April 20, 2026

Submitted via www.regulations.gov

Dr. Justin Ransom
Administrator
Food Safety & Inspection Service
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250-3700

RE: MAXIMUM LINE SPEED UNDER THE NEW SWINE SLAUGHTER INSPECTION SYSTEM (NSIS) (DOCKET NO. FSIS–2025–0009)

Dear Administrator Ransom:

The undersigned organizations (Commenters) and their members and supporters oppose the U.S. Department of Agriculture (USDA) Food Safety & Inspection Service's (FSIS) proposed Maximum Line Speed Under the New Swine Slaughter Inspection System (NSIS) rule (Proposed Rule) to remove maximum line speed limits for pig slaughterhouses operating under NSIS.[1] If adopted, the Proposed Rule would have disastrous effects on food safety and animal welfare, in derogation of FSIS's statutory mandates to ensure the safety of the nation's meat supply and the humane treatment of pigs at slaughter. Additionally, if the Proposed Rule is finalized, it will cause significant environmental impacts, and FSIS's use of a categorical exclusion to avoid environmental analysis is improper. Accordingly, FSIS must abandon the Proposed Rule—to do otherwise would be arbitrary, capricious, contrary to law, without observance of procedure required by law, and in excess of statutory authority. This comment is submitted electronically via regulations.gov, with native exhibits sent to FSIS on a USB via U.S. Postal Service on April 16, 2026.[2]

I. Commenters

The Animal Law and Policy Institute at Vermont Law and Graduate School trains tomorrow's animal advocacy leaders to advance animals' legal status through education, scholarship, policy development, community engagement, and litigation. Engaging with advocacy organizations, communities, journalists, and policymakers, the Institute serves as a resource hub for animal law and policy issues. The views

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1 Maximum Line Speed Under the New Swine Slaughter Inspection System (NSIS), 91 Fed. Reg. 7,905 (proposed Feb. 19, 2026) (hereinafter, Proposed Rule).

2 U.S. Postal Service Tracking Number (Apr. 16, 2025) (Exhibit 1).

expressed herein do not necessarily represent those of Vermont Law and Graduate School.

The Animal Law Clinic serves as a comprehensive training ground for students interested in the full range of policy and related work to benefit the field of animal law and encourage consideration of the interests of animals in legal decision-making through the direct representation of clients. Lewis & Clark Law School institutional affiliations are provided for identification purposes only. The views expressed herein are solely those of the signatories in their individual capacities, and do not necessarily represent the views of the Center for Animal Law Studies or Lewis & Clark Law School.

The Animal Legal Defense Fund (ALDF) is a national nonprofit organization founded in 1979 to protect the lives and advance the interests of animals through the legal system. ALDF has more than 300,000 members and supporters nationwide, including the 14,349 members and supporters who signed the accompanying petition calling upon FSIS to abandon the Proposed Rule.[3] One of ALDF's central goals is effective oversight and regulation of industrial animal agriculture. ALDF achieves this goal by filing lawsuits, administrative comments, and rulemaking petitions. Through these efforts, ALDF is deeply invested in ensuring transparency in the agricultural system.

Animal Outlook is a national nonprofit 501(c)(3) animal advocacy organization based in Washington, DC and Los Angeles, CA. Our mission is to strategically challenge animal agribusiness through undercover investigations, legal advocacy, corporate and food system reform, and disseminating information about the many harms of animal agriculture, empowering everyone to choose vegan.

Animal Partisan is a legal advocacy organization whose mission is to end the exploitation of animals on farms, in slaughterhouses, and in laboratories through legal advocacy that discovers, exposes, and challenges injustice in all its forms.

Animal Place in northern California, founded in 1989, is one of the oldest and largest sanctuaries for farmed animals in the country. In the past decade, Animal Place has rescued, rehomed, and provided sanctuary to more than 32,000 animals - most of whom are hens rescued from the egg industry. We provide sanctuary to more than 200 formerly farmed animals on 600-acres.

Animal Protection Voters New Mexico is a non-partisan 501(c)(4) nonprofit dedicated to protecting all animals through legislative and political action. APV serves as the legislative arm of Animal Protection New Mexico (APNM) and animal advocates across the state. APV holds elected officials accountable through Primary

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[3] ALDF Member and Supporter Petition (Apr. 20, 2026) (Exhibit 2).

and General Election voter guides, publishing an annual Legislative Scorecard reflecting legislators' votes, and endorsing animal-friendly candidates. Since 2002, APV has driven systematic change for animals in New Mexico by strengthening legal protections and creating infrastructure to prevent cruelty and suffering.

Founded in 1866, the ASPCA® (The American Society for the Prevention of Cruelty to Animals®) was the first animal welfare organization to be established in North America and today serves as the nation's leading voice for vulnerable and victimized animals. As a 501(c)(3) not-for-profit corporation with more than two million supporters nationwide, the ASPCA is committed to preventing cruelty to dogs, cats, equines, and farm animals throughout the United States.

The Animal Welfare Institute (AWI) is a national nonprofit organization founded in 1951 and dedicated to alleviating animal suffering caused by people. AWI seeks to improve the welfare of animals everywhere: in agriculture, in commerce, in our homes and communities, in research, and in the wild.

Attorneys for Animals (AfA) is an organization of Michigan lawyers, law school graduates, law students, certified legal assistants and others who believe the legal system is an important tool in protecting animals and bettering their lives. Founded in the early 1990s, we received our 501 (c)(3) nonprofit status in 1995. We serve as an informal clearinghouse for attorneys interested in taking animal law cases and maintain an informal referral list of attorneys who specialize in animal-related legal issues. We assist state and particularly local government units in drafting and revising animal laws, rules and ordinances, and we help guide lawmakers through the often confusing and contentious areas of animal-related legislation. We provide funding of causes and organizations which will improve animal life and welfare in Michigan.

Austin Farm Sanctuary is a 501(c)(3) non-profit farmed animal rescue that cares for over 250 residents on 95 acres in Central Texas. Our mission, like others, is to rescue farmed animals, tell their stories, and create a connection with humans and animals like them in order to inspire change in how they are viewed and treated.

Ballydidean Farm Sanctuary rescues, rehabilitates, and rehomes farmed animals who are unwanted, neglected, or abused. Through tours and community education, we give people the chance to make friends with animals they typically only meet on their dinner plate, giving them an opportunity to rethink their relationship with farmed animals. Exposure = Empathy.

Better Piggies Rescue is a Phoenix-based 501(c)(3) nonprofit sanctuary dedicated to rescuing, rehabilitating, and advocating for pigs across Arizona. Caring for more than 200 pigs, the organization responds to neglect, abandonment, and

owner surrenders—often involving pigs misrepresented as "teacup" pets. Through medical care, lifelong sanctuary, and partnerships with veterinarians and local agencies, Better Piggies ensures each pig receives the care they need while also addressing the root causes of pig homelessness. By combining direct rescue efforts with community education on responsible ownership and humane treatment, the organization is creating lasting change and giving pigs a safe, compassionate place to call home.

Center for Food Safety ("CFS") is a national nonprofit organization with over one million members and supporters. CFS's mission is to empower people, support farmers, and protect the earth from the harmful impacts of industrial agriculture. For over 25 years, CFS has furthered this mission through groundbreaking legal, scientific, and grassroots action. One of CFS's flagship programs seeks to end the harmful effects of industrial meat production on animals, workers, public health, and the environment.

The Changemaker Project is a 501(c)3 nonprofit empowering youth around the world to create positive change in their communities.

Clorofil is an all-volunteer animal advocacy nonprofit and micro-sanctuary in the San Francisco Bay area. It grows awareness in its community by giving talks about the plight of farmed animals and the impact of animal agriculture on our planet. Through our cooking demonstrations, it encourages a plant-based lifestyle. It also promotes chicken adoption and educates the public about pet chicken care.

Direct Action Everywhere is an international grassroots network of animal rights activists working to achieve revolutionary social and political change for animals.

Expand Animal Rights Now ("EARN") seeks to expand the rights of all animals and the humans who care for them. EARN accomplishes this mission by using the legal system and the court of public opinion to provide low- and no-cost legal representation in cases that advance the rights of animals; provide legal support to nonprofit animal rights organizations; rescue animals affected by abuse, neglect, and abandonment; influence positive changes to local and state laws and their enforcement; and inform people of their legal rights.

The European Institute for Animal Law & Policy is a think-and-do-tank based in Brussels, Belgium specializing in EU animal law and policy. Our mission is to advance the interests of animals in the EU.

Farm Aid's mission since 1985 has been to build a vibrant, family farm-centered system of agriculture in America. Farm Aid works with local, regional and

national organizations to promote fair farm policies and grassroots organizing campaigns designed to defend and bolster family farmers.

Farm Sanctuary is a national 501(c)(3) nonprofit that is the founding farm animal rescue and protection organization in the United States. Its mission is to pursue bold solutions to end factory farming and foster just and compassionate vegan living through education, advocacy, and rescue.

The Farm Micro Sanctuary was established in 2021 to provide a safe haven for at risk farmed animals and to promote compassionate choices for the animals and the environment. We specialize in giving a forever home to senior and special needs animals and advocating for their care.

The Farmed Animal Protection Project (the "Project") at Lewis & Clark Law School offers students an experiential learning opportunity to develop lawyering and other professional skills used by farmed animal protection advocates. The Project approaches farmed animal protection from a holistic lens, addressing the many intersecting harms of industrial animal agriculture. Lewis & Clark Law School institutional affiliations are provided for identification purposes only. The views expressed herein are solely those of the signatories in their individual capacities, and do not necessarily represent the views of the Center for Animal Law Studies or Lewis & Clark Law School.

Fauna Films is a US 501(c)(3) using the power of film to shift consumer behavior towards compassion for animals, people, and the planet.

Food & Water Watch (FWW) fights for the safe and healthy food, clean water, and livable climate we all deserve. We empower people to take on destructive corporations and the policy makers who enable them, in order to stop pollution, defend democracy, and protect the planet – now and for future generations. Fighting the harmful impacts of the factory farm industry, including slaughterhouses, is a priority issue for FWW.

Friends of the Earth fights to create a more healthy and just world. Through our Food & Agriculture Program, we work to rapidly transition our food system to one that is sustainable, healthy, and just via markets and policy advocacy, strategic communications, organizing, and cutting-edge science. We seek three fundamental shifts in our food system: from toxic and chemical-intensive to healthy and ecologically regenerative; from corporate-controlled to democratically governed; and from a system that embodies the deepest inequities in our society to one that advances justice and fulfills the needs of all eaters now and in the future.

Full Circle Farm Sanctuary (FCFS) is a Georgia-based nonprofit providing lifelong sanctuary and care to farmed animals to more than 100 rescued residents

across 13 species, including pigs, chickens, and turkeys. FCFS exists to provide safety, dignity, and lifelong care to animals who were once farmed, discarded, neglected, abused, or needing more care than previous circumstances could provide.

Dominion Farm Animal Sanctuary in Fairhope, Alabama, is a 501(c)(3) nonprofit farm animal rescue and educational resource for the surrounding area. We are a benefit to the community through education.

The Global Federation of Animal Sanctuaries is the only global organization dedicated to accrediting, strengthening, and supporting the work of animal sanctuaries, rescues, and rehabilitation centers. The goal of GFAS is to ensure these facilities are resourced, honored, and recognized for providing high standards of care to the animals in residence. GFAS was founded by animal protection leaders in response to virtually unchecked and often hidden exploitation of animals for human entertainment and financial profit.

Godspeed Horse Hostel, Inc. was founded in 2004, to rescue, rehabilitate and rehome unwanted horses. However, the need to rescue farm animals became so great, we added farm animals to our mission and started a Hay Bank to be able to feed all these additional large animals. The rescue has initiatives for all animals now, with programs for domestic, farm, wild and companion animals. All of our programs and outreach services are free. We advocate for stronger laws for animals and work in the field training the next generation of animal welfare advocates. We do this by providing humane education, investigating animal cruelty, and plant based school lunch outreach programs. We are members of strong coalitions that collectively work to end the suffering of animals, in particular, the millions of animals suffering on factory farms.

HEAL (Health, Environment, Agriculture, Labor) Food Alliance is a national multi-sector, multi-racial coalition. HEAL is led by its member-organizations, who represent about two million rural and urban farmers, ranchers, fishers, farm and food chain workers, Indigenous groups, scientists, public health advocates, policy experts, and community organizers united in their commitment to transformed food and farm systems.

Hogs & Kisses Farm Sanctuary believes that all animals deserve love and respect, even the ones that typically end up on plates. We are a 501(c)3 non-profit micro-sanctuary with the mission of creating the best possible life for farmed animals while inspiring compassion for all living beings. We provide unwavering support and care for fourteen beautiful souls - hogs, turkeys, and rabbits. We are only micro in scale, but certainly mighty in conviction.

Huckleberry Trails Animal Sanctuary is located in Shermans Dale, PA and advocates for the humane treatment of all farm animals.

Humane Action Pennsylvania is a Pittsburgh-based nonprofit working on behalf of all animals. With campaigns dedicated to companion animals, farmed animals, and wildlife, we provide education, community programming, and advocacy for the most vulnerable nonhuman animals.

The Humane Farming Association (HFA) is dedicated to the protection of farm animals. Founded in 1985, HFA has garnered worldwide recognition and respect for its landmark anti-cruelty campaigns including, most notably, its successful National Veal Boycott. HFA also provides direct hands-on emergency care for abused farm animals at HFA's Suwanna Ranch – the nation's largest farm animal sanctuary.

The Humane League (THL) is a global nonprofit to end the abuse of animals raised for food. Established in 2005, THL operates through corporate negotiations and advocacy campaigns, legislative and policy change, and global movement building.

Inside Animal Ag is a research-based guide to the structure and impacts of factory farming. We have done research on the line speed regulations for both poultry and pigs, their impact on the animals and on the workers in processing plants. We believe that the USDA's interpretation of the 2025 line speed evaluation studies (Harris-Adamson et al.) is inappropriately dismissive of physical and other health injuries to workers. There is strong evidence to believe that more animals will suffer as well.

The Institute for Agriculture and Trade Policy (IATP) works locally and globally to ensure fair and sustainable food, farm and trade systems. IATP supports policies that protect the interests of farmers, workers and rural communities over extractive, exploitive and unfair practices of corporations. IATP has submitted comments on food safety and worker safety concerns in meat and poultry processing for more than a decade, including the risks associated with faster line speeds.

Lancaster Farm Sanctuary is a nonprofit animal rescue and advocacy organization located in Lancaster County, Pennsylvania. It provides lifelong care to farmed animals rescued from neglect, abuse, slaughter, and exploitative systems, while offering public education that advances justice for animals.

Legal Impact for Chickens (LIC) works to protect farmed animals by enforcing the law. LIC envisions a world where all farmed animals have their basic needs met and cruelty carries consequences. LIC is a 501(c)(3) public charity, a society for the prevention of cruelty to animals, and a nonprofit law firm.

Nestled in the beautiful Willamette Valley of Oregon, Lighthouse Farm Sanctuary, the oldest sanctuary in the state, sits on 54 acres. Our open-concept sanctuary allows rescued animals to enjoy a fully self-actualized existence. With access to lush pastures, dense oak groves, and a multitude of warm barns and structures, the animals have the choice to spend their days exactly how they please. Our sanctuary is home to over 250 rescued animals who have seen the very worst of humanity and every day they amaze us with their profound abilities to love and to be loved, even after the tragedies they have endured.

Little Red Barn Farm Sanctuary is a happy little farm nestled in Tunbridge, Vermont, promoting friendship and life-long bonds with farm animals commonly used for meat. It provides a safe haven for agriculture's "undesirables," including injured animals and those too old to breed. It's a fun and happy place where people can meet farm animals, and their individual personalities, and challenge traditional views of farm animals and their uses.

Luvin Arms Animal Sanctuary is as nonprofit animal sanctuary for abused or neglected farmed animals in Erie, Colorado. Rescued residents include cows, pigs, turkeys, chickens, horses, goats, sheep, and ducks. These beautiful residents were rescued from horrific situations including abuse and neglect cases, factory farms, religious rituals, slaughterhouse-bound trucks, bankrupt farms, and more. They were left with nowhere to turn and would have been slaughtered if they hadn't been saved.

Maine Animal Coalition is a part of the Animal Policy Alliance. We were founded in 1987 and are a state-wide organization. Our mission statement is: Dedicated to the elimination of animal abuse and exploitation through education, advocacy and example.

Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA-Angell) has been at the forefront of animal protection and veterinary care since 1868, providing hands-on care for thousands of animals each year. Today, the MSPCA-Angell is a world leader in animal welfare; healing, rescuing, sheltering, protecting, and advocating for more animals than any other humane organization in the United States.

The MISS Foundation is a nonprofit organization founded in 1996 to support families experiencing the death of a child. It operates internationally as a volunteer-based 501(c)(3), emphasizing compassionate, non-medicalized and nature based care for traumatic grief.

The National Sustainable Agriculture Coalition is an alliance of grassroots organizations that advocates for federal policy reform to advance the sustainability of agriculture, food systems, natural resources, and rural communities.

New Story Farm grows and raises food as a byproduct of ecological restoration, while offering nature and farming education to all ages through their non-profit school.

Northwest Animal Rights Network will sign on to both FSIS comments. Our mission: The Northwest Animal Rights Network champions freedom, respect, and well-being for all sentient beings through advocacy, education, and community connection.

Ohio Animal Advocates is a statewide animal advocacy organization and co-founder of the Coalition of State Animal Advocacy Organizations.

