



Christine L. Owens
Executive Director

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

FSIS Freedom of Information Act Office
Room 2168-South Building
14th and Independence Avenue, SW
Washington, DC 20250-3700

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

Transmitted by email to fsis.foia@usda.gov

Re: Freedom of Information Request

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

Dear FSIS FOIA Coordinator:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, the National Employment Law Project (NELP) makes the following request for records.

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

Requested Records

- 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.)
- 2) The names and addresses of all the 24 traditional plants who's in-establishment injury rates were used in the preliminary analysis referenced above and cited in the preamble to the proposed Modernization of Swine Slaughter Inspection Proposed rule at 83 Fed. Reg. 4796
- 3) Data and any information from 2002-2010 on the number of sorters on the lines , line speeds, number of shifts operating , and dates of plant operation, in any of the above mentioned 24 traditional plants as well as 5 HIMP plants that FSIS used or relied on in the preliminary analysis of in-establishment injury rates referred to on 83 Fed. Reg. 4786.
- 4) Any data, spreadsheets, reports, analysis, studies of employee injury and illness rates in swine slaughter establishments conducted by FSIS using data after 2011.
- 5) The identity of the 35 establishments that FSIS stated in the Risk Assessment are the most probable to adopt the new inspection system and the reasons, criteria, inspection data or other data used by the agency to make this determination .
<https://www.fsis.usda.gov/wps/wcm/connect/0c03ed4d-68bf-4bd9-80e0-b8f3aa6ff16e/ModernizationSwineSlaughterRiskAssessment.pdf?MOD=AJPERES>

Under the FOIA Improvements Act of 2016, agencies are required to adopt a presumption of disclosure, withholding information only if "disclosure is prohibited by law" or "disclosure would harm an interest protected by an exemption." If it is your position that any portion of the requested records is exempt from

disclosure, NELP requests that you provide an index of those documents as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). As you are aware, the Vaughn index should describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology of Washington, D.C. v. Bell*, 603 F.2d. 945, 949 (D.C. Cir. 1979).

Fee Waiver Request

NELP requests a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), 7 C.F.R. § 1.5(a) & app. A § 6(a), and 9 C.F.R. § 390.5(b). NELP is a nonprofit workers’ rights organization, and this request is not being made for any commercial use. NELP intends to use the information gathered by this FOIA request to prepare comments on the proposed rule ‘Modernization of Swine Slaughter Inspection.’ A fee waiver is therefore consistent with the Department’s fee waiver standards as articulated at 7 C.F.R. Part 1, Subpart A, Appendix A, Section 6(a).

Request for Expedited Processing

NELP also requests expedited processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E)(i), 7 C.F.R. § 1.9, and 9 C.F.R. § 390.5(a)(4). The Department’s regulations provide that expedited processing is available where there is “[a]n urgency to inform the public about an actual or alleged federal government activity, if made by an individual primarily engaged in disseminating information.” 7 C.F.R. § 1.9(b)(2).

First, this request satisfies the “urgency” requirement as provided by the Department’s FOIA regulations. FSIS has proposed a new inspection program for swine slaughter (NSIS) in the proposed rule, ‘Modernization of Swine Slaughter’ published on February 1, 2018. FSIS has requested comments from the public on the proposed rule, and the deadline for submitting comments is May 2, 2018. The new proposed NSIS would increase line speeds in swine slaughter establishments with devastating consequences to in establishment worker safety and health. FSIS summarized a preliminary analysis of self-reported plant injury and illness data, but did not provide any of the data to permit careful scrutiny and evaluation of this analysis for the public in order to provide comments to the agency. The information requested in this FOIS is pertinent to the public’s understanding of the proposed rule, and to commenters’ ability to advise FSIS of their views. The deadline for public comment on the proposed rule is May 2, 2018. *See* 83 Fed. Reg. 4780-4823, Absent expedited processing, the data used to support FSIS’s preliminary analysis of worker injury rates in non HIMP vs HIMP plants may not be made available before the May 2 comment deadline, and the particular value of this information to the public’s ability to comment on the proposed rule will be lost. *See* 7 C.F.R. § 1.9(b)(2) (providing that “urgency” is established where “the information has a particular value that will be lost if not disseminated quickly”).

Second NELP is “primarily engaged in disseminating information” for purposes of this FOIA request. The Department’s regulations provide that requesters need not be members of the news media to meet this requirement, but may establish that “their primary activity involves publishing or otherwise disseminating information to the public as a whole.” *Id.* As a workers’ rights advocacy organization, NELP routinely publishes reports and analyses of federal activity for the purpose of educating the public of the import of federal policy on the economic well-being of low-wage, unemployed, or vulnerable workers. *See, e.g.,* Fact

Sheet, *Responding at the Federal and State Levels to the Needs of Unemployed Families Resulting from Hurricanes Harvey and Irma* (Sept. 12, 2017), available at <http://bit.ly/2A64LiT>; Fact Sheet, *The Trump Administration's War on Workers and Families* (Oct. 2, 2017), available at <http://bit.ly/2A7pXEX>; see also generally <http://www.nelp.org/publications/>. NELP has in fact already engaged in public advocacy regarding the issue of meat and poultry line speeds. See, e.g., Deborah Berkowitz, NELP, *Congressional Testimony on Harsh Conditions Endured by America's Poultry Workers* (Sept. 8, 2017), available at <http://bit.ly/2xMQmq3>. In addition, as explained above, NELP intends to use any requested records it receives to further educate the public on the Department's proposed new policies regarding swine inspection requirements, and to comment on the proposed rule, which will be posted online (on both the NELP website and at www.regulations.gov) for public dissemination. NELP therefore meets the requirement that it be "primarily engaged in disseminating information" for purposes of justifying this request for expedited FOIA processing. See 7 C.F.R. § 1.9(b)(2).

Pursuant to 7 C.F.R. § 1.9(c), I certify that the information supporting this request for expedited processing is true and correct to the best of my knowledge.

Thank you for your prompt attention to this FOIA request. Please feel free to contact me at (202) 640-6519 or Dberkowitz@nelp.org if you have any questions

Sincerely,



Deborah Berkowitz
Senior Fellow, Worker Safety and Health
NELP
2040 S Street, NW
Washington, DC 20009