

December 3, 2019

Senator Richard Shelby, Chairman
Senate Committee on Appropriations

Representative Nita Lowey, Chairwoman
House Committee on Appropriations

Senator Patrick Leahy, Ranking Member
Senate Committee on Appropriations

Representative Kay Granger, Ranking Member
House Committee on Appropriations

Senator John Hoeven, Chairman
Senate Subcommittee on Agriculture, Rural
Development, Food and Drug Administration,
and Related Agencies Appropriations

Representative Sanford Bishop, Chairman
House Committee on Agriculture, Rural
Development, Food and Drug Administration,
and Related Agencies Appropriations

Senator Jeff Merkley, Ranking Member
Senate Subcommittee on Agriculture, Rural
Development, Food and Drug Administration,
and Related Agencies Appropriations

Representative Jeff Fortenberry, Ranking
Member
House Subcommittee on Agriculture, Rural
Development, Food and Drug Administration,
and Related Agencies Appropriations

RE: Section 779, Division B, H.R. 3055, “Commerce, Justice, Science, Agriculture, Rural Development, Food and Drug Administration, Interior, Environment, Military Construction, Veterans Affairs, Transportation, and Housing and Urban Development Appropriations Act, 2020”

Dear Senators Shelby, Leahy, Hoeven and Merkley and Representatives Lowey, Granger, Bishop and Fortenberry:

We, the undersigned organizations, urge that the final FY 2020 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act contain the provision as written in Section 779 of Division B, H.R. 3055, “Commerce, Justice, Science, Agriculture, Rural Development, Food and Drug Administration, Interior, Environment, Military Construction, Veterans Affairs, Transportation, and Housing and Urban Development Appropriations Act, 2020,” passed by the House of Representatives on June 25, 2019. Even though USDA’s Food Safety and Inspection Service (FSIS) has published the final rule to implement the New Swine Inspection System (NSIS),¹ the agency does not expect swine slaughter facilities to convert to NSIS before March 2020.² The final rule failed to address most of the concerns that we raised during the public comment period on the proposed rule (FSIS received over 100,000 comments – most of them opposed to the proposed rule), so we strongly believe

¹ 84 FR 52300-52349

² Ibid., p. 52300

that an independent review of the rulemaking conducted by USDA's Office of Inspector General (OIG) is in order.

Sec. 779. None of the funds made available to the Department of Agriculture shall be used to finalize, issue, or implement the proposed rule entitled "Modernization of Swine Slaughter Inspection" published in the Federal Register by the Food Safety Inspection Service on February 1, 2018 (83 Fed. Reg. 4780 et seq.), including insofar as such rule relates to converting establishments, until—

(1) the Office of the Inspector General of the Department of Agriculture has provided to the Food Safety and Inspection Service and the Committees on Appropriations of the House of Representatives and the Senate findings on the data used in support of the development and design of the swine slaughter inspection program that is the subject of such proposed rule; and

(2) the Food Safety and Inspection Service has addressed and resolved issues identified by the Inspector General in the findings referred to in paragraph (1).

The OIG already has a history of reviewing FSIS' swine slaughter inspection program. In May 2013, it published an audit report entitled, "Food Safety and Inspection Service – Inspection and Enforcement Activities at Swine Slaughter Plants."³ Among its findings, the OIG found that FSIS had conducted ineffective oversight of the five swine slaughter plants that had voluntarily enrolled in the pilot program called the HACCP-based Inspection Models Project (HIMP).⁴ This pilot served as the basis upon which NSIS was proposed.