People for the Ethical Treatment of Animals (PETA) is a non-stock corporation and an animal-protection charity dedicated to protecting animals from neglect, abuse, and all forms of cruelty. PETA U.S. is the largest animal rights organization in the world, with more than 10.4 million members and supporters globally. PETA operates, in part, to promote and advance the principle that animals are not ours to abuse in any way and carries out its mission through public education, investigations, news reporting, animal rescue, legislative advocacy, litigation, special events, and protest campaigns.

Piedmont Farm Animal Refuge provides lifelong care to rescued farm animals, educates people about the realities of animal agriculture, and promotes veganism by offering knowledge, support, and community.

Pro-Animal Future is a collective of voters, volunteers, and small donors building a political movement to end factory farming. We use grassroots campaigns to turn public support for animals into law.

Reject Ranch's mission is to come to the aid of farm animals in dire need and to provide them with a safe home through sanctuary or adoption. It strives to inspire empathy and compassion for all animals by providing opportunities for people to interact with our rescued animals. Its goal is to create a world where all animals, not just companion animals, are treated with the kindness and respect they deserve.

Ridge 2 River Animal Haven is a farmed animal sanctuary and humane education center. R2R exists to inspire humans to make compassionate and sustainable choices for the health of the planet and all living beings. Educating on the interconnectedness of mental, physical, social and environmental health. Help us work toward a future where humans, animals and the planet can thrive in harmony.

Rivendell Sanctuary is a refuge for factory farmed animals that have suffered from neglect and abuse and who without intervention would either be put down or slaughtered. Using sustainable technologies as a core value, out of respect, compassion, and conservation for all living things, the Sanctuary works to share the stories of the farm animals and how conscious choices can create meaningful change.

Rosie's Farm Sanctuary aims to inspire compassion in the hearts of all people and be the voice for animals by rescuing and rehabilitating farm animals, and providing educational programs and advocacy.

Ryther Law Group, LLP ("RLG") fights for animals and their advocates. As a private law firm, RLG only takes cases that serve the best interests of animals. RLG handles both simple and complex litigation matters, ranging from animal cruelty cases and nonprofit support to veterinary malpractice and wrongful death or other torts against animals.

Saoirse Pastures rescues unwanted, abandoned, relinquished or abused farmed animals; facilitates re-homings when appropriate; and provides lifetime sanctuary in a sustainable, safe, enriched environment. We are committed to community education about the cruelties of factory farming to promote intersectional veganism. We actively support animal rights in alliance with other social justice movements. Saoirse Pastures seeks a gentle world built on respect for all living beings.

Saving Grace Animal Sanctuary is a nonprofit sanctuary that provides a safe home for farm animals who have been rescued from cruelty/neglect or who were on their way to be food. Each resident is treated with respect and honor. Their individual needs are recognized, met with love and addressed. They now know a life of love and dignity.

Selah Carefarm is a pioneering therapeutic retreat near Sedona, Arizona, designed for individuals and families coping with traumatic grief, such as the loss of a child, sibling, or loved one from any cause. It spans about 20 acres of farmland and houses around 50 rescued animals—including horses, pigs, cows, alpacas, goats, donkeys, sheep, cats, and dogs—all saved from abuse, neglect, or homelessness.

Serenity Sanctuary Farm is a small micro sanctuary in Sherborn, Massachusetts. Our goal is to create a safe space for animals of all types and educate people about alternative ways of eating.

Shy 38, Inc. is a 501(c)(3) non-profit organization, founded in February 2015 and based in Leavenworth County, Kansas. Shy 38 works to change attitudes about

industrialized farm animals by offering a compassionate public humane education program, promoting a cruelty-free, vegan lifestyle, and providing opportunities for the public to interact with its rescued farmed animal residents.

Social Compassion in Legislation is a leading political advocacy group founded in 2007 to promote legislation that saves and protects animals in California and throughout the United States.

SoL Criations Farm Sanctuary is a vegan 501(c)(3) farmed animal sanctuary where we rescue and provide life-long sanctuary to typically farmed animals in need. It is our mission to educate, help make connections, and inspire non-violence, peace, and reverence for all life.

Strategies for Ethical and Environmental Development (SEED) is an animal and environmental protection nonprofit committed to creating a sustainable future by advocating for animals, people, and the planet against the impacts of industrial animal agriculture.

Strategic Action for Animals is a San Diego-based advocacy organization driving collective action to fight animal exploitation through smart, strategic, grassroots campaigns. We work at the local, state, and national level — from ballot initiatives and corporate pressure campaigns to legislative outreach — to create systematic change for animals.

Sweet Peeps Microsanctuary is a fully registered 501(c)(3) in Lillian, Alabama, that is primarily focused on rescuing chickens from the meat industry.

TevaLand Sanctuary Farm is a 501(c)3 non-profit farm animal sanctuary located in the historic Ramapo Mountains in Rockland County, New York, that offers a variety of educational programs.

The Texas Humane Legislation Network's (THLN) mission is to promote the humane treatment of animals through legislation and advocacy. Since 1975, THLN has been the only Texas-based organization dedicated solely to advancing animal protection through legislation and public policy.

Tindakan creates and supports endeavors advocating for eco-social justice causes. We support and create initiatives restoring balance between people, animals and the planet.

Voters For Animal Rights help elect candidates who support animal protection, lobby for strong laws to stop animal cruelty, and hold elected officials accountable to humane voters.

Woodstock Farm Sanctuary is a 501(c)(3) nonprofit located in High Falls, NY. We rescue farmed animals, give them lifelong care and sanctuary, and educate about the harms of animal farming. The Sanctuary welcomes visitors to come and meet animals who are most commonly exploited, abused, and killed in animal agriculture. We are currently home to nearly 300 rescued animals, and represent members across the country who oppose the USDA line speeds proposal.

Wynham Farm Sanctuary is home to cows and pigs. These animals were rescued as babies and have known only love and kindness. They serve as ambassadors in our community where people and children can meet them up close and personal. We hope to open some hearts and minds so that our human friends can see the unique, affectionate personalities of these sensitive, loving animals.

The Zend: Final Farm & Sanctuary is a "safe refuge for gentle souls." Our mission includes rescue and rehabilitation for farmed animals facing slaughter, abuse, neglect, and/or abandonment providing them with long-term, compassionate care while also engaging and educating the community about making the world a kinder place through various outreach programs, public events, and private tours. Through rescue, rehabilitation, education, and advocacy we provide impactful change not only for the animals in our care, but also for the humans who meet them and learn how to be better stewards of the animals and the environment which we all share. Our promise to all of our residents is zen until the end...The Zend.

II. Statutory Background

A. Federal Meat Inspection Act

FSIS is charged with ensuring that America's meat supply is safe under the Federal Meat Inspection Act (FMIA).[4] Congress found that the Act was "essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged."[5] The FMIA requires FSIS to ensure sanitary conditions at establishments where meat products from covered species enter interstate commerce, and FSIS also requires that federal inspectors conduct ante-mortem and post-mortem inspections of meat that enters interstate commerce.[6] The Secretary of Agriculture is charged with "appoint[ing]. . . inspectors to make examination and inspection of all amenable species," including pigs.[7]

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4 21 U.S.C. § 603.
5 21 U.S.C. § 602.
6 21 U.S.C. §§ 603, 604, 621.
7 21 U.S.C. § 621.

B. Humane Methods of Slaughter Act

When establishing the Humane Methods of Slaughter Act (HMSA), which is incorporated into the FMIA by reference,[8] Congress found "that the use of humane methods in the slaughter of livestock prevents needless suffering" and also "benefits. . . consumers."[9] As such, the HMSA declares that "the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods"[10] and provides that "[n]o method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane."[11] Specifically, the HMSA requires animals to be "rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut" or "slaughter[ed] in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering."[12]

C. National Environmental Policy Act

The National Environmental Policy Act (NEPA)[13] requires all federal agencies to consider the environmental impact of their proposed actions before deciding whether and how to proceed. "NEPA establishes a 'national policy [to] encourage productive and enjoyable harmony between man and his environment,' and was intended to reduce or eliminate environmental damage and to promote 'the understanding of the ecological systems and natural resources important to' the United States."[14] NEPA does not dictate the outcome of a proposed action, but it does impose "procedural requirements on federal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions."[15] When properly implemented, NEPA procedures "ensure[ ]

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8 21 U.S.C. § 603(b). *See also id.* § 610(b) (making it unlawful to slaughter or handle in connection with slaughter. . . swine" not in accordance with the HMSA).

9 7 U.S.C. § 1901.

10 *Id. See* H.R. Report No. 85-706 at 4 (1957) (establishing a "national policy" of slaughtering animals humanely).

11 7 U.S.C. § 1902.

12 *Id.*

13 42 U.S.C. §§ 4321–4336e.

14 *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 756 (2004) (quoting 42 U.S.C. § 4332(C)).

15 *Id.* at 756–57 (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S.

that the agency will inform the public that it has indeed considered environmental concerns in its decision-making process."[16]

D. Administrative Procedure Act

Under the Administrative Procedure Act (APA), FSIS decisions must not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations," or "without observance of procedure required by law."[17] A basic tenet of agency "reasoned decisionmaking" is that the agency's actions be "based on consideration of the relevant factors and within the scope of the authority delegated to the agency by the statute. . . . [T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[18] Agency regulations are "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[19] Additionally, "the APA requires that an agency give notice of a proposed rule setting forth 'either the terms or substance of the proposed rule or a description of the subjects and issues involved,'" in order to "'give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.'"[20]

FSIS regulations and decisions regarding pig slaughter must comply with both the spirit and letter of the FMIA, the HMSA, and NEPA. The Proposed Rule misses this mark. Further, FSIS has not articulated a rational connection between the facts underlying this matter and the decision to eliminate slaughter line speed limits at pig slaughterhouses operating under the NSIS. In its current form, the Proposed Rule is arbitrary, capricious, an abuse of discretion, and not in accordance with the FMIA, the HMSA, NEPA, and the APA. Accordingly, Commenters urge FSIS to abandon the Proposed Rule and end the Time Limited Trial (TLT) because eliminating slaughter line speeds does not comport with FSIS's duty to ensure pork products are safe. At the very least, FSIS must conduct additional food safety,

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332, 349–50 (1989)).

16 *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983).

17 5 U.S.C. § 706(2)(A), (C), (D).

18 *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co. (State Farm)*, 463 U.S. 29, 42–43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

19 *Id.* at 43.

20 *Solite Corp. v. U.S. EPA*, 952 F.2d 473, 484 (D.C.Cir.1991) (quoting 5 U.S.C. § 553(b), (c)).

worker safety, animal welfare, and environmental analyses, and provide a scientifically sound justification for the Proposed Rule based on consideration of all these analyses.

III. The Proposed Rule is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

FSIS's Proposed Rule is arbitrary and capricious because the agency (1) failed to meaningfully consider the impacts that faster slaughter line speeds would have on food safety, worker safety, and animal welfare; (2) failed to consider an important aspect of the problem, namely that there are chronic inspector staffing shortages, that Inspectors-in-Charge (IICs) cannot readily slow or stop lines, and that inspectors often are not available to document noncompliances; (3) impermissibly relied on increasing "production efficiency" as a rationale for the Proposed Rule; and (4) inadequately explained its decision to change course and remove slaughter line speed limits. Courts must "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[21] As the U.S. Supreme Court has made clear, "One of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decisions."[22] An agency rule is arbitrary, and thus unlawful, "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[23] The agency "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made."[24]

A. FSIS failed to adequately consider the impacts of increased slaughter line speeds on food safety.

Eliminating swine slaughter line speeds limits will undermine food safety inspectors' ability to identify adulterated products, increasing risks from foodborne illnesses. These elevated threats to public health are an unacceptable price to pay in exchange for marginal income increases for meatpacking corporations that are already raking in record profits. Testimonial and scientific evidence demonstrate that the risks this rule would create outweigh any benefit it could provide. Further,

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21 5 U.S.C. § 706(2)(A).

22 *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

23 *State Farm*, 463 U.S. at 43.

24 *Id.* (internal quotations omitted) (citing *Burlington Truck Lines v. United States*, 371 U.S. 156 (1962)).

the faulty data FSIS relies on to justify eliminating line speed limits are completely unreliable, downplaying food safety risks through a combination of obfuscation and underreporting. The data relied on by FSIS have not been provided to the public, thereby impeding the ability of the public to comment.[25] In truth, the Proposed Rule change would exacerbate the slaughter industry's adverse public health impacts, particularly given recent changes within the federal government that undermine food safety and disease control.

Pursuant to the FMIA, USDA must require inspectors to conduct ante-mortem and post-mortem examinations and inspections—and when necessary, reinspection—of every pig and carcass that passes through a regulated slaughter facility.[26] The purpose of these inspections is to prevent adulterated pork products from entering the stream of commerce where they may be consumed by humans or other animals.[27] "Adulterated" is defined to include, *inter alia*: any product that contains "any poisonous or deleterious substance which may render it injurious to health;" "consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;" "has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;" or "is, in whole or in part, the product of an animal which has died otherwise than by slaughter."[28] To identify signs of adulteration, inspectors need time to examine each pig before it enters the slaughterhouse, and time to examine each carcass before it leaves the slaughterhouse, bound for further processing and, ultimately, retail shelves. Any threat to inspectors' ability to reliably identify and remove adulterated pork is a threat to consumers and public health.

1. Increasing pig slaughter line speeds will make food less safe.

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25 *See Am. Radio Relay League, Inc. v. F.C.C.*, 524 F.3d 227, 237 (D.C. Cir. 2008) ("It would appear to be a fairly obvious proposition that studies upon which an agency relies in promulgating a rule must be made available during the rulemaking in order to afford interested persons meaningful notice and an opportunity for comment.")

26 21 U.S.C. § 604.

27 21 U.S.C. § 602; *see also* Brief for the United States as Amicus Curiae Supporting Petitioner, *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452 (2012), (No. 10-224), 2011 WL 3821398, at *15 (calling FSIS inspections "often the best way to detect potentially devastating diseases that may be spreading through livestock populations" and noting that the inspections allow veterinarians to spread the alarm to those who can "Act to prevent widespread economic harm and disruption of the meat supply").

28 21 U.S.C. § 601(m).

Pork products are known vectors of foodborne pathogens.[29] FSIS data collected between 2015 and 2017 show pork may be contaminated with not only *Salmonella* spp., but also other bacterial pathogens, including Shiga-toxin producing *E. coli, Listeria* spp., and methicillin-resistant *Staphylococcus aureas*.[30] A literature review analyzing the prevalence of Shiga-toxin producing *E. coli* in pork products explained that FSIS systemically undercounts risks from pathogenic *E. coli* strains the government neither tests for nor regulates.[31] Increasing line speeds will reduce the time inspectors have to detect, report, and address signs of contamination by these dangerous pathogens and ensure adulterated products are properly excluded from commerce.

Fecal contamination in pork products is a significant food safety concern that is bound to increase along with increased slaughter line speeds. Pig fecal matter has been found to include a host of bacterial pathogens, including *Bacillus anthracis*, *Brucella* spp., *Campylobacter* spp., *Chlamydia* spp., *E. coli*, *Leptospira* spp., *Listeria* monocytogenes, *Mycobacterium* spp., *Salmonella* spp., and *Yersinia* spp.[32] A former FSIS inspector at a HACCP-Based Inspection Models Project (HIMP) slaughterhouse with a line speed waiver stated that inspectors only had "about two seconds per pig to identify pathology and fecal contamination."[33] An undercover investigation at this same slaughterhouse revealed apparent food safety concerns

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29 *See* Comment of Dr. Parthapratim Basu submitted to Docket No. FSIS–2025–0009, 11 (Apr. 20, 2026) (Exhibit 3).

30 *Raw Pork Products Exploratory Sampling Program*, FSIS (updated Oct. 31, 2026) https://www.fsis.usda.gov/science-data/sampling-program/raw-pork-products-exploratory-sampling-program (Exhibit 4); *see also* Alma D. Paz-González et al., *Enterobacteriaceae in Pork Meat: Causal Agents of Public Health Problems*, 25 J. BIO. & HEALTH SCI. 73, 73–74 (2023), https://www.scielo.org.mx/pdf/biotecnia/v25n2/1665-1456-biotecnia-25-02-73.pdf (Exhibit 5); FSIS, REVIEW OF THE BOAR'S HEAD LISTERIA MONOCYTOGENES OUTBREAK, (Jan. 2025) https://www.fsis.usda.gov/sites/default/files/media_file/documents/Boars-Head-Public-Report-012025.pdf (Exhibit 6); Birgit Lassok & Bernd-Alois Tenhagen, *From Pig to Pork: Methicillin-Resistant Staphylococcus aureus in the Pork Production Chain*, 76 J. FOOD PROD. 1095, 1095, 1098, 1103 (2013) (Exhibit 7).

31 Manirul Haque et al., A Review of Shiga-Toxin Producing Escherichia Coli (STEC) Contamination in the Raw Pork Production Chain, 377 Int'l J. Food Microbiology 1, 2, 5–6 (2022) (Exhibit 8).

32 Cherie J. Ziemer, *Fate and Transport of Zoonotic, Bacterial, Viral, and Parasitic Pathogens During Swine Manure Treatment, Storage, and Land Application*, 88 J. ANIMA. SCI. E84, E86 (2010) (Exhibit 9).

