questions outlined below.

We reviewed the July 29, 2022 letters¹ that FSIS sent to establishments with existing line speed waivers (“the letters”), and we are specifically concerned with the amount of data requested, the lack of details regarding the information requested, the specifics of the study discussed in those letters, and the length of time given to establishments to respond to the letters.

We understand that the letters contained three distinct dates of compliance.² The first date, September 1, 2022, is the date by which establishments must agree to participate in a third-party worker safety study and agree to provide worker safety data in order to receive a modified waiver to continue operating at current line speeds. By this date, establishments must also provide their establishment number, confirm that the establishment continues to meet the criteria described in 83 FR 490483³, and provide a point of contact for submission and participation in modified line speed waivers, if approved. The second date, September 30, 2022, is the date by which establishments must submit the requested worker safety information initially listed in the appendix of the modified line speed waiver letter. The final date, November 1, 2022, is the date by which establishments are to provide the last four years of “ongoing” worker safety-related data also found in the appendix of the letters.

In addition to concerns regarding the breadth, compilation, redaction, protection, and distribution of the information requested in the letters, we were very surprised to learn of the highly inadequate, rigid timelines the Department has given establishments to respond to and comply with the broad information requests made in these letters. We are equally concerned that the Department has given establishments, some of which have had line speed waivers for over two decades, just 31 days to agree to an aggressive data submission plan in which there is no assurance of the protection of any submitted information and to agree to a study in which the establishments have been provided little to no details.

¹ Letter from Rachel Edelstein, Assistant Administrator, OFFICE OF POLICY AND PROGRAM DEVELOPMENT FOR THE USDA, to chicken plants (July 29, 2022) (on file with Congressman Andrew S. Clyde).

² *Id.*

³ PETITION TO PERMIT WAIVERS OF MAXIMUM LINE SPEEDS, 83 FED. REG. § 49048, 49050 (Sept. 28, 2018).

To further complicate the situation, FSIS has provided only limited time to compile, redact, and submit a vast amount of information with no assurances of its protection and distribution. If an establishment does not meet the Agency's aggressive timeline, establishments will lose their waivers and only have 60 days to return to operating at 140 birds per minute (bpm). As you are aware, the chicken industry, like many other U.S.-based industries, is already faced with significant supply chain disruptions, all-time high input costs, and substantial market uncertainty. If the Agency forces the industry to cut production, the ripple effects will be disastrous to consumers of American-raised chicken both domestically and abroad, the family farmers that work tirelessly to raise broiler chickens, the health and welfare of millions of broiler chickens, and the industry as a whole.

Therefore, we respectfully request answers to the following questions in writing by no later than September 30, 2022:


1. How did the Department develop the parameters outlined in the Appendix of the July 29, 2022 letters? If the Department had assistance in developing these parameters, please name all parties involved.
2. How did the Department choose the third-party that is conducting the study? If the Department had assistance in selecting the third-party, please name all parties involved.
3. Please provide detailed information regarding the compensation of the third-party(s).
4. What assurances has the Department put in place that all information provided by companies to FSIS (including personnel records, videography, proprietary business information, personally identifiable information, etc.) will not be subject to FOIA or any other form of information release?
5. Beyond the third-party, what additional individuals will have access to the information provided by companies to FSIS and other information collected by the third party?
6. Of the information the Department plans to collect, what information, if any, will be shared with the Department of Labor or Congress?
7. How does the Department plan to ensure that any information shared with a third-party as a part of the study will not be made public? Please provide all cybersecurity protocols that the Department and third-party plan to use to ensure any information submitted is protected.
8. Has the Department considered whether the *askFSIS* mailbox is able to handle the amount of information that is being requested? If not, how does the Department plan to remedy that issue?
9. Please explain how the following items, which are included in list of information requested of establishments, pertain to evisceration line speeds, and thus are relevant to the study? Additionally, please explain how such information will be assessed in the process of evaluating whether an establishment is allowed to retain its waiver.
 - a. "Work pace: productivity requirements and targets, piece rate, incentives and/or penalties for production requirements"
 - b. "Hazard assessment for PAA and other chemicals"
10. Please explain, in detail, how previous OSHA citations will be evaluated by FSIS including who will make the decision if a previous OSHA citation will result in a line speed waiver being withdrawn?
11. Please specify what the Department is seeking when it lists "first aid logs" in its letters to establishments and how the Department plans to compile and assess "first aid logs," particularly since they are prepared differently on a company-by-company basis.
12. If an establishment does not possess, or cannot compile, redact, and prepare certain information requested in the letters by the deadlines set forth in the letters, how should that establishment submit the information it does have?


