



**Christine L. Owens**  
Executive Director

[www.nelp.org](http://www.nelp.org)

**NELP National Office**  
75 Maiden Lane  
Suite 601  
New York, NY 10038  
212-285-3025

**Washington DC Office**  
2040 S Street NW  
Lower Level  
Washington, DC 20009  
202-640-6520

**California Office**  
2030 Addison Street  
Suite 310  
Berkeley, CA 94704  
510-982-5945

**Washington State Office**  
317 17th Avenue South  
Seattle, WA 98144  
206-324-4000

October 2, 2018

Carmen Rottenberg  
Acting Deputy Under Secretary for Food Safety  
United States Department of Agriculture  
Office of Food Safety  
331-E Jamie L. Whitten Building  
12th Street and Jefferson Street SW  
Washington, DC 20250

Dear Acting Deputy Under Secretary Rottenberg,

The National Employment Law Project (NELP) requests that the U.S. Department of Agriculture (USDA) reopen the docket for the proposed "Modernization of Swine Slaughter Inspection Rule" (FSIS-2016-0017 RIN 0583-AD62) to allow the public to comment on the newly released worker injury data and analysis that the agency relied on to conclude in the proposed rule that, "The preliminary analysis shows that HIMP establishments had lower mean injury rates than non-HIMP establishments." (83 FR 4796). We are requesting that the docket be reopened for 60 days to allow the public to comment on the analysis and data just provided (please see below). This request supports a similar request filed by the United Food and Commercial Workers Union on September 26<sup>th</sup>.

The proposed rule, Modernization of Swine Slaughter Inspection, was published in the Federal Register on February 1, 2018 and did not contain the preliminary injury analysis that USDA's Food Safety and Inspection Service (FSIS) relied on in the rulemaking. Nor did USDA provide in the record any of the data the analysis relied on. On February 14<sup>th</sup>, 2018, Dr. Celeste Monforton filed a Freedom of Information Request, and then on March 6, 2018, NELP also filed Freedom of Information Request (FOIA 18-227), which requested expedited processing, for the preliminary injury analysis and data referred to in the proposed rule.

NELP requested, in part, in our March 6<sup>th</sup> FOIA request:

- 1) The data, spreadsheets, reports, and preliminary analysis conducted by FSIS, or obtained by FSIS from another government agency or private party, to compare the in -establishment employee injury rates between HIMP and traditional swine slaughter plants from 2002-2010 that the agency refers to in the proposed rule, Modernization of Swine Slaughter Inspection, published in the Federal register on February 1, 2018. FSIS refers to this data in the proposed rule on page 4796 (83 Fed. Reg.4796). None of this data is contained in the docket (Docket No.FSIS-2-16-0017 at Regulations.gov.)

The comment period for the proposed rule ended on May 2, and neither NELP nor Dr. Monforton had received the requested data and analysis. In NELP's comments to the agency on the proposed rule, filed on April 30<sup>th</sup>, we noted that we could not comment on the preliminary analysis "where there is no study publicly available to review." We were unable

to evaluate the validity of FSIS's claim about worker injury rates because the agency had not made their analysis available for review.

Fully six months after the NELP FOIA request was filed, and four months after the comment period closed, on September 14<sup>th</sup>, NELP received the requested information from USDA FOIA officer, Ann Sylvester.

We are now requesting that USDA, FSIS reopen the rule to accept comments on the data and analysis provided in the FOIA – the data USDA should have released with the proposed rule but did not. We request that the agency allow 60 days for comments to be submitted on this data.

We look forward to hearing from the agency.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah Berkowitz".

Deborah Berkowitz  
Program Director, Worker Safety and Health  
Month Day, Year