33 Decl. of Jill Mauer, *Farm Sanctuary v. USDA*, No.19-cv-6910-EAW, Dkt. #30-6, at p. 3 (W.D.N.Y. Apr. 10, 2020) (Exhibit 10).

resulting from deficient inspections and plant procedures.[34] The plant appeared to lack any procedure to designate and separate animals who became non-ambulatory once they were in the livestock area and consequently, these "downed" animals were slaughtered alongside ambulatory pigs, despite well documented links between non-ambulatory animals and food safety risks.[35] The investigation also documented numerous carcasses riddled with growths, abscesses, and lumps, some of which contained green or yellow pus, along with carcasses visibly contaminated with fecal matter.[36] Not only did fecal zero tolerance noncompliance records increase at this slaughterhouse while it was running line speeds around 1,325 pigs slaughtered per hour, but so did worker attempts to "sneak defective carcasses past inspectors."[37]

Additionally, threats posed by bacterial contamination are particularly concerning given the rise of antibiotic resistance.[38] Intensive—and growing[39]—use of livestock antibiotics is a major contributor to the proliferation of antibiotic-resistant bacteria that endanger human health as they are transferred through the food chain and through drinking water.[40] According to the FDA, antibiotic use in pork jumped 16 percent in 2024.[41] Research also indicates that disinfectant procedures at pig slaughterhouses reduces bacterial diversity, increasing the odds that antibiotic resistance will emerge.[42] As a result, slaughterhouse workers already

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34 *Hormel: USDA-Approved High Speed Slaughter Hell*, ANIMAL OUTLOOK (last visited Apr. 11, 2026), https://animaloutlook.org/investigations/hormel/ [https://perma.cc/4SYN-JUZ9] (hereinafter QPP Investigation) (Exhibit 11 & Exhibit 1 (shipping and tracking information for native video on USB).

35 *Id.*

36 *Id.*

37 Decl. of Jill Mauer, *supra* note 33, at 2–5.

38 *See* Comment of Dr. Parthapratim Basu, *supra* note 29, at 10–11.

39 Anne Schechinger, *Sharp Rise in Livestock Antibiotic Use Threatens Life-Saving Medications*, EWG (Jan. 21, 2026), https://www.ewg.org/news-insights/news/2026/01/sharp-rise-livestock-antibiotic-use-threatens-life-saving-medications (Exhibit 12).

40 EPA, LITERATURE REVIEW OF CONTAMINANTS IN LIVESTOCK AND POULTRY MANURE AND IMPLICATIONS FOR WATER QUALITY 1, 49-56 (July 2013) (Exhibit 13); CDC, ANTIBIOTIC RESISTANCE THREATS IN THE UNITED STATES 18, 28 (2019); WORLD ANIMAL PROTECTION, SILENT SUPERBUG KILLERS IN A RIVER NEAR YOU 17, 19 (2021) (Exhibit 14); Comment of Dr. Parthapratim Basu, *supra* note 29, at 10–11.

41 Tom Perkins, *Antibiotic Use in US Meat Production Jumped 16 percent in 2024, Report Shows* (Jan. 27, 2026), https://www.theguardian.com/us-news/2026/jan/27/antibiotic-meat-production (Exhibit 15).

42 Arnaud Bridier et al., *Impact of Cleaning and Disinfection Procedures on Microbial Ecology and Salmonella Antimicrobial Resistance in a Pig Slaughterhouse* (Sept. 10, 2019), https://anses.hal.science/anses-02348705/file/bridier1_13.pdf (Exhibit 16).

face disproportionately high rates of infection by antibiotic-resistant pathogens.[43] As FSIS has acknowledged,[44] overall production is likely to increase as slaughter lines run faster, increasing the rate at which workers, their families, and the public are exposed to potentially hazardous pathogens. Antibiotic-resistant infections are more difficult and expensive to treat, and more likely to be fatal.[45] In the United States, these infections are responsible for an estimated 2.8 million illnesses and 35,000 deaths each year.[46]

Notably, the Proposed Rule lacks any heightened food safety criteria slaughterhouses must meet to run at faster speeds and includes no additional monitoring requirements to ensure the speeds at which the facility is running are not compromising food safety. Further, despite acknowledging that "the speed at which slaughter establishments can run their lines is limited by the establishments' equipment functionality and design,"[47] FSIS's proposal lacks any requirement that facilities operating at higher line speeds install equipment designed to operate safely at higher speeds. In fact, the only consideration given to equipment needs in the Proposed Rule is to estimate industry costs, and even this ignores the likelihood that operating at higher line speeds will shorten equipment lifespans, thereby increasing repair and replacement costs.[48] FSIS's omission of equipment updates and maintenance requirements as a precursor to eliminating line speed limits is particularly alarming given recent reporting on whistleblower accounts of hog

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43 Lance B. Price et al., *Elevated Risk of Carrying Gentamicin-Resistant Escherichia coli Among U.S. Poultry Workers*, 115 ENVTL. HEALTH PERSPECTIVES 1738, 1740-41 (Dec. 2007) (Exhibit 17) ("The present study revealed a disproportionately high rate of colonization with GEN-resistant E. coli among U.S. poultry workers.").

44 *Infra* Section VII.C.; *see* 84 Fed. Reg. 52,300, 52335 (Oct. 1, 2019) (estimating eliminating line speeds will result in roughly 11.5 million additional pigs slaughtered annually in the United States, and an $87.64 million surplus to the industry responsible for raising and slaughtering those pigs).

45 *See* Richard E. Nelson et al., *National Estimates of Healthcare Costs Associated with Multidrug-Resistant Bacterial Infections Among Hospitalized Patients in the United States*, 72 CLINICAL INFECTIOUS DISEASES S17, S22 (Exhibit 18) (estimating that national costs associated with six multidrug-resistant infections was more than $4.6 billion annually); CDC, ANTIBIOTIC RESISTANCE THREATS IN THE UNITED STATES 5 (2019) (Exhibit 19) ("Antibiotic-resistant infections can be difficult, and sometimes impossible, to treat. In addition to increasing morbidity and mortality, resistant infections also add considerable costs to the U.S. healthcare system . . . in many cases, these infections require extended hospital stays, additional follow-up visits to healthcare providers, and the use of treatments that may be more costly and potentially more toxic.").

46 Schechinger, *supra* note 39.

47 Proposed Rule at 7,908.

48 Proposed Rule at 7,917.

slaughterhouses continuing to operate well after broken equipment has created unmistakable food safety hazards.[49] The rule treats line speed as an isolated variable. The record demonstrates that speed interacts with existing constraints to amplify risk. At higher speeds the record reflects equipment failures affect greater volumes of product before detection. Sanitation lapses are more difficult to correct and observational limits reduce the likelihood that conditions will be identified in time. The agency does not meaningfully analyze these interactions. Its failure to do so further underscores the rule's lack of reasoned decision-making.[50]

2. FSIS's food safety data does not justify eliminating line speed limits.

FSIS's determination that eliminating slaughter line speed limits will not adversely impact food safety outcomes is based on flawed data and unreliable science. To support this determination, FSIS relies on data from five pig slaughterhouses that participated in HIMP and six pig slaughterhouses that participated in a "time limited trial" (TLT). Given the overlap between the two test programs, FSIS assessed data from just six facilities in total.[51] Contrary to FSIS's claims, neither of these sources provides a legitimate scientific basis for the reckless elimination of line speed limits. Because FSIS has consistently failed to collect reliable data or conduct well-designed program evaluations, the Proposed Rule is once again devoid of any science assuring against negative food safety impacts from increased line speed limits.

FSIS first points to data from the HIMP pilot to support the conclusion that eliminating line speeds does not compromise food safety. The first problem with using HIMP facilities as a test group to assess the impact of increased line speed on food safety is selection bias. Slaughterhouses volunteered to participate in HIMP as opposed to being chosen randomly. As prerequisites to participation, the volunteers had to demonstrate production controls, sanitary standard operating procedures, and a functional *E. coli* testing program.[52] Given these requirements, it is likely that any difference in food safety outcomes between facilities that self-selected into HIMP and the rest of the slaughter industry are attributable to factors other than line speeds. Indeed, in evaluating HIMP as applied to young chicken slaughterhouses, the U.S. Government Accountability Office raised this and other

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49 Jessica Scott-Reid, *'Navigating in Guts': A Former Worker Exposes Conditions Inside Slaughterhouse* (March 31, 2026), https://sentientmedia.org/former-worker-exposes-conditions-inside-slaughterhouse/ (Exhibit 20).

50 Exhibit B.

51 *Compare* https://www.fsis.usda.gov/inspection/compliance-guidance/haacp/haccp-based-inspection-models-project/list-himp-participating (HIMP facilities) *with* https://www.fsis.usda.gov/inspection/inspection-programs/inspection-meat-products/modernization-swine-slaughter-inspection (TLT facilities).

52 62 Fed. Reg. 31553, 31558, 31560.

concerns, stating that the pilot suffered from "design and methodology limitations that compromise the overall validity and reliability of its results."[53]

Second, any differences in food safety-related data between HIMP establishments and comparable non-HIMP establishments cannot be attributed to differences in line speeds because the HIMP establishments were not uniformly operating at higher line speeds. Rather, "[t]he HIMP establishments determined their line speeds based on their equipment, size, and condition of the animals coming to slaughter, and their ability to maintain process control when operating at a given line speed."[54] Consequently, although some of the HIMP facilities operated above the 1,106 hph some of the time, their estimated average line speed was 1,099 hph—*under* the existing limit.[55] FSIS has no data from this study indicating that food safety risks were not elevated while the HIMP facilities were operating at higher line speeds because FSIS did not contemporaneously track line speeds and food safety indicators. Even the estimated 1,099 hph average was calculated based on operating hours, donning and doffing times, and average employee overtime records rather than actually measured.[56] This led FSIS to admit in 2014 that "estimated line speeds likely vary from actual line speeds."[57] Similarly, in a 2019 Assessment of *Salmonella* risk at HIMP facilities compared to non-HIMP facilities, FSIS stated unequivocally that "[d]ata describing establishments' line speeds were incomplete and not included in the model."[58] Without measuring food safety indicators while line speeds are above the existing limit, FSIS cannot justify its

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53 FSIS, Evaluation of HACCP Inspection Models Project (HIMP) 3 (Aug. 2011) (Exhibit 21); *see* USDA OIG, FSIS, INSPECTION AND ENFORCEMENT ACTIVITIES AT SWINE SLAUGHTER PLANTS, AUDIT REPORT NO. 246010001-41 (May 2013) (finding that the FSIS's "enforcement policies do not deter swine slaughter plants from becoming repeat violators of the" FMIA and, "[a]s a result, plants have repeatedly violated the same regulations with little or no consequence" and "FSIS could not ensure humane handling of swine," and summarizing five prior audits "related to FSIS enforcement of food safety and humane handling" that "identified continuing problems with FSIS' inspections and enforcement") (Exhibit 22); Comment of Dr. Parthapratim Basu, *supra* note 29, at 15–16.

54 Proposed Rule at 7,908.

55 FSIS, Evaluation of HACCP Inspection Models Project (HIMP) for Market Hogs 12 (Nov. 2014) [hereinafter 2014 FSIS Evaluation of HIMP] (Exhibit 23).

56 *Id.* at 12 n.3.

57 *Id.*

58 FSIS, Assessment of the Potential Change in Human Risk of Salmonella Illnesses Associated with Modernizing Inspection of Market Hog Slaughter Establishments 39 (Sept. 2019) (Exhibit 24).

conclusion that operating kill lines faster than the existing limit will not compromise food safety.[59]

The third problem with FSIS's HIMP data is the likelihood of falsification and underreporting. Slaughterhouse inspectors experience immense pressure from the facilities they regulate and from USDA.[60] Inspectors at HIMP facilities have reported being berated and otherwise unsupported by company management when they try to intervene at slaughter lines.[61] Obviously, company management has even more control over its own workers who are often poorly trained and fear retaliation that endangers their jobs.[62] In a 2013 Government Accountability Office assessment of the HIMP pilot, representatives from all 11 stakeholder groups interviewed noted concerns about inadequate training of plant personnel that likely impacted food safety data gathered at HIMP plants.[63] Inspectors also reported that slaughterhouse management alter their inspection protocols and engage in other manipulative tactics to make it more difficult for federal inspectors to detect and

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[59] *See* Comment of Dr. Parthapratim Basu, *supra* note 29, at 14–15; *see also State Farm*, 463 U.S. at 43 (agencies "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made").

[60] FSIS Whistleblower Affidavit to Alyssa Doom, Government Accountability Project 3-4 (Oct. 22, 2014), https://foodwhistleblower.org/wp-content/uploads/2015/01/Affidavit-2-Redacted_.pdf [hereinafter "Inspector Affidavit 3"] (Exhibit 25); Affidavit of Joe Ferguson to Alyssa Doom, Government Accountability Project 2 (Oct. 2014), https://foodwhistleblower.org/wp-content/uploads/2015/01/Affidavit-4-%E2%80%93-Joe-Ferguson.pdf [hereinafter "Ferguson Affidavit"] (Exhibit 26).

[61] Inspector Affidavit 3*, supra* note 60, at 1-4; Ferguson Affidavit, *supra* note 60, at 2; Chad Bouchard, *Meat Inspectors Get Blowback for Blowing the Whistle*, INDIANA PUBLIC MEDIA, (Oct. 29, 2019), https://www.ipm.org/show/eartheats/2019-10-29/meat-inspectors-blowback-blowing-whistle (Exhibit 27).

[62] Inspector Affidavit 3*, supra* note 60, at 3, 5-7; FSIS Whistleblower Affidavit to Alyssa Doom, Government Accountability Project 2-3 (Oct. 2014), https://foodwhistleblower.org/wp-content/uploads/2014/10/Affidavit-1-Redacted_.pdf ["Inspector Affidavit 1"] (Exhibit 28); Ferguson Affidavit, *supra* note 60, at 1; *see also* U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-775, MORE DISCLOSURE AND DATA NEEDED TO CLARIFY IMPACT OF CHANGES TO POULTRY AND HOG INSPECTIONS 21 (2013), *available at* https://www.gao.gov/assets/gao-13-775.pdf ("Representatives from 4 stakeholder groups stated that plants' responsibility for sorting carcasses presents a conflict of interest.") (Exhibit 29).

[63] U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-775, *supra* note 62, at 19; *see* Comment of Dr. Parthapratim Basu, *supra* note 29, at 15.

report food safety violations.[64] Data that has been manipulated to this extent simply cannot justify a rule change with such obvious food safety implications.

Moreover, the Agency relies heavily on reduced noncompliance records ("NRs") and sampling data from NSIS plants to conclude that increased line speeds do not compromise food safety. The record demonstrates that those metrics are not reliable indicators of actual conditions. NR data is systematically constrained. Inspectors cannot document violations while stationed on the line. Understaffing—which is chronic—limits the ability to record noncompliances. Violations are frequently addressed but not recorded. And documented NRs are often appealed and overturned by the Agency without explanation or guidance.[65]

FSIS next relies on data from the TLT to support the Proposed Rule's purported lack of food safety implications. But this study examined just slaughterhouses, four of which were already HIMP participants, permitted to operate—but not necessarily *actually operating*—at higher line speeds. FSIS's discussion of the TLT in the Proposed Rule focuses primarily on denying that increased line speeds are associated with increased *Salmonella* risks. In fact, the Proposed Rule devotes just a single sentence to risks from bacterial pathogens other than *Salmonella*, stating that sampling from the TLT establishments shows "a consistent reduction from pre-evisceration to post-chill."[66] Apparently, the public is just supposed to take FSIS's word for this because, in a deviation from past practices,[67] the agency did not release any supporting data. This withholding is detrimental to Commenters' ability to provide thorough feedback on the Proposed Rule.[68] Ultimately, FSIS's failure to conduct any meaningful assessment of food safety risks from bacterial pathogens other than *Salmonella* before attempting to promulgate the Proposed Rule is arbitrary and capricious.

Moreover, even FSIS's *Salmonella* analysis is so flawed that any conclusions based on the analysis are unreliable. In addition to the input data issues discussed

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64 Inspector Affidavit 3, *supra* note 60, at 3-6; *see also* U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-775, *supra* note 62, at 20–21 ("Representatives of 5 stakeholder groups stated that it is harder for FSIS inspectors to cite plants for not complying with FSIS' zero-tolerance standard for fecal material because plants in the pilot project may decide to address a food safety hazard—such as fecal material—at a point on the slaughter line after the FSIS inspector.").

65 Exhibit B

66 Proposed Rule at 7,910.

67 *See generally* FSIS, THE NATIONWIDE MICROBIAL BASELINE DATA COLLECTION PROGRAM: MARKET HOGS SURVEY (Aug. 2010-Aug. 2011) (Exhibit 30).

68 *See Bear Valley Mut. Water Co. v. Salazar*, No. 11-01263-JVS, 2012 WL 5353353, at *32 (C.D. Cal. Oct. 17, 2012), *aff'd sub nom. Bear Valley Mut. Water Co. v. Jewell*, 790 F.3d 977 (9th Cir. 2015) ("a rule-making agency 'cannot solicit public comments and seek peer review while withholding vital information'") (quoting *Center for Biological Diversity v. Norton*, 240 F.Supp.2d 1090, 1107 (D. Ariz. 2003).

above—which are severe—TLT participants were required to participate in FSIS's Salmonella Initiative Program (SIP). SIP is hardly a rigorous testing requirement: sample selection is chosen by the slaughterhouse as opposed to randomly, and samples are tested at laboratories chosen by the slaughterhouse.[69] Samples are selected by the establishment from pristine animals avoiding visibly compromised areas and sampling results therefore do not reflect representative conditions.[70] Moreover, TLT participants *knew* they would be required to submit to heightened federal sampling and testing requirements, as well as more intensive oversight generally to collect worker safety and air quality data.[71] Yet, under the Proposed Rule, slaughterhouses operating at higher line speeds would "no longer be required to meet the former TLT waiver criteria or participate in the SIP."[72] Instead, slaughterhouses operating at speeds above 1,106 hph would only be required to comply with regulations designed with slower line speeds in mind, which only requires that 1 out of every 1,000 hogs be tested for microbial contamination.[73]

The FMIA requires USDA to establish inspection requirements to protect public health—not maximize efficiency within the slaughter industry.[74] In the past, USDA has aligned its regulatory approach with this goal, such as by refusing to cave to smaller meat processors' complaints about the economic burden of regulation when FSIS banned the slaughter of cattle that become non-ambulatory after ante-mortem inspection.[75] There, FSIS affirmed that economic effects did not override the need to ensure adulterated products did not threaten public health.[76] FSIS's unwillingness to ensure the same when large slaughter operations are the complainants is arbitrary. As such, FSIS must prioritize public health and safety now by abandoning the Proposed Rule.