13. Does the Department plan to revoke a line speed waiver even if an establishment is making a good faith effort to comply with the timeline yet they do not meet the Department's deadline due to the vast amount of the information that is being requested? If the Department does not plan to revoke a line speed waiver in this instance, what other options does the Department plan to offer in order to bring an establishment into compliance with the requests made in the July 29, 2022 letters?
14. What entity, or governmental agency, will conduct oversight of the third party conducting the study?
15. How are establishments that do not have line speed waivers relevant to the modified waiver proposal, and thus the study and third party?
16. Does the Department plan to share the design of the study with industry, particularly worker safety experts within said establishments, and will there be an opportunity to comment or provide input on the design of the study?
17. Does the Department plan to allow establishment management to be present during an employee interview if a union representative is also present?
18. Does the Department and third-party plan to allow union representatives to be present in the event of an employee interview, or in any other access that is otherwise granted to the third-party?
19. How long does the Department plan to conduct the study?
20. What metrics will the Department use, in conjunction with the Department of Labor, to determine the future of the modified line speed waiver program?
21. Will the Department limit the scope of the study to evisceration line speeds, or will it include within the scope (and its metrics for success) any additional information obtained from the establishment, including unrelated previous OSHA citations?
22. Is the Department prepared to properly staff plants if establishments choose to revert operations back to accommodate traditional inspection, thus opting out of the New Poultry Inspection System (NPIS)?
23. Does the Department have a plan in the event an establishment first chooses to opt into the study, but later decides to opt out?
 - a. If so, does the Department plan to allow the establishment a reasonable period of time to slow their lines down and adjust production accordingly?
 - b. If so, how does the Department plan to ensure information previously submitted is destroyed and/or returned to the company, including revoking third-party and all other governmental agency access to such information?
24. Why is the information requested of the poultry industry significantly broader than the information requested of the swine industry as part of the Department's goal to modify New Swine Inspection System (NSIS) waivers?


We look forward to your written response no later than September 30, 2022. If you have any questions in the meantime, please contact Cameron Erickson, at Cameron.Erickson@mail.house.gov or (202) 225-9893.

Thank you.

Sincerely,



Andrew S. Clyde
Member of Congress


Glenn Thompson
Member of Congress
Ranking Member, Committee on
Agriculture

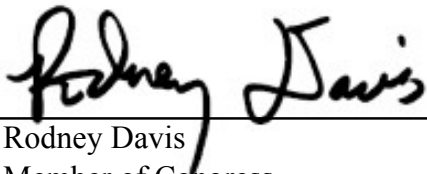

James Comer
Member of Congress
Ranking Member, Committee on
Oversight and Reform



Bruce Westerman
Member of Congress
Ranking Member, Committee on
Natural Resources



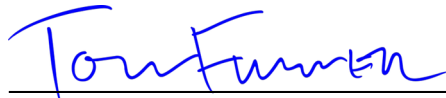
Virginia Foxx
Member of Congress
Ranking Member, Committee on
Education and Labor



Rodney Davis
Member of Congress
Ranking Member, Committee on
House Administration



Andy Harris, M.D.
Member of Congress



Tom Emmer
Member of Congress



Dusty Johnson
Member of Congress



Steve Womack
Member of Congress



Robert B. Aderholt
Member of Congress



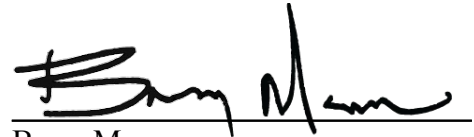
Eric A. "Rick" Crawford
Member of Congress



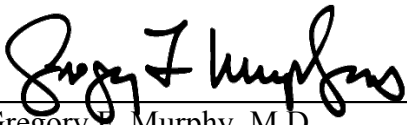
Randy Feenstra
Member of Congress



Charles J. "Chuck" Fleischmann
Member of Congress



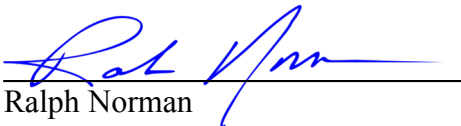
Barry Moore
Member of Congress



Gregory P. Murphy, M.D.
Member of Congress



David Rouzer
Member of Congress



Ralph Norman
Member of Congress



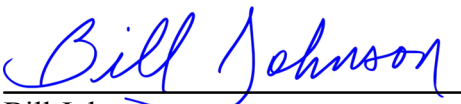
Randy K. Weber, Sr.
Member of Congress



Rick W. Allen
Member of Congress



David G. Valadao
Member of Congress



Bill Johnson
Member of Congress



Byron Donalds
Member of Congress



Ted Budd
Member of Congress



Markwayne Mullin
Member of Congress



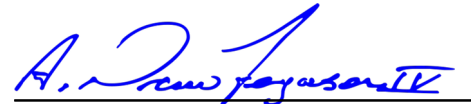
Austin Scott
Member of Congress



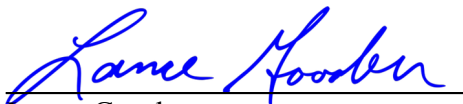
Ben Cline
Member of Congress



Marjorie Taylor Greene
Member of Congress



A. Drew Ferguson IV
Member of Congress



Lance Gooden
Member of Congress



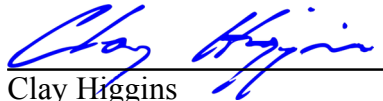
Michael Cloud
Member of Congress




Bob Gibbs
Member of Congress



Adrian Smith
Member of Congress


Clay Higgins
Member of Congress


Brad Finstad
Member of Congress

cc. Sandra Eskin, Under Secretary for Food Safety, USDA

Douglas Parker, Assistant Secretary of Labor, Occupational Safety and Health, OSHA

Paul Kiecker, Administrator, Food Safety and Inspection Service, USDA

Rachel Edelstein, Assistant Administrator, Food Safety and Inspection Service, USDA