When it became apparent that the FY 2020 appropriations process was not going to be completed in a timely manner, Senator Jeff Merkley and Representative Rosa DeLauro sent a letter to the OIG on August 1, 2019, requesting that it conduct an audit of the NSIS rulemaking.⁵ The concerns outlined in that letter remain today:

- USDA's Office of Inspector General (OIG) has opened an inspection into the quality of worker safety data used to develop the Rule, as well as whether the Department followed applicable requirements for public transparency;
- FSIS has failed to explain how the rule's increase in line speeds would not decrease food safety given USDA's own conclusion "that higher line speeds result in more pathogen contamination 'in the absence of compensating measures.'" Moreover, "FSIS cannot credibly argue that ... increasing the volume of animals slaughtered will not undermine animal welfare."
- FSIS also has not explained how food safety could be maintained while reducing the number of inspectors despite USDA's own conclusion that "having plants 'fully staffed' with inspectors

³ United States Department of Agriculture, Office of Inspector General. "Food Safety and Inspection Service – Inspection and Enforcement Activities at Swine Slaughter Plants," Audit Report 24601-0001-41, May 2013.

⁴ Ibid., pp. 17-21.

⁵ See <https://delauro.house.gov/media-center/press-releases/delauro-merkley-call-usda-inspector-general-expand-swine-slaughter>

improves food safety." Relatedly, "FSIS cannot credibly argue that decreasing inspector oversight of the sorting of pigs ... will not undermine animal welfare."

- Ignoring USDA's own position that "microbiological performance standards have resulted in better control of pathogens like Salmonella," FSIS failed to explain how the new rule's elimination of microbiological testing standards would not reduce control of pathogens.
- FSIS has also "failed to comply with requests for data and other information cited in its analyses of the proposed changes."
- The results of an unlawfully belated peer review of FSIS's risk assessment were not published until *after* the close of the public comment period on the proposed rule, and the review strongly suggests that the risk assessment is invalid. Three of the five reviewers raised fundamental objections to the agency's assessment, including that "the risk assessment's modeling was 'completely inadequate to describe the hog slaughter data'" and concern that the risk assessment did not take "'a statistically legitimate approach.'"
- The Merkley-Delauro letter also expressed a "deep[] concern[] that USDA failed to adequately assess and consider the impacts of the proposed rule on animal welfare." For instance, "the proposed rule fails to even consider the impact it would have on non-ambulatory disabled pigs—a class of animals especially at risk of inhumane handling during sorting." And despite USDA's mandate to "enforc[e] the Humane Methods of Slaughter Act (HMSA), which requires that all farmed animals be rendered fully unconscious before slaughter," firsthand evidence "revealed that plant workers who were facing the pressure of faster slaughter line speeds improperly stunned pigs or did not stun them at all."
- In sum, "the available evidence indicates that ... USDA's rule may jeopardize not only worker safety but also public health and animal welfare."

In the meantime, as FSIS failed to address these shortcomings in the final rule, two lawsuits have been filed by constituent groups against FSIS regarding the flawed data analyses it conducted on various aspects of the rule.⁶

Based on the reasons we cited above, we believe that it is imperative that Congress step in to require that an independent review of the NSIS rulemaking takes place before plants begin to convert to this controversial inspection model next spring. According to FSIS, in addition to the five plants in the original pilot, the agency expects thirty-five additional hog slaughter plants to convert to NSIS. These forty plants slaughter 92 percent of all market hogs in the U.S. Therefore, we urge that the language contained in Section 779 in the House bill be included in the final FY 2020 Agriculture Appropriations Act.

Should you have any questions, please feel free to contact any one of the signatories to this letter.

⁶ See <https://www.citizen.org/wp-content/uploads/Pork-Line-Speed-Complaint-10.07.19.pdf>; <https://www.foodandwaterwatch.org/sites/default/files/usdafoialawsuitstamped.pdf>

Sincerely,

American Federation of Government Employees

American Society for the Prevention of Cruelty to Animals (ASPCA)

Animal Equality

Animal Legal Defense Fund

Center for Biological Diversity

Center for Food Safety

Center for Science in the Public Interest

Compassion Over Killing

Consumer Federation of America

Food & Water Watch

Government Accountability Project

Humane Society of the United States/Humane Society Legislative Fund

Human Rights Watch

Lady Freethinker

Mercy for Animals

National Employment Law Project

Nebraska Appleseed

United Food and Commercial Workers International Union (UFCW)