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69 Comment of Dr. Parthapratim Basu, *supra* note 29, at 7.

70 Exhibit B

71 Proposed Rule at 7,906.

72 *Id.* at 7,912.

73 *See id.* (citing 9 C.F.R. § 310.18(c)).

74 Comment of Dr. Parthapratim Basu, *supra* note 29, at 4; *see Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551, 554 (7th Cir. 2007) (noting that the FMIA "is concerned with inspecting premises at which meat is produced for human consumption…rather than with preserving the production of particular types of meat for people to eat."); *United States v. Stanko*, 491 F.3d 408, 417 (8th Cir. 2007) ("[C]ases discussing the FMIA uniformly describe the statute as concerned primarily with protecting public health.").

75 Final Rule, Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle, 72 Fed. Reg. 38,699, 38,705 (July 13, 2007).

76 *Id.*

a. Inspection outcomes and disease detection are being materially altered before federal review.

The record reflects a recurring practice, as authorized by NSIS: carcasses and animals are effectively pre-sorted, trimmed and altered, or dispositioned by plant personnel before meaningful federal inspection occurs.[77]

This includes pre-inspection trimming of pathological indicators, removing diagnostic tissues necessary to identify disease, and making sorting or disposition decisions outside of federal oversight.[78] These practices do not merely interfere with inspection, but they also eliminate the evidentiary basis for both carcass-level safety determinations and herd-level disease detection.[79] Ante-mortem inspection is supposed to be a meaningful review of animal condition, but in practice it is often limited. Inspectors may be looking down long rows of animals from a fixed vantage point, without the ability to fully observe each animal or ensure that all animals are adequately assessed. In some cases, physical plant design limits what can even be seen. That means conditions can enter the system before inspection has had a real opportunity to identify them.[80]

That failure is especially consequential because under the FMIA, inspection is not limited to evaluating individual carcasses. It serves a broader national function: detecting communicable and economically significant diseases within livestock populations.[81] As the government has stated, "[ante-mortem] inspections are often the best way to detect potentially devastating diseases that may be spreading through livestock populations," as they enable veterinarians to alert authorities and prevent widespread harm.[82] The federal inspection system "is designed in part to ensure the safety of particular carcasses for human consumption, and in part to implement a uniform federal policy regarding the humane handling of livestock. But it also serves to detect serious diseases… that may be spreading through livestock populations, threatening widespread economic harm and disruption of the meat supply."[83] Critically, many such diseases—including vesicular diseases and conditions like foot-and-mouth disease—are most

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77 Exhibit B

78 Exhibit B

79 Exhibit B

80 Exhibit B

81 *See* 9 C.F.R. 309.2(g), (i)–(k); Brief for the United States as Amicus Curiae Supporting Petitioner, *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452 (2012), (No. 10-224), 2011 WL 3821398, at *6.

82 Brief for the United States as Amicus Curiae Supporting Petitioner, *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452 (2012), (No. 10-224), 2011 WL 3821398, at *15.

83 *Id.* at *16.

effectively identified antemortem, based on clinical signs such as fever, lameness, or behavioral changes that may not be detectable post-mortem.[84]

By allowing plant personnel to pre-sort, alter, and effectively remove diseased animals or tissues from federal observation, the system prevents inspectors from observing the very conditions necessary to identify reportable diseases.[85] This undermines required reporting obligations to state, federal, and international authorities, and disrupts the traceability and containment functions that depend on accurate detection at slaughter.[86]

The Proposed Rule does not meaningfully address this consequence.[87] The Proposed Rule assumes that federal inspection continues to provide a reliable basis for identifying disease and ensuring product safety, however, critical evidence of disease is being routinely altered, removed, or obscured before federal review.[88] Where the integrity of the inspection process itself is compromised at the point of observation—particularly in a system that depends on ante-mortem and real-time detection of disease—FSIS cannot reasonably rely on downstream data, discretionary intervention, or generalized assurances of "process control" to fill that gap. By failing to account for practices that fundamentally distort both inspection outcomes and the federal disease detection system, the agency has not merely overlooked a relevant factor but has relied on a premise that is demonstrably unsound.

b. The Proposed Rule undermines continuous inspection requirements and the federal disease detection framework required under the FMIA.

The Proposed Rule further conflicts with the FMIA by undermining continuous inspection and the federal disease detection framework. The FMIA requires continuous federal inspection to ensure that only wholesome, unadulterated product enters commerce and to support a national system of disease detection and response.[89] The current system operates with gaps in federal presence, allows plant personnel to make de facto disposition decisions, and permits pre-inspection practices that obscure or eliminate disease indicators.[90] These conditions undermine not only carcass-level inspection but also the broader federal system for identifying and responding to livestock disease. This system depends heavily on ante-mortem inspection to identify conditions that may signal emerging

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84 *Id.* at *16; Comment of Dr. Parthapratim Basu, *supra* note 29, at 9.
85 Comment of Dr. Parthapratim Basu, *supra* note 29, at 9; Exhibit B
86 Exhibit B
87 Comment of Dr. Parthapratim Basu, *supra* note 29, at 10.
88 Exhibit B
89 *See* 21 U.S.C. §§ 603–604.
90 Exhibit B

outbreaks and to trigger coordinated response mechanisms.[91] When that detection function is compromised, the consequences extend beyond individual establishments, including herd-level disease monitoring; interstate and international trade; and the stability of the national food supply.

However, the Proposed Rule does not reconcile the proposed increase in slaughter line speeds with these statutory functions. It treats inspection as a localized quality control mechanism rather than a component of a national disease surveillance system. FSIS's justification for the Proposed Rule depends on the existence of continuous federal oversight capable of identifying and removing adulterated or diseased product in real time. That condition does not reliably exist. The Proposed Rule relies heavily on the ability of inspectors—particularly Inspectors-in-Charge (IICs)—to slow or stop the line as a central safeguard. In practice, that safeguard is unreliable.[92] Evidence demonstrates that IICs are not consistently present.[93] Inspectors lack the capacity to intervene while maintaining assigned duties, and inspectors' efforts to stop the line are constrained by production pressure, confrontation, and lack of supervisory backing.[94] Under these conditions, the statutory safeguard of continuous inspection is not functionally present.

B. FSIS failed to adequately consider the impacts of eliminating slaughter line speeds on animal welfare.

1. The welfare of pigs is an important consideration in determining whether to increase slaughter line speeds.

The need to safeguard farmed animal welfare, especially during slaughter, is unquestionable. Action by Congress, scientific consensus, societal attitudes and behaviors, and even policies and initiatives developed by the very industries that profit from the raising and slaughtering of animals for food all demonstrate unequivocally that farmed animal welfare is important and should be protected.

Most notable and obvious in this context is the enactment of the Humane Methods of Slaughter Act (HMSA). First enacted in 1958 to cover meat companies supplying to the U.S. government, the law required the stunning of livestock before being shackled, hoisted, thrown, cast, or cut.[95] The HMSA was amended in 1978

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91 Brief for the United States as Amicus Curiae Supporting Petitioner, *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452 (2012), (No. 10-224), 2011 WL 3821398, at *16; Comment of Dr. Parthapratim Basu, *supra* note 29, at 9.

92 Exhibit B

93 Exhibit B

94 Exhibit B

95 Pub. L. 85–765 (1958).

and today applies to all federally inspected establishments slaughtering livestock in the U.S.[96] Section 1901 of the HMSA states:

> "The Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering [and] results in safer and better working conditions for persons engaged in the slaughtering industry … It is therefore declared to be the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods."[97]

Further, the law and its implementing regulations require that "in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut."[98] Under the HMSA, the following scenarios constitute humane slaughter violations, all of which are already routinely documented in pig slaughter establishments and may increase if the proposed rule is finalized:

- Driving animals off transport trucks and down ramps using excessive force or other means likely to cause undue excitement and discomfort
- Failing to use suitable equipment to move animals unable to walk off the trucks or to stun animals before being moved
- Dragging conscious animals
- Failing to separate disabled animals from ambulatory animals and/or to place them in covered pens
- Failing to provide animals with access to water, access to feed if held over 24 hours, and sufficient room to lie down if held overnight
- Excessive use of electric prods to move animals
- Failing to maintain facilities and equipment in good repair to prevent injury or pain to the animals
- Making more than one attempt to render an animal unconscious by stunning and/or causing excitement or discomfort during stunning
- Shackling, hoisting, or cutting still-conscious animals.[99]

Enforcement of the HMSA is a key component of the FMIA—the statute that purportedly provides the USDA's authority to promulgate the Proposed Rule is purportedly provided. Almost every year since 2004, Congress has required, through annual appropriations legislation, that appropriated funds be used to employ a

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96 Pub. L. 95–445 (1978).

97 7 U.S.C. § 1901.

98 7 U.S.C § 1902(a).

99 *See* 9 C.F.R. Part 313 Humane Slaughter of Livestock, §§ 313.1–313.50.

certain level of full-time equivalent positions for purposes dedicated solely to inspection and enforcement related to the HMSA.[100] These Congressional actions demonstrate the importance of and continued support for farmed animal welfare, especially at slaughter, further underscoring that FSIS is acting arbitrarily in failing to adequately consider the impacts of increased line speeds on animal welfare and compliance with the HMSA.

Beyond Congress, additional U.S. and international scientific bodies recognize the importance of and actively work to promote the welfare of farmed animals at generally and at slaughter, including the American Veterinary Medical Association (AVMA), the United States Animal Health Association (USAHA), the World Organisation for Animal Health (WOAH), and the Food and Agriculture Organization of the United Nations (FAO).

One of the core animal welfare principals the AVMA offers for the development and evaluation of animal welfare policies, resolutions, and actions is that "animals shall be treated with respect and dignity throughout their lives and, when necessary, provided a humane death."[101] To that end and in recognition of the importance of protecting welfare during slaughter, the AVMA has developed its own guidelines for the humane slaughter of animals wherein the organization states, "Jointly, these Guidelines reflect the AVMA's ongoing commitment to science-informed techniques and core principles of animal welfare and veterinary ethics to ensure that the termination of an animal's life under various circumstances is as good as it can be."[102] Further, the AVMA states:

> The Humane Slaughter Guidelines stress the AVMA's ethical and professional commitments, as much as is practicable, that no unnecessary pain, injury, or distress is inflicted on conscious animals prior to and during termination. A painful or stressful death may eclipse or negatively color all that came before. Careful attention to empirical observation is essential when assessing farming practices and slaughter methods from an ethical perspective. The AVMA encourages its members and practitioners to utilize their scientific knowledge, practical expertise, and well reasoned ethical judgment to protect and promote the health and welfare of all animals.[103]

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100 *See* Pub. L. 119-37; Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act (2026).

101 *Animal Welfare Principles*, AM. VETERINARY MED. ASS'N (last visited Apr. 14, 2026) *available at* https://www.avma.org/resources-tools/avma-policies/avma-animal-welfare-principles.

102 *AVMA Guidelines for the Humane Slaughter of Animals: 2024 Edition*, AM. VETERINARY MED. ASS'N 5 (2024), https://www.avma.org/sites/default/files/2024-09/Humane-Slaughter-Guidelines-2024.pdf.

103 *Id.*

As for the USAHA, a core part of the organization's mission is to provide a venue to help identify the most effective methods for protecting and improving animal welfare. The USAHA has established a specific Committee on Animal Welfare that "explores and promotes dialogue on issues related to animal use, care, and welfare in search of broad-based animal welfare recommendations" and routinely focuses on issues impacting the welfare of livestock and poultry.[104]

WOAH, which is widely regarded as the global authority on animal health, recognizes the inextricable link between animal health and welfare, and therefore views promoting the welfare of animals as a key component of its mission.[105] Within its vision paper titled *Animal Welfare: A Vital Asset for a More Sustainable World*, WOAH states, "Today, animal welfare is at the forefront of public debate: consumers are increasingly concerned about how their food is produced, especially with how animals are reared, transported and slaughtered."[106] It goes on to further stress, "To preserve the bond between humans and animals, any system that involves or impacts animals, including animal production systems and the various links in the food chain, must integrate animal welfare principles to avoid injury, lasting fear, stress, or brutal changes to their environment."[107] Like the AVMA, WOAH has developed science-based standards for animal welfare during slaughter, which are included in its *Terrestrial Animal Health Code.*[108]

Finally, as part of its Global Agenda for Sustainable Livestock, the FAO has identified animal health and animal welfare as one of four sustainability domains, and has developed an Animal Welfare Action Network in recognition of the fact that "Animal welfare is vital to the production system, from farm to consumer, regardless of industry scale, farm size or species."[109] It is the view of the FAO that "Animal welfare, human wellbeing, and the environment are interconnected and should be addressed together," "[g]ood welfare reduces disease risks, antimicrobial

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104 *See United States Animal Health Association, available at* https://usaha.org/animal-welfare/.

105 *Terrestrial Animal Health Code, Chapter 7.5 Animal Welfare During Slaughter*, WORLD ORGANISATION FOR ANIMAL HEALTH (2026), https://www.woah.org/en/what-we-do/standards/codes-and-manuals/.

106 *Animal Welfare: A Vital Asset for a More Sustainable World*, WORLD ORGANISATION FOR ANIMAL HEALTH 3 (2024), https://www.woah.org/app/uploads/2024/01/en-woah-visionpaper-animalwelfare.pdf.

107 *Id.* at 5.

108 *Terrestrial Animal Health Code, supra* note 105.

109 *See Global Agenda for Sustainable Livestock (GASL)*, FOOD & AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (2026), *available at* https://www.fao.org/partnerships/livestock-dialogue/areas-of-work/action-networks/animal-welfare/en.

use, and improves food safety," and "[a]nimal welfare must be embedded more firmly in food systems policies and governance."[110]

As stated in WOAH's vision paper, animal welfare is very important to consumers and the general public. Countless studies on consumer attitudes, as well as public perception surveys conducted throughout the years, affirm this repeatedly. For example, a recent research study on U.S. consumer attitudes towards animal wellness and its influence on purchasing decisions conducted by the global auditing and certification organization, NSF, found that 67% of U.S. consumers say animal wellness is either very or extremely important to purchasing decisions and 68% said it was very important or extremely important that companies demonstrate consistency and compliance with animal wellness throughout their supply chain.[111] The 2021 Power of Meat survey found that animal welfare continues to matter to consumers, with 60% of respondents indicating that how animals are handled during slaughter matters when making meat purchasing decisions.[112] The generally accepted notion that consumers are increasingly concerned with how animals are raised and slaughtered for food has led to the proliferation of third-party certification programs that audit and certify food companies and farms to certain animal welfare standards. These programs include American Humane Certified by the American Humane Association, Certified Humane by Humane Farm Animal Care, Animal Welfare Approved by A Greener World, and the Global Animal Partnership 5-Step Animal Welfare Rating Program, all of which include standards or requirements pertaining to humane slaughter.[113]

Recognition of the public's concern for animal welfare has also contributed to the development of animal care standards by some of the nation's largest trade associations representing the conventional animal agriculture industry. This includes the *Common Swine Industry Audit* developed for the U.S. pork industry by

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110 *See Beyond Health – True Welfare is Not Physical Health Alone, Includes Nutritional, Husbandry and Behavioural Needs of Animals*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (Oct. 6, 2025) *available at* https://www.fao.org/partnerships/livestock-dialogue/news-events/news/detail/report-calls-for-action-on-animal-welfare-in-production-and-working-animals/en.

111 *Nearly 70% of Americans Say Animal Wellness Plays an Important Role in Purchasing Decisions*, NSF (Feb. 14, 2024), https://www.nsf.org/news/nsf-reveals-americans-say-animal-wellness-important-role-purchasing-decisions.

112 Elizabeth Doughman, *10 Takeaways From the 2021 Power of Meat Report*, WATT AGNET (Mar 24, 2021) https://www.wattagnet.com/poultry-future/article/15533233/10-takeaways-from-the-2021-power-of-meat-report.

113 *See A Consumer's Guide to Food Labels and Animal Welfare,* ANIMAL WELFARE INST. (Sept. 2025) https://www.awionline.org/sites/default/files/publication/digital_download/awi-food-label-guide.pdf (Exhibit 31).

the National Pork Board,[114] as well as the *Meat Industry Recommended Animal Handling Guidelines, A Systematic Approach to Animal Welfare at Transport and Slaughter* developed for U.S. slaughter establishments by the Meat Institute.[115]

All such policies, programs, and protocols taken together demonstrate the irrefutable notion that farmed animal welfare, including the welfare of pigs slaughtered for meat, is critically important. Any actions taken by the agency that seek to alter the process under which animals are moved through the slaughter system will undoubtedly impact animal welfare, thus making it an important aspect of the Proposed Rule that must be considered.

