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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. **FSIS-2020-0023**]

Response to the Office of Inspector General's Recommendations on the Rulemaking Process for the Proposed Rule Modernization of Swine Slaughter Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is responding to two recommendations from the USDA Office of Inspector General (OIG) regarding the Agency's rulemaking process for the proposed rule entitled *Modernization of Swine Slaughter Inspection*, that included the proposal to establish the New Swine Slaughter Inspection System (NSIS).

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, telephone: (202) 205-0495.

SUPPLEMENTARY INFORMATION:

Background

FSIS is providing information to further address two recommendations from the recent USDA OIG Final Inspection Report, *FSIS Rulemaking Process for the Proposed Rule: Modernization of Swine Slaughter Inspection* (Inspection Report 24801-0001-41, June 23, 2020),¹ both concerning the presentation

¹ <https://www.usda.gov/oig/audit-reports/fsis-rulemaking-process-proposed-rule-modernization-swine-slaughter-inspection>

of data in a preliminary worker safety analysis that FSIS conducted when developing the proposed rule². FSIS already responded to the two recommendations and the responses were printed in the OIG report (available at <https://www.usda.gov/sites/default/files/audit-reports/24801-0001-41.pdf>). OIG did not fully accept the FSIS responses, however, and requested further clarification about the data in a public document.

In its final report, OIG recommended (Recommendation #2) that FSIS communicate to the public the correct scope of data used in the FSIS preliminary worker safety analysis. Specifically, OIG found a typographical error in the sentence in the proposed rule that states, "FSIS compared in-establishment injury rates between HACCP-Based Inspection Models Project (HIMP) establishments and traditional establishments from 2002 to 2010" (83 FR 4796). OIG pointed out in its report that for the preliminary worker safety analysis, FSIS also examined CY 2011 results for 5 of 24 traditional establishments, which were outside of its stated scope of CYs 2002 to 2010.

FSIS has acknowledged the typographical error in discussions with OIG and noted that it did not affect the conclusions of the analysis or have any bearing on its ability

² On March 31, 2021, the U.S. District Court for the District of Minnesota vacated a portion of the NSIS final rule. The Court found that FSIS violated the Administrative Procedure Act because it asked for comments on the impact of line speed increases on worker safety in the proposed rule but did not consider these comments in the final rule. The Court vacated the final rule only insofar as it eliminated the maximum line speed cap for NSIS establishments. The other provisions of the final rule were not affected by the Court's decision.

to be understood. Regardless of what time span is used, from 2002 to 2010 or from 2002 to 2011, both show that HIMP³ establishments had lower mean injury rates than non-HIMP establishments. In addition, this OIG recommendation was addressed in the publication of the final rule to modernize swine inspection (84 FR 52300), where FSIS included a link (84 FR 52305) to its Electronic Freedom of Information Act Reading Room, which contains documents that show FSIS' full analysis of worker injury data.

OIG also recommended (Recommendation #3) that FSIS communicate to the public two limitations of the Occupational Safety and Health Administration (OSHA) data used for FSIS' analysis. While the Agency used the best publicly available data and requested from the public additional data resources on injuries in swine establishments, OIG contended that these two limitations should have been discussed in the proposed or final rules. Specifically, OIG stated that (1) the OSHA data the agency used in its analysis of the 29 establishments did not include injury and illness rates for all establishments for each of the 10 years, and (2) the OSHA data used did not differentiate whether injuries/illnesses occurred on the swine slaughter line or elsewhere within the establishment.

FSIS is publishing OIG's two observations about the data used in the preliminary worker safety analysis in response to

³ The HACCP-Based Inspection Models Project, or HIMP, was a pilot program for modernized poultry and swine inspection, data from which informed the New Poultry Inspection System and NSIS rulemakings.

OIG's recommendation to communicate these observations to the public. Importantly, FSIS did not develop the preliminary worker safety analysis as a basis for the NSIS rulemaking, to draw conclusions on worker safety in HIMP or non-HIMP establishments, or to determine whether there is an associated impact on food safety. Had FSIS developed the analysis for any of these reasons, it would have more thoroughly addressed data limitations and uncertainty, as recommended by OIG.

Instead, FSIS published the preliminary worker safety analysis solely to solicit comments for use by OSHA and the National Institute for Occupational Safety and Health (NIOSH) in examining worker safety in swine slaughter establishments. OSHA and NIOSH are the Federal agencies with jurisdiction over meat and poultry establishment worker safety. Notably, FSIS stated this immediately following the discussion of the preliminary analysis in the preamble to the proposed rule (83 FR 4796):

FSIS is requesting comments on the effects of faster line speeds on worker safety. Specifically, FSIS is requesting comments on whether line speeds for the NSIS should be set at the current regulatory limit of 1,106 hph or some other number. The Agency is also interested in comments on the availability of records or studies that contain data that OSHA or the National Institute for Occupational Safety and Health (NIOSH) may be able to use in analyzing the effects of increased line speed on the safety and health of employees throughout the establishment, including effects prior to and following the evisceration line.

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subscriptions themselves and have the option to password protect their accounts.

Done at Washington, DC:

Paul Kiecker,

Administrator.

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