2. The Proposed Rule fails to adequately consider the welfare of pigs.

Despite the importance of animal welfare, as explained above, the Proposed Rule's only substantive analysis of the welfare of pigs going through the slaughter process is a brief section discussing humane handling verification activities conducted in the TLT establishments.[116] This brief and narrow discussion fails to acknowledge the many documented issues that have occurred within the slaughter plants that did not partake in the TLTs and which are likely to increase their line speeds if the Proposed Rule is finalized—issues that would only be exacerbated by an increase in production and the numbers of animals in plants.[117] Additionally, using the humane handling verification data of the TLT establishments to arrive at the conclusion that *all* establishments would be able to "produce safe, wholesome, and unadulterated products and comply with humane handling requirements while operating at increased line speeds" is problematic. This is due to (1) the wide variation in plant design, policies, operating procedures, personnel, and general business practices among plants; (2) the fact that the TLT establishments were screened and selected according to specific criteria, including having not received an enforcement action for humane handling in the last 120 days;[118] and (3) the chronic understaffing of FSIS inspectors, which results in the inability to notice inhumane handling, or document it even if it is noticed, and calls into question the reliability of the data from the TLT establishments. If the Proposed Rule is finalized, all NSIS

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114 *Common Swine Industry Audit: Instructions, Standards, and Audit Tool*, PAACO (2026) https://www.porkcdn.com/sites/porkcheckoff/assets/files/2026CSIAEnglish3-4-2026_1772742888146.pdf.

115 *See Common Swine Industry Audit, Instructions, Standards and Audit Tool*, NATIONAL PORK BOARD (Jan. 2026), *available at* https://www.meatinstitute.org/sites/default/files/documents/2026_MeatIndustryGuidelines_Final.pdf.

116 Proposed Rule at 7,911.

117 *See* Comment of Dr. Parthapratim Basu, *supra* note 29, at 12.

118 Proposed Rule at 7,909.

plants would be permitted to operate at increased line speeds, regardless of their humane handling and enforcement history. The Proposed Rule fails to acknowledge this or establish any guardrails—aside from authorizing inspectors to exercise their judgment to "ensure that process control is maintained"[119]—that would ensure establishments with documented histories of humane handling and slaughter issues and violations would be able to comply with the HMSA's implementing regulations while operating at increased line speeds. Further, establishing loss of process control as the threshold at which inspectors may require establishments to reduce their rate of operations is problematic and will not necessarily safeguard animal welfare, as "loss of process control" is not defined by regulation, and according to FSIS, "An establishment is maintaining process control when their *food safety system* is performing as intended to consistently control hazards."[120]

It is particularly concerning that the Proposed Rule authorizes unlimited line speeds but does not adequately consider the potential for this action—and the resulting increase in the number of pigs cycling through already fast-paced, stressful environments—to exacerbate well-documented, existing issues that already routinely occur in pig slaughter establishments. This includes the potential for increased incidents or risk of ineffective stunning, ineffective euthanasia, animals still conscious or regaining consciousness after stunning, overcrowding of pigs in holding pens and CO_2 gondolas, reduced ability for inspectors or plant personnel to intervene in problematic scenarios to reduce harm, increased stress or pressure on plant personnel to move animals resulting in rough handling and excessive use of force, and facilities such as pens, driveways, and ramps falling into disrepair and posing safety hazards to pigs due to increased traffic.[121] Extensive FSIS inspection records, as well as an undercover investigation conducted at a HIMP plant with a line speed waiver that documented horrific instances of inhumane handling that even the USDA called "appalling and completely unacceptable," demonstrate these issues are already common in livestock slaughter establishments.[122] Specific examples of these inspection records and further detail about the undercover investigation are provided below in sections III.B.4 and III.C., respectively.

As illustrated by these extensive examples of humane handling violations in pig slaughterhouses, fast slaughter line speeds dramatically impact animal welfare. According to Temple Grandin, employee training and equipment with "sufficient capacity for the number of pigs being handled" are two of the most important

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119 *Id.* at 7,913.

120 *Id.* at 7,905, n.1 (emphasis added); Comment of Dr. Parthapratim Basu, *supra* note 29, at 6.

121 *See* Section III.B.4; Comment of Dr. Parthapratim Basu, *supra* note 29, at 12–13.

122 QPP Investigation, *supra* note 34.

requirements in having good animal welfare practices during handling, transport and slaughter.[123] Yet the Proposed Rule contains nothing that would ensure that slaughterhouses implementing faster slaughter line speeds are training employees adequately or redesigning their facilities to handle a greater number of pigs being slaughtered. FSIS should not eliminate slaughter line speed limits without first establishing basic requirements for humane handling for pigs at faster speeds.[124] For example, FSIS should ensure that slaughterhouses have sufficient space, facilities, equipment, and personnel before allowing any facility to increase slaughter line speeds.[125]

FSIS should also define and require that adequate training is provided for slaughterhouse employees.[126] Instead, FSIS has not adequately considered whether or how increased slaughter line speeds may cause needless suffering because slaughterhouse workers could be pressured to use inhumane and excessive force on pigs. For instance, one study found that slaughterhouses killing 500 or more pigs an hour shocked pigs with electric prods to make pigs move faster at varying rates depending on employee training, but reached as high as 80% of pigs being shocked at one facility.[127] Relatedly, training regarding the use of extensive force on pigs is essential because 60–80% of U.S. pigs are fed the growth-promoting drug ractopamine hydrochloride,[128] which increases pigs' stress levels and makes it more difficult for them to move.[129] According to one study, pigs fed ractopamine "took 136% longer to remove from the home pen, 83% longer to handle into the weighing scale, and needed 52% more pats, slaps, and pushes from the handler to enter the scales."[130] FSIS records corroborate these findings, as even without eliminating slaughter line speeds, current slaughter line speeds result in workers using excessive force in handling pigs.

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123 Temple Grandin, *The Welfare of Pigs During Transport and Slaughter*, 24 PIG NEWS & INFO. 83N, 83N (2003) (Exhibit 32).

124 *See* Comment of Dr. Parthapratim Basu, *supra* note 29, at 12–13.

125 Temple Grandin, *supra* note 123, at 86N; *see id.* at 87N (finding that a "short 3.5m race in an 800-pig per-hour plant causes stress [to pigs] because keeping up with the slaughter line would be difficult").

126 *See* Comment of Dr. Parthapratim Basu, *supra* note 29, at 13.

127 Grandin, *supra* note 123, at 83N.

128 *E.g.*, Clark Mindock, *Common Livestock Feed Additive Poses Risks to Human Health, Lawsuit Says*, REUTERS (Mar. 27, 2024, 12:04 PM), https://www.reuters.com/legal/litigation/common-livestock-feed-additive-poses-risks-human-health-lawsuit-says-2024-03-27/ (Exhibit 33).

129 Jeremy Marchant-Forde et al., *The Effects of Ractopamine on the Behavior and Physiology of Finishing Pigs*, 81 J. ANIMAL SCI. 416, 421 (2003) (Exhibit 34).

130 *Id.* at 419.

3. The Proposed Rule fails to adequately consider the welfare of nonambulatory or disabled pigs.

Additionally, FSIS has failed to consider the impacts of the Proposed Rule on nonambulatory or disabled pigs, who are particularly at risk of inhumane handling during unloading and sorting due to their heightened vulnerability.[131]

It is generally accepted that transport is very stressful for farmed animals, including pigs, and can lead to a number of welfare issues. The animal welfare concerns associated with transport generally include the potential for animals to experience injury, fatigue, mortality and morbidity resulting from limited access to feed and water, exposure to temperature extremes, noise, vibrations and toxins, mixing with unfamiliar animals, and poor handling.[132] These welfare issues greatly impact the condition animals are in upon arrival to the slaughterhouse, including the potential for animals to become nonambulatory (also referred to as "downed"). A recent industry survey conducted with 20 U.S. slaughter facilities from 2012 through 2015 representing approximately 310 million market weight pigs found that the industry average for nonambulatory pigs from unloading to stunning was 0.63%.[133] For an industry that slaughters over 100 million pigs per year, this equates to hundreds of thousands of animals.

Multiple factors can contribute to a pig becoming nonambulatory or disabled, including fatigue and injury that can occur due to overcrowding/insufficient space, poor leg conformation, ractopamine use, genetics, food and water deprivation, and temperature extremes.[134] A huge concern with nonambulatory or disabled pigs is their inability to move, putting them at greater risk from overcrowding, trampling, rough handling, and pain and fear that results from these stressors. Due to their heightened vulnerability, they are also increasingly susceptible to the many

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131 *See* Comment of Dr. Parthapratim Basu, *supra* note 29, at 13.

132 K. S. Schwartzkopf-Genswein et al., *Road Transport of Cattle, Swine and Poultry in North America and its Impact on Animal Welfare, Carcass and Meat Quality: A Review*, 92 MEAT SCIENCE 227–43 (2012), *available at* https://doi.org/10.1016/j.meatsci.2012.04.010 (Exhibit 35).

133 Matthew J. Ritter et al., *Transport Losses in Market Weight Pigs: II. US Incidence and Economic Impact*, 4.2 TRANSLATIONAL ANIMAL SCIENCE 1103-1112 (2020) (Exhibit 36).

134 Søren Saxmose Nielsen et al., *EFSA Panel on Animal Health and Welfare: Scientific Opinion on the Welfare of Pigs at Slaughter*, 18 EUROPEAN FOOD SAFETY AUTHORITY J., 1-113 (2020) https://efsa.onlinelibrary.wiley.com/doi/10.2903/j.efsa.2020.6148 (Exhibit 37); Temple Grandin, Reducing Fatigue and Non-Ambulatory Pigs in Slaughter Plants to Improve Welfare and Pork Quality, "Fixing Fatigue" (updated February 2020) *available at* https://www.grandin.com/meat/reduce.fatigued.pigs.html (Exhibit 38).

inhumane handling violations that routinely occur in livestock slaughter establishments, examples of which are provided in greater detail below in Sections III.B.4 and III.C.

4. The Proposed Rule fails to consider the humane handling and slaughter noncompliance records of slaughter facilities likely to implement faster slaughter line speeds.

Beyond the Proposed Rule's inadequate discussion of animal welfare and humane handling concerns at the TLT establishments that have already increased their line speeds, the agency also fails to consider or discuss HMSA compliance at plants that are anticipated to increase line speeds if the Proposed Rule is finalized. Even worse, the agency fails to identify these plants, rendering it nearly impossible for the public to assess or substantiate past compliance with the HMSA and whether the plants have a history of humane handling problems.

According to the Proposed Rule, FSIS anticipates that there will be 27 market hog slaughter establishments will operate at increased line speeds if the Proposed Rule is finalized.[135] This includes the 17 plants that were already operating under the New Swine Inspection System (NSIS), six of which participated in the TLT and would presumably continue to operate at those higher speeds. It also includes an additional ten traditional plants that operate at a similar volume as the 17 NSIS plants, establishments which the agency anticipates will convert to the NSIS and increase their line speeds. Specifically, the Proposed Rule states, "The six NSIS establishments currently operating under a line speed waiver would continue to operate at faster line speeds. FSIS assumed the 11 NSIS establishments would adopt faster lines speeds in years one through five, and the 10 traditional establishments would voluntarily convert to NSIS and adopt faster line speeds in years six through ten."[136] Under its Proposed Regulatory Impact Analysis (PRIA) for the Proposed Rule, FSIS provides additional details and characteristics about these plants, but does not identify them, provide an assessment of their humane handling history, or even mention if HMSA compliance or their history of HMSA enforcement was in any way considered in the agency's decision to develop the Proposed Rule.

Further, the agency fails to provide enough information for the public to be able to identify these plants and conduct any assessments as to whether they would be able to comply with the HMSA at higher line speeds. As a result, the public is forced to guess which plants the agency references in its PRIA using information gathered from FSIS' Meat, Poultry and Egg Product Inspection Directory.[137] This

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135 Proposed Rule at 7,914.

136 *Id.*

137 *Meat, Poultry and Egg Product Inspection Directory: Establishment Demographic Data*, FSIS,

resource lists 22 plants as NSIS establishments, including the 6 TLT establishments. The remaining 16 include those listed below in Table 1.

Table 1. Establishments Designated as NSIS in FSIS's Meat, Poultry and Egg Product Inspection Directory

Establishment Name	Establishment Number
Smithfield Packaged Meats Corp.	M17D
Smithfield Fresh Meats Corp.	M18079
Tyson Fresh Meats, Inc.	M244L
Tyson Fresh Meats, Inc.	M244
Triumph Foods LLC	M31965
Swift Pork Company	M3S
Swift Pork Company	M3W
Smithfield Fresh Meats Corp.	M413
Seaboard Triumph Foods	M46071
Eagle Grove Cooperative	M51340
Smithfield Fresh Meats Corp.	M717CR
Smithfield Fresh Meats Corp.	M717M
Smithfield Fresh Meats Corp.	M717
Swift Pork Company	M85O
Swift Pork Company	M995
Seaboard Foods, LLC	M13597

It appears likely that the 11 NSIS establishments FSIS references in the Proposed Rule as likely to adopt faster line speeds within 5 years are among those listed in Table 1. Following is a review of the humane handling violations at these establishments using records within the USDA's publicly available Livestock Humane Handling Inspection Task datasets.[138] These records revealed 121 noncompliance records (NRs) issued for humane handling violations at the above 16 plants from FY2021 through FY2025. The records demonstrate serious humane handling issues that routinely occur in pig slaughter establishments, many of which may be exacerbated by increased line speeds as employees will be under increased pressure to move an even larger volume of pigs through an already fast-paced slaughter process. The following examples (identified by their corresponding NR numbers) illustrate issues that are of particular concern.

https://www.fsis.usda.gov/inspection/establishments/meat-poultry-and-egg-product-inspection-directory (last visited Apr. 15, 2026).

138 *Inspection Task Data: Humane Handling and Poultry Good Commercial Practices*, FSIS https://www.fsis.usda.gov/science-data/data-sets-visualizations/inspection-task-data (last visited Apr. 15, 2026).

a. Improper treatment of nonambulatory or "suspect" pigs in violation of 9 C.F.R. sections 313.15 and 313.2.

Examples of such incidents include:

- 07/04/2023, Smithfield Packaged Meats Corp. (M17D): Employee was observed grabbing the hind limb of a non-ambulatory pig, without first checking the conscious state of the pig, and dragging them in an attempt to reposition the pig to be picked up by the skid steer.[139]
- 11/16/2021, Smithfield Fresh Meats Corp. (M717): Employee was observed trying to euthanize a condemned pig being held in the U.S. Suspect Pen three times before finally losing consciousness. The pig was clearly conscious, bleeding, and attempting to roll over following the first two unsuccessful attempts.[140]
- 11/18/2022, Seaboard Triumph Foods (M46071) Employee tried forcibly moving a non-ambulatory pig, first with his hands then using a gate, because he was "getting behind and he just wanted to get it out of the way."[141]
- 12/13/2021, Swift Pork Company (M995): Employee was observed attempting to discharge a captive bolt gun on a non-ambulatory pig in the disabled pen, which was unsuccessful, causing the pig to begin vocalizing and walking around the pen area visibly bleeding. The pig then had to be held down using a sorting board and re-stunned.[142]
- 06/22/2022 & 06/29/2022, Smithfield Fresh Meats Corp. (M18079): Two separate NRs were issued for multiple unsuccessful attempts to stun "suspect" pigs, including one that was going down from porcine stress syndrome. During the second instance, the employees involved were making no attempts to re-stun the pig, despite clear signs of consciousness, until the inspector intervened.[143]
- 08/04/2022, Smithfield Packaged Meats Corp. (M17D): Employees were observed ineffectively stunning a condemned non-ambulatory pig. After the first attempt, the pig remained sensible, immediately started vocalizing and rolled into sternal recumbency and then into a dog-sitting position where the inspector could see a single captive bolt wound one inch above the right eye with blood draining from it.[144]

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139 NR # WLJ1701075825N-1 (Exhibit A).
140 NR # TAE0815114216N-1 (Exhibit A).
141 NR # OPT5214114419N-1 (Exhibit A).
142 NR # RKE5514121513N-1 (Exhibit A).
143 NR # VFB5314062322N-1; NR # VFB2514061729N-1 (Exhibit A).
144 NR # WLJ5023080824N-1(Exhibit A).

b. Excessive use of force, including paddling and electric prod use, to drive animals, in violation of 9 C.F.R. section 313.2.

Examples of such incidents include:

- 02/16/2024, Eagle Grove Cooperative (M51340): Employee was observed using excessive force and hitting pigs in the face with a paddle to drive them to the stunning area causing the pigs to become increasingly excited and start balking.[145]
- 11/15/2022, Smithfield Fresh Meats Corp. (M717): Employee was observed forcibly striking a pig on the back multiple times to get the pig to move from the truck unloading site to the holding area. The employee seemed to be visibly frustrated and responded with vulgar language when told to stop by the inspector.[146]
- 01/25/2023, Smithfield Fresh Meats Corp. (M18079): Employee was observed striking pigs with a paddle on the head and snout multiple times while unloading from the truck.[147]
- 03/30/2023, Swift Pork Company (M85O): Employee was observed paddling pigs causing them to pile and vocalize loudly, then continued to do so, causing more piling, loud vocalizations, and a pig to lose balance in the pile and fall.[148]
- 07/24/2023, Swift Pork Company (M85O): Truck driver was observed hitting a pig in the face with a bat multiple times during truck unloading.[149]
- 12/22/2021, Tyson Fresh Meats, Inc. (M244L): Excessive electric prod use was observed on a large group of pigs being moved through an area of the plant.[150]
- 01/17/2022, Swift Pork Company (M85O): Truck driver was observed attempting to move a large group of pigs through an alley causing excessive excitement, piling, and loud/abnormal vocalizing.[151]
- 02/22/2022, Smithfield Fresh Meats Corp. (M717): Excessive and egregious electric prod and paddle use–including on the face, head and back–was observed being used on a large group of pigs while attempting to unload them from a truck.[152]

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145 NR # KBZ1714020816N-2 (Exhibit A).
146 NR # TAE2714111615N-1 (Exhibit A).
147 NR # VFB1214015125N-1 (Exhibit A).
148 NR # HEM5419044705N-1 (Exhibit A).
149 NR # HEM2719071826N-1 (Exhibit A).
150 NR # TWH1711124422N-1 (Exhibit A).
151 NR # HEM1302013219N-1(Exhibit A).
152 NR # TAE0316022022N-1 (Exhibit A).

- 03/14/2022, Swift Pork Company (M85O): Excessive use of force was observed during truck unloading causing loud vocalizations, excitement, and frantic movement on top of each other.[153]
- 03/18/2022, Smithfield Fresh Meats Corp. (M18079): Excessive use of force was observed while trying to move pigs out of a pen causing loud vocalization, excitement, bunching and balking.[154]
- 05/25/2022, Tyson Fresh Meats, Inc. (M244L): Excessive electric prod use was observed.[155]
- 09/08/2021, Smithfield Fresh Meats Corp. (M18079): Excessive use of force was observed while pigs were being moved through a truck unloading area.[156]
- 11/16/2023, Tyson Fresh Meats, Inc.(M244L): Employee was observed striking pigs with a flag with excessive force causing them to slip and fall.[157]

c. Lack of feed and water availability in violation of 9 C.F.R. section 313.2.

Examples of such incidents include the following:

- 07/08/2025, Smithfield Fresh Meats Corp. (M18079): Pigs left unattended without access to water so an employee could complete another task.[158]
- 12/31/2024, Smithfield Fresh Meats Corp. (M18079): Large pens with capacity to hold entire trailer loads of pigs did not have access to water because the water had been shut off; no plant personnel noticed that the water was off and there was no access until an inspector intervened and notified a supervisor.[159]

d. Pigs being left in overcrowded pens and conditions in violation of 9 C.F.R. section 313.2.

Examples of such incidents include the following:

- 08/20/2025, Swift Pork Company (M3S): Pigs were left in crowded conditions on top of each other without access to water.[160]
- 06/14/2024, Seaboard Triumph Foods (M46071): Inspector observed a stressed pig being overrun, bumped into and knocked down by a large

153 NR # HEM0523034814N-1 (Exhibit A).
154 NR # VFB4918035918N-1 (Exhibit A).
155 NR # TWH1611054425N-1 (Exhibit A).
156 NR # VFB3307094909N-1 (Exhibit A).
157 NR # TWH2915114122N-1 (Exhibit A).
158 NR # VFB5113074508N-1 (Exhibit A).
159 NR # VFB3211121431N-1 (Exhibit A).
160 NR # PUN1506080120N-1 (Exhibit A).

group of pigs that were driven into the pen, even as the animal was clearly distressed and severely shaking[161]

- 09/30/2024, Smithfield Packaged Meats Corp. (M17D): Overcrowding observed in a holding pen with a significant number of pigs lying on top of each other with no available floor space to prevent them from continuing to lay on top of each other, raising concerns over access to water, especially without climbing over each other.[162]
- 02/27/2023, Smithfield Packaged Meats Corp. (M17D): Overcrowding observed in a pen with pigs lying on top of each other with no usable floor space and no way of accessing water without climbing on top of each other.[163]
- 12/10/2021, Smithfield Fresh Meats Corp. (M18079) Overcrowding observed in driveway leading to a CO_2 chamber causing pigs to be on top of each other vocalizing.[164]

e. Pigs being ineffectively stunned, euthanized, or regaining consciousness on the rail following stunning in violation of 9 C.F.R. sections 313.15, 313.2, and 313.5.

Examples of such incidents include the following:

- 02/05/2025, Swift Pork Company (M85O): Ineffective CO_2 stunning and pigs regaining consciousness prior to be shackled and hoisted.[165]
- 12/30/2023, Smithfield Fresh Meats Corp. (M18079): Inspector observed a pig regain consciousness after a stunning attempt and being dumped on an unattended conveyor belt leading to shackling.[166]
- 07/12/2021, Seaboard Foods, LLC (M13597): Inspector observed several pigs come out of a stunner conscious and standing, partially sedated, on the shackle belt; none of the employees made any moves to stun the animals until an inspector intervened.[167]
- 09/03/2021, Smithfield Packaged Meats Corp. (M17D): Multiple shackled pigs were conscious on the rail and had to be re-stunned; one

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161 NR # OPT5216064014N-1 (Exhibit A).
162 NR # WLJ3021095230N-1 (Exhibit A).
163 NR # WLJ4023023527N-1 (Exhibit A).
164 NR # VFB3611122310N-1 (Exhibit A).
165 NR # HEM5618021605N-1(Exhibit A).
166 NR # VFB2221122430N-1 (Exhibit A).
167 NR # VMK4110074212N-1 (Exhibit A).

was re-stunned proactively by an employee and the other was caught by the inspector.[168]

- 09/25/2021, Seaboard Triumph Foods (M46071): Inspector documented an issue with CO_2 levels that caused ineffective stunning and multiple animals to regain consciousness on the rail; most were caught by employees but at least one was missed and caught by the inspector.[169]

f. Excessive feces build-up in flooring causing animals to slip and fall in violation of 9 C.F.R. sections 313.1 and 313.2.

Examples of such incidents include the following:

- Swift Pork Company (M85O) was documented repeatedly over the course of years for having excessive feces buildup in multiple areas, causing animals to slip and fall. In one instance, this happened in plain view of plant employees who did nothing to address the issue until the inspector intervened.[170]
- A separate plant, Tyson Fresh Meats, Inc. (M244L) was also issued NRs on multiple occasions for excessive feces buildup in the flooring that caused many animals to slip and lose footing.[171]

g. Pigs becoming trapped in gates or equipment resulting in dragging or injuries in violation of 9 C.F.R. sections 313.1, 313.2, and 313.5.

Examples of such incidents include the following:

- 05/27/2025, Swift Pork Company (M3W): Inspector observed a pig being pushed down by other pigs resulting in a limb getting caught in the push gate and dragging the pig several feet; the employee showed no sign of trying to stop the pig from being pushed by the gate until the inspector intervened.[172]
- 12/02/2021, Swift Pork Company (M85O): Inspector observed a pig that was trapped in a gate near the entrance of the stunner that was going

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168 NR # WLJ1304092704N-1 (Exhibit A).

169 NR # OPT5902093426N-1 (Exhibit A).

170 MOI # HEM4414092227G; NR # HEM1801105605N-1; NR # HEM1116124608N-1; NR # HEM4218074024N-1; NR # HEM1823023812N-1; NR # HEM5510030724N-1; NR # HEM4615044929N-1 (Exhibit A).

171 NR # TWH0408034106N-1; NR # TWH0118052516N-1 (Exhibit A).

172 NR # GJC2306055028N-1 (Exhibit A).

unnoticed despite loud vocalizations; the pig was not relieved of suffering until an inspector intervened and called over a supervisor.[173]

Just as the agency fails to identify the 11 NSIS establishments it anticipates will increase line speeds in the near future, it also fails to identify the 10 traditional plants referenced in the Proposed Rule that are likely to transition to NSIS and implement faster speeds. Again, this makes it nearly impossible for the public to adequately assess and comment on how these establishments might operate with faster line speeds and the impact this transition may have on their humane handling compliance. That notwithstanding, based on the characteristics of the establishments alluded to in the Proposed Rule, particularly with regard to the large number of pigs they slaughter annually, it is likely that they include at least some of the large establishments[174] identified by the Animal Welfare Institute in its report titled, *Humane Slaughter Update, Federal and State Oversight of the Welfare of Livestock at Slaughter*,[175] as having the most humane handling incidents.[176] This list includes six traditional establishments (i.e., establishments not identified within the FSIS' Meat, Poultry and Egg Product Inspection Directory as being NSIS establishments) that together were subject to 215 USDA enforcement incidents related to inhumane handling from 2019 through 2022.[177] These incidents involve many of the same types of issues detailed in the NRs above, raising significant concerns over how these plants will be able to comply with the HMSA and its implementing regulations given their histories of noncompliance even with line speed caps in place.

C. The Proposed Rule improperly prioritizes "production efficiency" over food safety and humane handling concerns, contrary to the FMIA and the HMSA.

Neither the FMIA nor the HMSA provides FSIS with the authority to increase meat industry profits in the name of "potential production efficiencies."[178]

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173 NR # HEM4101121604N-1 (Exhibit A).

174 The use of "large" in this context is consistent with USDA's definition of "large establishments" having 500 or more employees.

175 *Humane Slaughter Update, Federal and State Oversight of the Welfare of Livestock at Slaughter*, ANIMAL WELFARE INST. (Apr. 2025) https://awionline.org/sites/default/files/publication/digital_download/awi-humane-slaughter-update-2025.pdf (Exhibit 39).

176 "Incidents" represent a variety of USDA HMSA enforcement records including memorandums of interview (MOI), noncompliance records (NR), notices of intended enforcement (NOIE), and notices and reinstatements of suspension (NOS/ROS).

177 *Humane Slaughter Update, Federal and State Oversight of the Welfare of Livestock at Slaughter*, *supra* note 175, at 23.

178 *See* Proposed Rule at 7,917–20.

FSIS points to no authority under these statutes to justify its Proposed Rule's goal of increasing profits for the meat industry.

FSIS states that its Proposed Rule is "needed" because "the current line speed restriction has been shown to be unnecessary and limiting [to] an establishment's ability to operate at maximum efficiency"[179] and because eliminating line speed regulations "would reduce production costs and optimize production" for NSIS establishments.[180] But enriching an industry FSIS is supposed to be regulating is outside the ambit of FSIS's statutory authority. Because FSIS has not provided any non-arbitrary food safety or humane handling justification for this rulemaking, the Proposed Rule is *ultra vires*, contrary to the FMIA and HMSA, and unlawful under the APA.

The FMIA's purpose is to protect consumers from unsafe meat products in the marketplace,[181] and the HMSA's purpose is to "prevent needless suffering" and ensure "that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods."[182] Nothing in the text of the FMIA directs the agency to consider how to increase industry profits.[183] The agency points to section 621 as requiring it to adopt regulations "necessary for the efficient execution of the provisions of the FMIA."[184] However, the provisions of the FMIA pertain to ensuring the health and welfare of consumers, not to achieving "cost savings [that] could lead to an increase in industry profits."[185] FSIS has previously shown that it understands its food safety and humane handling mandates. For example, the agency passed a final rule requiring that non-ambulatory disabled cows be condemned and disposed of without the chance of later re-inspection.[186] Even though meat industry commenters argued that this rule would cause them a "significant expense" because they could no longer wait to re-inspect and "salvage" downed cows, FSIS responded that re-inspection of downed cows "may have created an incentive for establishments to inhumanely attempt to force these animals to rise."[187] FSIS maintained its position that the rule was

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179 *Id.* at 7,913–14.

180 *Id.*

181 21 U.S.C. § 603(b).

182 7 U.S.C. § 1901.

183 *See, e.g.*, *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551, 554 (7th Cir. 2007) ("The [FMIA] is concerned with inspecting premises at which meat is produced for human consumption. . . rather than with preserving the production of particular types of meat for people to eat.") (citations omitted).

184 21 U.S.C. § 621.

185 Proposed Rule at 7,920; *see* Comment of Dr. Parthapratim Basu, *supra* note 29, at 4.

186 Requirements for the Disposition of Cattle that Become Non-Ambulatory Disabled Following Ante-Mortem Inspection, 74 Fed. Reg. 11,463 (Mar. 18, 2009).

187 *Id.* at 11,464–65.

justified because the agency is required to ensure food safety and humane handling when slaughtering animals.

However, even in the face of abundant evidence that eliminating slaughter line speeds will engender food safety and humane handling problems that rise to the level of violations of the FMIA and the HMSA, FSIS remains dead set on eliminating slaughter line speeds in the name of alleged "efficiency." For instance, FSIS is aware of an Animal Outlook (formerly Compassion Over Killing) investigation of Quality Pork Processors (QPP), a HIMP facility operating at increased slaughter line speeds of around 1,300 pigs per hour, where "appalling and completely unacceptable" food safety and humane handling violations occurred.[188] The investigation showed that QPP workers, who were under pressure to keep up with QPP's high line speeds, dragged, kicked, beat, and excessively shocked pigs with electric prods to try to get them to move faster.[189] Nonambulatory or disabled pigs were driven by excessive force in an effort to move them more quickly.[190] The investigation of QPP also revealed many instances of improper stunning of pigs, where pigs showing signs of consciousness had their throats slit.[191] The QPP investigation also depicted pigs with fecal contamination and abscesses being processed for food.[192] After reviewing the investigation footage, FSIS stated that had QPP's humane handling violations *"been observed by FSIS inspectors,* they would have resulted in immediate regulatory action against the plant."[193] But the agency asserted that because the actions *"occurred at times when USDA inspection personnel were not performing verifications,"* the USDA would not suspend the plant's operations.[194] Thus, because FSIS inspectors were nowhere to be found, no one was there to intervene and stop the slaughter line; the agency instead merely issued a notice of intended enforcement.[195]

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188 QPP Investigation, *supra* note 34; *see* Roberto A. Ferdman, *"That one was definitely alive.": An Undercover Video at One of the Nation's Biggest Pork Processors*, WASHINGTON POST (Nov. 11, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/11/11/that-one-was-definitely-alive-an-undercover-video-at-one-of-the-fastest-pork-processors-in-the-u-s/ (quoting USDA spokesman Adam Tarr regarding the QPP undercover investigation) (Exhibit 40).

189 QPP Investigation, *supra* note 34.

190 *Id.*

191 *Id.*

192 *Id.*

193 Ted Genoways, *Close to the Bone: The Fight Over Transparency in the Meat Industry*, N.Y. TIMES (Oct. 5, 2016), https://www.nytimes.com/interactive/2016/10/09/magazine/meat-industry-transparency-fight.html (Exhibit 41).

194 *Id.*

195 *Id.*

Additionally, with the help of the Government Accountability Project, former FSIS inspectors came forward with sworn affidavits confirming that the non-compliant conditions seen in the QPP investigation represent the norm in HIMP facilities. One former inspector stated that "plant inspectors don't actually want to shut off the line to deal with problems they spot on the job. . . .Obviously their employer will terminate them if they do it too many times."[196] Another former inspector said that

> [t]he number of hogs processed per shift has gone up by 200. During this time, the plant never increased the number of process control employees (those plant workers who took over many of the duties of USDA inspectors) on the lines. . . . The only way this plant could possibly be meeting these standards is by manipulating plant employees, USDA inspectors, and their own records and processes. I have personally witnessed all three.[197]

In response, the USDA dismissed these former inspectors' statements as being "part of a well-funded and organized public-relations campaign."[198]

Even with evidence of food safety and humane handling concerns, FSIS remains laser-focused only on increasing efficiency and profits for the meat industry instead of upholding its mandates under the FMIA and the HMSA. This reasoning is improper, making the Proposed Rule unlawful.[199] The agency must withdraw the Proposed Rule. If FSIS intends to finalize the Proposed Rule in its current form—which it should not—the final rule must provide non-arbitrary food safety and humane handling justifications for eliminating slaughter line speed limits and the worker safety attestation. So far, FSIS has not done so.

D. FSIS inadequately explains why it is changing course from numerical slaughter line speeds to unlimited slaughter line speeds.

FSIS has failed to provide a reasoned explanation for why it proposes to remove longstanding numerical slaughter line speeds limit regulations in favor of allowing unlimited slaughter line speeds. An agency's decision is arbitrary and capricious when it "relie[s] on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is

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196 Inspector Affidavit 1, *supra* note 62, at 2–3.

197 Inspector Affidavit 3, *supra* note 60, at 2.

198 Genoways, *supra* note 193.

199 *See State Farm*, 463 U.S. at 42–43.

so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[200] An agency must provide a "satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[201] When an agency issues a regulation amending a prior regulation, the agency must provide "a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance" and show that there are "good reasons" for the change.[202] An unexplained inconsistency between a prior rule and a new rule can itself be a reason the agency's action is arbitrary and capricious.[203] FSIS has not "reasonably considered the relevant issues and reasonably explained [its] decision."[204]

As explained above, there are important food safety and humane handling concerns that FSIS has dismissed in favor of deregulating slaughterhouses and allowing each slaughterhouse to operate as it sees fit. On top of these issues, FSIS has not even attempted to explain why it is changing course from enforcing a set slaughter line speed to completely eliminating slaughter line speeds altogether. For instance, the Proposed Rule discusses the TLT waivers given to TLT slaughterhouses, "granting [six NSIS slaughterhouses'] discrete requests in their waiver applications to operate at maximum line speeds ranging from 1,206 hph to 1,450 hph."[205] Using data from the TLT slaughterhouses—where specific maximum slaughter line speed limits were set—FSIS changed course in the Proposed Rule and decided that *no* slaughter line speed limits are required any longer to comply with the FMIA and HMSA. In the Proposed Rule, FSIS states that "the TLT data confirm FSIS' conclusion in the [2019] final rule that NSIS establishments approved to operate under a TLT waiver are able to maintain process control and comply with humane handling regulations when operating at increased line speeds."[206] FSIS's 2019 "Modernization of Swine Slaughter Inspection" final rule relied on its flawed HIMP data[207] to come to the conclusion that slaughter line speed limits are unnecessary; however, in the 16 years of the HIMP program, the average slaughter line speed was 1,099 pigs per minute, which is lower than the existing cap of 1,106 pigs per minute.[208] Removing slaughter line speed limits, therefore, is seemingly

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200 *Id.* at 43; *see* 5 U.S.C. § 706(2).

201 *State Farm*, 463 U.S. at 43.

202 *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 514–15 (2009) (citation omitted).

203 *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016) (citation omitted).

204 *F.C.C. v. Prometheus Radio Project*, 592 U.S. 414. 423 (2021).

205 Proposed Rule at 7,906.

206 *Id.*

207 *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-775, *supra* note 62, at 15–18.

208 Modernization of Swine Slaughter Inspection, 83 Fed. Reg. 4,780, 4,796 (proposed Feb. 1, 2018).

unnecessary. In fact, FSIS has never actually tested the impacts on food safety and humane handling of entirely eliminating slaughter line speeds limits on food safety and humane handling. The Proposed Rule does not represent reasoned agency decisionmaking.

Relatedly, FSIS does not explain why it is proposing to eliminate slaughter line speeds for pigs while maintaining them for poultry slaughterhouses.[209] Faced with essentially similar situations, FSIS has come to different conclusions with no explanation. When the National Chicken Council petitioned FSIS to eliminate maximum slaughter line speeds for New Poultry Inspection System chicken slaughterhouses, FSIS denied the petition, preferring to retain control to review case-by-case line speed waivers for slaughterhouses to review equipment and technology changes, training procedures, and other protocols.[210] By contrast, when it comes to slaughtering pigs, FSIS proposes to relinquish such control and allow slaughter line speeds to be determined by the plants themselves. FSIS is treating similar situations differently without providing any explanation in its Proposed Rule. This arbitrary and capricious.[211]

FSIS has failed to provide an adequate explanation for the change in its slaughter line speeds regulations and must not move forward with the Proposed Rule.

E. FSIS failed to adequately consider the impact of increasing slaughter line speeds on worker safety.

The last time FSIS attempted to increase line speeds, the U.S. District Court that rejected the rule change concluded that increasing line speeds would "increase the already hazardous conditions faced by [slaughterhouse] workers."[212] Nothing about FSIS's Proposed Rule—including its flawed PULSE study—alters that conclusion. Moreover, the Proposed Rule ignores the full range of risks to workers and incorrectly claims FSIS has no authority to regulate worker safety. These oversights and errors are arbitrary and capricious.

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209 *See* Maximum Line Speed Rates for Young Chicken and Turkey Establishments Operating Under the New Poultry Inspection System, 91 Fed. Reg. 7,926 (proposed Feb. 19, 2026).

210 Letter from Carmen Rottenberg to Michael J. Brown (Jan. 29, 2018), *available at* https://www.fsis.usda.gov/sites/default/files/media_file/2020-07/17-05-FSIS-Response-Letter-01292018.pdf (Exhibit 42).

211 *See Westar Energy, Inc. v. Fed. Energy Regul. Comm'n*, 473 F.3d 1239, 1241 (D.C. Cir. 2007) ("A fundamental norm of administrative procedure requires an agency to treat like cases alike.").

212 *United Food & Comm. Workers Union, Local No. 663 v. U.S. Dep't of Agric.*, 532 F. Supp. 3d 741, 764 (2021).

1. Slaughterhouses are already extremely dangerous work environments.

In pig slaughterhouses across the country, hundreds of thousands of workers are subjected to conditions that are harmful to their mental and physical health. Workers break down hogs using knives, hooks, and saws, making the same forceful cuts and movements tens of thousands of times per shift. Hazards facing workers include acute injuries from slips, trips, falls, lacerations, burns, and amputations, chemical exposures from refrigerants and disinfectants, infectious agent exposures, loud noises that can cause hearing loss, urinary tract infections from limited access to bathrooms, extreme temperatures, and musculoskeletal disorders from repetitive and forceful motions, awkward postures and vibration.[213]

According to a 2019 report compiled by Human Rights Watch, OSHA data reveal that a worker in the meat and poultry products industry lost a body part or was sent to the hospital approximately every other day between 2015 and 2018.[214] Between 2004 and 2013, a worker died from occupational injuries about once a month.[215] Importantly, instances of slaughter worker injury and illness are chronically underreported, due in large part to pressure from supervisors and fear of retribution.[216]

2. Eliminating slaughter line speed limits will further endanger workers.

Eliminating the current limit of 1,106 hogs per hour will increase harm to workers. When FSIS last proposed eliminating hog slaughter line speeds, Dr. Melissa Perry—an internationally respected public health researcher with experience studying pork processing plants—commented that her experience in the industry left her with "no doubt that increasing line speed will increase laceration injuries to workers." According to Human Rights Watch, "nearly all" of the workers interviewed for its 2019 report identified speed as the primary factor compounding their risk of injury and illness.[217] Further, during an evaluation of a hog slaughter plant operating at the existing line speed limit, the National Institute for Occupational Safety and Health found that workers were exposed to high risk of musculoskeletal disorders and recommended decreasing the speed of the work to

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213 HUMAN RIGHTS WATCH, "WHEN WE'RE DEAD AND BURIED, OUR BONES WILL KEEP HURTING": WORKERS' RIGHTS UNDER THREAT IN US MEAT AND POULTRY PLANTS 27-42 (2019) (Exhibit 43).

214 *Id.* at 29.

215 *Id.* at 30.

216 *Id.* at 44

217 *Id.* at 49.

reduce harm.[218] Employees at this plant also reported struggling to keep up with the work.[219]

USDA's study of plants that have been allowed to increase line speeds pursuant to USDA-issued waivers (the PULSE study) does not support the conclusion that increased line speeds would not harm workers. In the PULSE study, FSIS evaluated musculoskeletal disorder risk to workers in just six slaughterhouses for seven days over the course of two weeks. Contrary to FSIS's claims that this study shows increased line speeds are safe, the study's authors stated that job-specific line speed was an important driver of musculoskeletal disorders, and that piece rate (individual work pace) was a significant factor in musculoskeletal disorder risk.[220] Even though increasing piece rates are a completely foreseeable consequence of increasing line speeds, FSIS does not include any provisions to limit piece rates in the Proposed Rule. As such, FSIS's conclusion that increasing line speeds has no impact on worker safety is directly undermined by its own study.

Moreover, the PULSE study is so underinclusive that it cannot justify any reasonable conclusion about worker safety impacts of the Proposed Rule. The study did not evaluate risks from lacerations, amputations, urinary infections, or any of the other harms that will foreseeably befall workers if line speeds are increased. These glaring oversights renders any decision about worker safety arbitrary and capricious.

3. The safety attestation must be maintained and strengthened.

FSIS must also abandon its proposal to eliminate the requirement that pig plants submit a simple attestation to the FSIS affirming that they maintain a program to monitor and document work related conditions. Despite conducting an entire study to remedy a judicial opinion that held FSIS must consider worker safety before increasing line speed limits, FSIS now claims it cannot require a simple safety attestation because it has no authority to regulate worker safety at the slaughterhouses it inspects. This ludicrous position is contrary to the Federal

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218 NIOSH, EVALUATION OF ERGONOMIC RISKS, MUSCULOSKELETAL DISORDERS, AND PERACETIC ACID EXPOSURE AMONG EMPLOYEES AT A PORK PROCESSING PLANT IN PENNSYLVANIA 5 (May 2025) (Exhibit 44).

219 *Id.* at B-13.

220 Carissa Harris-Adamson et al., Swine Processing Line Speed Evaluation Study 6, 8 (Jan. 9, 2025).

government's historical stance on this issue,[221] and contrary to binding judicial precedent.[222]

As described in *United Food & Commercial Workers*, "FSIS has consistently considered worker safety in its rulemaking" because, per a 2013 Memo drafted by the Office of General Counsel, "[n]othing precludes FSIS from adopting a rule that allows the agency to fulfill its mission in a manner that is also safe for plant workers."[223] The safety attestation falls precisely within the ambit of that memo: it is not directly regulating worker safety, but rather implementing its food and consumer safety mission in a manner that contributes to a safe work environment. FSIS correctly identifies OSHA as the agency responsible for directly regulating worker safety. The point of the attestation is not to usurp that role, but rather to facilitate effective regulation by OSHA.

The attestation, which has been in place for over a decade, flows from the Memorandum of Understanding OSHA and USDA FSIS signed in 1994[224] and renewed a few years ago.[225] That agreement established a process to "train FSIS meat and poultry inspection personnel to improve their ability to recognize serious workplace hazards within the meat and poultry industry, institute new procedures for meat and poultry inspection personnel to refer to OSHA serious workplace hazards affecting plant employees and coordinate possible inconsistencies between OSHA jobs safety and health standards and FSIS sanitation and health standards." Based on Executive Order 12866, these government agencies have worked together for over thirty years to assist each other in doing their jobs.

The MOU was signed following the horrific deaths of 25 workers in 1991 at the Imperial Foods Chicken Processing Plant in Hamlet North Carolina when a fire

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221 *See F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 514–15 (2009) (citation omitted) (agencies must provide "a reasoned analysis" to show there are "good reasons" for reversing course in a regulation).

222 *See United Food & Comm. Workers Union, Local No. 663 v. U.S. Dep't of Agric.*, 532 F. Supp. 3d 741, 770-73 (2021). FSIS's citation to *Seven County Infrastructure Coalition v. Eagle County*, a NEPA case that has nothing to do with FSIS or the PPIA, is completely inapposite to this rulemaking.

223 *Id.* at 770–71.

224 Memorandum of Understanding between the U.S. Department of Labor Occupational Safety and Health Administration and the U.S. Department of Agriculture Food Safety and Inspection Service (Feb. 4, 1994), https://www.osha.gov/laws-regs/mou/1994-02-04.

225 *FSIS and OSHA Sign Memorandum of Understanding to Protect Workers and Enhance Training* (Aug. 3, 2022), https://www.fsis.usda.gov/news-events/news-press-releases/fsis-and-osha-sign-memorandum-understanding-protect-workers-and.

broke out. These workers were all killed trying to escape the fire—but the doors were locked and workers could not escape. Locked exit doors is a violation of OSHA standards that require exit doors be unlocked and easily accessible.[226] An investigation revealed that the USDA FSIS might have contributed to this tragedy. The FSIS inspector in the plant had signed off on locking the doors as a means to prevent flies from entering the plant —and may have recommended it.[227] This measure violated OSHA standards intended to protect all workers in the plant. To prevent tragedies like this from ever happening again, the MOU was signed and implemented, and that implementation resulted in the attestation FSIS now seeks to eliminate.

Rather than draw an arbitrary line that impedes interagency cooperation, FSIS should strengthen the worker safety attestation by establishing protocols that ensure establishments complete their safety attestations truthfully. If a plant does not submit a complete and accurate safety attestation, FSIS should take action, such as by issuing an NR against the establishment or by making a referral to OSHA for enforcement action. And given the intersectionality between safe working conditions and food safety, attestations should be made available in a centralized location for public access.

F. FSIS failed to consider that increasing slaughter line speeds would increase overcrowding, directly impacting animal welfare, food safety, and public safety.

The Proposed Rule does not consider that increasing line speeds would necessitate increased breeding of pigs for slaughter, which impacts animal welfare throughout the supply chain in predictable ways. By not considering the impacts of increased demand[228] for pigs and its concomitant effects on the welfare of pigs at slaughter, FSIS is ignoring its mandates under the FMIA and HMSA.

To supply increased demand for pigs for slaughter, pig CAFOs would need to expand their operations. Pig CAFOs "are characterized by maximal use of

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226 29 C.F.R. § 1910.36.

227 Joe Davidson, *Agencies Create Second Workplace Hazards Plan to Fix What the Original Missed* (Sept. 3, 2022), https://www.washingtonpost.com/politics/2022/09/03/agriculture-department-osha-safety-agreement/.

228 *See* 84 Fed. Reg. 52,300, 52,335 (Oct. 1, 2019) (estimating eliminating line speeds will result in roughly 11.5 million additional pigs slaughtered annually in the United States, and an $87.64 million surplus to the industry responsible for raising and slaughtering those pigs).

buildings," meaning they maximize the number of pigs per square area.[229] If CAFOs do not build new facilities yet increase their line speeds in the next ten years, as suggested by FSIS in the Proposed Rule, CAFOs may keep pigs in overcrowded conditions, which has severe animal welfare and public safety impacts. "Effects of crowding for pigs includes decreased general activity and comfort behaviors, increased aggression, skin lesions and tail injuries, increased foot and limb injuries, reduced growth and physiological function, and increased susceptibility to disease. The latter increases use of antimicrobials, which in turn increases the risk of antimicrobial resistance."[230]

The high stocking densities of pigs in CAFOs contributes to the spread of respiratory and enteric diseases.[231] This is because the overcrowded living conditions of pigs in CAFOs often causes them to act aggressively, biting other pigs and causing abscesses and wounds.[232] And because of the stocking density in CAFOs, they often cannot move, which can "predispose" pigs "to locomotor disorders, such as lameness," which is often seen in pigs during transport to and in slaughterhouses.[233] To prevent or treat these conditions, pigs are often given antibiotics.[234] In addition to animal welfare impacts, an increase in the number of pig CAFOs or existing pig CAFOs' stocking densities would increase public health threats. [235] For instance, multidrug-resistant *Staphylococcus aureus* strains have already spread between pigs, farmworkers, and community residents and represents an emerging public health threat.[236]

IV. The Proposed Rule is unlawful because it improperly delegates regulatory authority to private industry.

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229 Jeremy N. Marchant-Forde & Laura A. Boyle, *COVID-19 Effects on Livestock Production: A One Welfare Issue*, 7 FRONTIERS IN VETERINARY SCI. 1, 5 (2020), *available at* https://www.frontiersin.org/journals/veterinary-science/articles/10.3389/fvets.2020.585787/full (Exhibit 45).

230 *Id.*; *see* Comment of Dr. Parthapratim Basu, *supra* note 29, at 11.

231 Rita Albernaz-Gonçalves et al., *Linking Animal Welfare and Antibiotic Use in Pig Farming—A Review*, 12 ANIMALS 1, 2 (2022), *available at* https://www.mdpi.com/2076-2615/12/2/216 (Exhibit 46); *see* Comment of Dr. Parthapratim Basu, *supra* note 29, at 12.

232 Albernaz-Gonçalves, *supra* note 231, at 5.

233 *Id.* at 5

234 *Id.* at 7.

235 *See* Comment of Dr. Parthapratim Basu, *supra* note 29, at 11–12.

236 Pranay R. Randad et al., *Transmission of Antimicrobial Resistant* Staphylococcus aureus *Clonal Complex 9 Between Pigs and Humans, United States*, 27 EMERGING INFECTIOUS DISEASES, 740 (2021), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC7920674/pdf/19-1775.pdf (Exhibit 47).

The Proposed Rule violates the APA and FMIA, because it unlawfully delegates the authority to determine slaughter line speeds—a key FSIS regulatory responsibility—to private industry. Under the APA, agency action must be set aside when it is "not in accordance with law" or "in excess of statutory authority."[237] Congress assigned the authority to administer the FMIA to the Secretary of Agriculture.[238] The Secretary of Agriculture delegated that authority to the Under Secretary for Food Safety,[239] who, in turn, delegated that authority to the Administrator of FSIS.[240] Thus, FSIS is responsible for implementing the statute.[241]

The FMIA directs the Secretary of Agriculture (and by extension, FSIS) to conduct a post-mortem inspection of carcasses: "[T]he Secretary shall cause to be made by inspectors appointed for that purpose a post mortem examination and inspection of the carcasses and parts thereof of all amenable species . . . ."[242] To carry out this responsibility, FSIS has adopted a specific set of regulations.[243] These regulations include provisions establishing the number of inspectors needed at each inspection station (head, viscera, carcass) to correspond with the number of pigs requiring inspection per hour.[244] For example, when 319 to 506 market hogs are being slaughtered (and thus require inspection) per hour, the regulation indicates that one inspector is needed at each of the three inspection stations.[245] When, at the other end of the spectrum, 1,023 to 1,106 market hogs are being slaughtered per hour (the maximum inspection rate, or slaughter line speed,[246] allowed under the regulation), then 3 inspectors are needed at the head station, 3 are needed at the viscera station, and 1 is needed at the carcass station.[247]

These inspector numbers—referred to in the regulation as "staffing standards"—were established by FSIS in order to carry out its responsibility to conduct post-mortem examinations.[248] While the FMIA may not explicitly instruct

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237 5 U.S.C. § 706(2)(A), (C).

238 *See* 21 U.S.C. § 602.

239 S*ee* 7 C.F.R. §§ 2.18(a)(ii)(B).

240 *See* 7 C.F.R. § 2.53(a)(2)(ii); 9 C.F.R. § 300.2(a).

241 *See* 9 C.F.R. §§ 300.2(b)(1), (4).

242 21 U.S.C. § 604.

243 *See* 9 C.F.R. Part 310—Post-Mortem Inspection (§§ 310.1–310.28).

244 *See id.* § 310.1(b)(3) Table 4.

245 *Id.*

246 It appears that in this context, "slaughter line speeds," "evisceration line speeds," and "line speeds" are used interchangeably. *See, e.g.*, 9 C.F.R. § 310.1(b)(1) (referring to "slaughter line speeds"); *United Food & Commercial Workers Union, Local No. 663 v. U.S. Dept. of Agric.*, 532 F.Supp.3d 741, 748–49 (D. Minn. 2021) (referring to "the speed of evisceration lines") (citing 9 C.F.R. § 310.1(b)(3)); Proposed Rule at 7911 (referring to the "line speeds set forth in 9 CFR 310.1. . . .").

247 9 C.F.R. § 310.1(b)(3) Table 4.

248 *See* 21 U.S.C. § 604.

FSIS to establish slaughter line speed rates, or set staffing standards, the regulations promulgated in 9 C.F.R. section 310.1(b)(3) were nonetheless established pursuant to FSIS's statutory obligation to ensure that post-mortem inspection occurs in accordance with the FMIA. Indeed, the pork industry itself has recognized that these regulations were adopted in furtherance of the agency's responsibility to appropriately inspect carcasses:

> Members of the pork industry and trade associations representing members of the pork industry . . . noted that line speeds were originally established to define the number of FSIS online inspectors required to inspect carcasses based on the number of carcasses an individual could reasonably evaluate in a given period.[249]

Thus, determining slaughter line speeds is a key regulatory responsibility of FSIS that affects the adequacy of inspection. The FMIA gives no indication that FSIS may transfer or cede that authority to private entities.[250]

Now, however, FSIS proposes to exempt NSIS plants from the line speed limits in § 310.1 and instead permit these plants "to *determine their own* line speeds based on their ability to maintain process control."[251] This constitutes a subdelegation by NSIS of its regulatory responsibility to private, regulated entities—the pig slaughter establishments. Courts have held this to be improper. Federal agencies "may not subdelegate to outside entities—private or sovereign—absent affirmative evidence of authority to do so."[252] "Indeed, if anything, the case law strongly suggests that subdelegations to outside parties are assumed to be improper absent an affirmative showing of congressional authorization."[253]

The Court in *U.S. Telecom Ass'n v. F.C.C.* explained the problems inherent in improper subdelegation:

> W]hen an agency delegates power to outside parties, lines of accountability may blur, undermining an important democratic check on government decision-making. Also, delegation to outside entities increases the risk that these parties will not share the agency's national vision and perspective, and thus may pursue goals inconsistent with those of the agency and the underlying statutory

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249 84 Fed. Reg. 52300, 52314 (Oct. 1, 2019).

250 *See* 21 U.S.C. § 604 (instructing the "Secretary" and "inspectors" to conduct the duties associated with poste-mortem examination).

251 Proposed Rule at 7,905 (emphasis added).

252 *U.S. Telecom Ass'n v. F.C.C.*, 359 F.3d 554, 565 (D.C. Cir. 2004) (holding the Federal Communications Commission could not delegate decisions regarding certain telecommunications services to state utility commissions).

253 *Id.*

scheme. In short, subdelegation to outside entities aggravates the risk of policy drift inherent in any principal-agent relationship.[254]

The Court's concerns appear particularly relevant in this case, where the outside entity is a for-profit industry.

The Proposed Rule suggests that line speeds will be tempered by the ability of FSIS inspectors to require establishments to reduce their line speeds "when, in their judgment, there is a loss of process control, or a carcass-by-carcass inspection cannot be adequately performed within the time available . . . ."[255] But this is the tail wagging the dog. In enacting the FMIA, Congress intended that the USDA would affirmatively regulate slaughter plants and ensure they complied with the law.[256] Congress did not contemplate or authorize FSIS to passively sit back and allow slaughter plants to operate as they please until inspectors suddenly realize, after the fact, that a noncompliance has occurred. For these reasons, FSIS's attempts to delegate the authority to set line speeds to pig slaughter plants is unlawful, in violation of both the FMIA and APA.

V. The Proposed Rule is unlawful because it will increase the number of pigs slaughtered in violation of the HMSA and the FMIA.

The Proposed Rule is unlawful because it will lead to an even greater number of pigs slaughtered inside CO_2 gas stunning chambers, out of view of inspectors, in contravention of the HMSA and FMIA. In May 2023, AWI and other animal protection organizations raised a similar concern in a rulemaking petition submitted to FSIS.[257] FSIS has not yet responded.

The HMSA requires that animals be handled and slaughtered humanely: "[T]he slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods."[258]. "No method of

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254 *Id.* at 565–66 (citing *Nat'l Ass'n of Reg. Util. Comm'rs v. FCC*, 737 F.2d 1095, 1143 n. 41 (D.C. Cir. 1984)). *See Printz v. United States*, 521 U.S. 898, 922–23 (1997); *Nat'l Park & Conservation Ass'n v. Stanton*, 54 F.Supp.2d 7, 20 (D.D.C. 1999).

255 Proposed Rule at 7,905.

256 *See* 21 U.S.C. § 602 ("It is essential in the public interest that the health and welfare of consumers *be protected by assuring* that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled and packaged.") (emphasis added).

257 *See* ANIMAL WELFARE INSTITUTE, PETITION TO REQUIRE THE USE OF VIDEO CAMERAS TO OBSERVE THE INTERIOR OF GONDOLAS DURING THE SLAUGHTER OF PIGS WITH CO_2 TO ENSURE COMPLIANCE WITH THE FMIA AND HMSA (May 16, 2023), *available at* https://awionline.org/sites/default/files/uploads/documents/AWI-Petition-Video-Cameras-CO2-Pig-Slaughter.pdf (Exhibit 48).

258 7 U.S.C. § 1901.

slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane."[259]

In turn, to ensure that handling and slaughter are humane, the FMIA directs FSIS to examine and inspect all methods of slaughter. The FMIA instructs, "For the purpose of preventing the inhumane slaughtering of livestock, the Secretary shall cause to be made, by inspectors appointed for that purpose, an *examination and inspection* of the method by which amenable species are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this chapter."[260]

"Examination" and "inspection" are not defined by the FMIA's statutory provisions or implementing regulations. However, courts have elaborated upon their meaning. In a 2000 case involving a challenge to a newly introduced FSIS inspection model, the D.C. Circuit Court of Appeals determined that, for purposes of the FMIA, an "inspection" entails "paying close attention" and conducting "a critical appraisal."[261] The Court also noted that, "in the ninety or so years since passage of the FMIA in 1907, 'inspection' has been taken to mean an organoleptic examination of the carcass, an inspection, that is, using the senses."[262]

Following proceedings on remand and another appeal in the same case, the Court of Appeals again considered the meaning of "inspection." Once again, the Court observed that FSIS inspectors had traditionally conducted inspections in an organoleptic manner, "relying on sight, touch and smell."[263] The Court noted that the plaintiffs in the case conceded the FMIA and Poultry Products Inspection Act do not explicitly require organoleptic inspection.[264] Nonetheless, the Court found that "inspection" meant that inspectors must "personally examine" each carcass.[265]

Similarly, FSIS directives make clear that inspection and examination mean to directly observe. For example, FSIS's ante-mortem livestock inspection directive instructs inspectors to "observe livestock from *both* sides . . . in order to determine

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259 *Id.* § 1902.

260 21 U.S.C. § 603(b) (emphasis added).

261 *American Federation of Government Employees v. Glickman*, 215 F.3d 7, 11 (D.C. Cir. 2000).

262 *Id.* at 10. *See also id.* at 8 ("organoleptic methods" means "relying on sight, touch and smell").

263 *American Federation of Government Employees, AFL-CIO v. Veneman*, 284 F.3d 125, 127 (D.C. Cir. 2002).

264 *Id.* at 130.

265 *Id.*

whether they are fit to slaughter for human consumption."[266] Its post-mortem livestock inspection directive repeatedly tells inspectors they must "observe" carcasses and carcass parts.[267] Further, the definition of "inspection" in Black's Law Dictionary suggests that it entails direct observation: "A careful examination of something, such as goods (to determine their fitness for purchase) or items produced in response to a discovery request (to determine their relevant to a lawsuit)."[268]

In the United States, "CO_2 stunning of pigs is the major method that is used in large slaughter plants."[269] According to unpublished data from the Pig Improvement Company, the use of CO_2 gas to stun pigs has increased dramatically in recent decades. In 1999, CO_2 was used to stun 2 percent of all pigs and 2.2 percent of pigs in establishments that slaughtered more than 4,500 pigs per day.[270] By 2020 (the latest data available), those numbers had risen to 86.2 percent and 96.2 percent, respectively.[271]

According to the National Agricultural Statistics Service, in 2020 more than 131 million pigs were slaughtered in the United States.[272] If 86.2 percent of those pigs were slaughtered using CO_2 gas, then approximately 113.5 million pigs were stunned or killed using CO_2 gas systems in 2020. That figure is several times greater than the *combined total* number of cattle, calves, and sheep slaughtered in the country the same year (about 35.5 million).[273] Because CO_2 gas is used to stun and kill such a large number of animals annually, it is particularly important to ensure that it is deployed in a manner that is compliant with humane slaughter requirements.

One type of CO_2 stunning method used in commercial settings in the U.S. is the paternoster system, also described by FSIS regulations as a "'U' type tunnel."[274]

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266 FSIS Directive 6100.1, Revision 3, § IX.B.2 (May 7, 2020) (emphasis in original) (Exhibit 49).

267 FSIS Directive 6100.2, Revision 1 (Oct. 24, 2016) (Exhibit 50).

268 *Inspection*, Black's Law Dictionary (12th ed. 2009).

269 THE SLAUGHTER OF FARMED ANIMALS: PRACTICAL WAYS OF ENHANCING ANIMAL WELFARE 136 (Temple Grandin & Michael Cockram eds., 2020).

270 Neal Matthews et al., *CO2 Stunning: Historical Perspective*, PIG IMPROVEMENT CO. 4 (2020) (Exhibit 51).

271 *Id.*

272 NAT'L AGRIC. STATS. SERV., LIVESTOCK SLAUGHTER 2020 SUMMARY 8 (2021) https://www.nass.usda.gov/Publications/Todays_Reports/reports/lsan0421.pdf (Exhibit 52).

273 *Id*. According to the NASS data, approximately 32.8 million cattle, 450 thousand calves, and 2.2 million sheep were slaughtered in 2020. *Id.*

274 9 C.F.R. § 313.5(b)(1)(i).

In this system, a small group of pigs is driven into a gondola, or elevator car. The gondola then descends from the loading area into a pit containing a high concentration of CO_2. The gondola "travel[s] through the CO_2 on a continuous conveyor, which is like a skinny Ferris wheel."[275] After a predetermined period, the gondola ascends and the pigs are removed from the gondolas and bled, or exsanguinated. In some systems, exposure to CO_2 is intended to cause death; in others, it is merely intended to stun the animals and death is achieved via exsanguination. In either case, pigs typically spend several minutes in the enclosed gondola, out of view of plant inspectors.[276] Indeed, "[v]iewing [t]he pigs when they reach the bottom of the deep pit is impossible because the next gondola blocks the view."[277]

Importantly, exposure to high concentrations of CO_2 does not result in an immediate loss of consciousness. As a result, pigs stunned and slaughtered in these systems may experience negative affective states during the period between initial exposure to the gas and subsequent loss of consciousness.[278] Prior to loss of

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275 Temple Grandin, CARBON DIOXIDE STUNNING OF PIGS (May 2022), https://www.grandin.com/humane/carbon.stun.html (Exhibit 53).

276 *See, e.g.*, Sophie Atkinson et al., *Animal Welfare and Meat Quality Assessment in Gas Stunning During Commercial Slaughter of Pigs Using Hypercapnic-Hypoxia (20% CO2 2% O2) Compared to Acute Hypercapnia (90% CO2 in Air)* 10 ANIMALS 2440 (2020) ("The time of exposure during 90C stunning ranged from 193 s to 259 s (237.3 ± 11.34 s), following the recommendations of the manufacturer (Butina), which is to keep pigs in the stunning unit for no less than 180 s.") (Exhibit 54); Isabel Lechner et al., *Discomfort Period of Fattening Pigs and Sows Stunned with CO_2: Duration and Potential Influencing Factors in a Commercial Setting*, 179 MEAT SCI., 108,535 (2021) ("Exposure to CO2 is set in a way that pigs remain 160 s in >88% CO2. Sows are prompted to a decelerated passage within 240 s remaining in >88% CO2.") (Exhibit 55); Merel Verhoeven et al., *Time to Loss of Consciousness and Its Relation to Behavior in Slaughter Pigs During Stunning with 80 or 95% Carbon Dioxide*, 3 FRONTIERS VETERINARY SCI., 38 (2016) (In a dip-lift system, "[d]escent of the gondola took 23 s, before remaining stationary at the bottom for 300 s before ascending in 23 s. The total cycle lasted 346 s . . . .") (Exhibit 56); Sophie Atkinson et al., *Assessing Pig Welfare at Stunning in Swedish Commercial Abattoirs Using CO2 Group-Stun Methods*, 21 ANIMAL WELFARE 487, 429 (2012) ("The shortest CO2 exposure time recorded in the paternoster systems was 238 s; indicating pigs were exposed to CO2 concentrations higher than 80% for at least 192 s.") (Exhibit 57).

277 Temple Grandin, CARBON DIOXIDE STUNNING OF PIGS, *supra* note 275.

278 Erik Sindhøj et al., *Review: Potential Alternatives to High-Concentration Carbon Dioxide Stunning of Pigs at Slaughter* 15 ANIMAL (2021) (Exhibit 58); Sophie Atkinson et al., SWEDISH UNIV. OF AGRIC. SCIS., GROUP STUNNING OF PIGS DURING COMMERCIAL SLAUGHTER IN A BUTINA PASTERNOSTER SYSTEM USING 80%

consciousness, pigs may experience acute respiratory distress, hyperventilation, a sense of breathlessness, gasping,[279] suffocation,[280] pain due to irritation of the mucus membranes,[281] muscular excitation,[282] fear, panic, and stress.[283]

Several factors can affect time to loss of consciousness. Research on CO_2 stunning and slaughter methods has reported a range of latencies to animal loss of consciousness resulting from CO_2 exposure in commercial slaughterhouses, from an average of 14 seconds to 66 seconds.[284] One factor is the percentage of CO_2 at the bottom of the pit. For example, Verhoeven et al. (2016) observed that pigs stunned with 80 percent CO_2 took an average of 47 seconds to lose consciousness, while those stunned with 95 percent CO_2 took an average of 33 seconds.[285]

It is clear that FSIS does not "examine and inspect" CO_2 stunning and slaughter while it is occurring within paternoster systems. The animals disappear from view when the gondola door closes (if the gondola is fully enclosed) or as the gondola descends to the bottom of the pit. The animals are deep within the gas chamber machines when they are exposed to the gas. There does not appear to be any evidence that inspectors or slaughter plant personnel have placed cameras or other devices inside the gondolas in an effort to observe the slaughter process. Thus, any aversive reactions the pigs may experience are not being seen or heard by inspectors. FSIS is therefore not "paying close attention," conducting "a critical appraisal," or "personally examining" the method by which the animals are being

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NITROGEN AND 20% CARBON DIOXIDE COMPARED TO 90% CARBON DIOXIDE 37 (Mar. 13, 2015) (Exhibit 59); Nielsen, *supra* note 134.

279 European Food Safety Authority, *Opinion of the Scientific Panel on Animal Health and Welfare on a Request from the Commission Related to Welfare Aspects of the Main Systems of Stunning and Killing the Main Commercial Species of Animals*, 45 EFSA J. 1 (2004) [hereinafter EFSA *Opinion of the Scientific Panel*] (Exhibit 60).

280 P. Rodríguez et al., *Assessment of Unconsciousness During Carbon Dioxide Stunning in Pigs*, 17 ANIMAL WELFARE 341 (2003) (Exhibit 61).

281 EFSA *Opinion of the Scientific Panel*, *supra* note 279; A.B.M. Raj & Neville G. Gregory, *Welfare Implications of the Gas Stunning of Pigs 2. Stress of Induction of Anaesthesia,* 5 ANIMAL WELFARE 71 (1996) (Exhibit 62).

282 EFSA *Opinion of the Scientific Panel*, *supra* note 279; Rodríguez et al., *supra* note 280.

283 Rodríguez et al., *supra* note 280; Aline R. Steiner et al., *Humanely Ending the Life of Animals: Research Priorities to Identify Alternatives to Carbon Dioxide* 9 ANIMALS 911 (2019) (Exhibit 63).

284 Steiner et al., *Humanely Ending the Life of Animals*, *supra* note 283; Neville G. Gregory et al., *An Assessment of Carbon Dioxide Stunning in Pigs*, 121 VETERINARY REC. 517 (1987) (Exhibit 64); Lechner et al., *supra* note 276; Verhoeven et al., *supra* note 276.

285 Verhoeven et al., *supra* note 276.

stunned and slaughtered. As a result, they have no way of determining whether the slaughter method is humane. This violates both the FMIA and HMSA.

The Proposed Rule explains that it would enable slaughter establishments to operate more efficiently, reduce their production costs, increase profits, and optimize their production processes.[286] These developments, in combination with faster line speeds, would enable plants to slaughter a larger number of animals per year.[287] This means the rule would directly enable and result in an even larger number of pigs stunned or slaughtered with CO_2 out of sight of federal inspectors, in violation of the FMIA and HMSA. As a result, the rule would also violate the APA, because it constitutes unlawful agency action.[288]

VI. The Proposed Rule directly violates the FMIA and the HMSA.

FSIS must not implement the Proposed Rule because, as explained above, it runs afoul of the statutory mandates the agency is charged with implementing under the FMIA and the HMSA. Eliminating slaughter line speeds is antithetical to the agency's statutory mandates and implementing regulations.

The agency's main reasons for the Proposed Rule are assisting pig slaughterhouses in increasing their efficiency, innovating new technologies, and

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286 Proposed Rule at 7,914, 7,920.

287 *See, e.g.*, 2014 FSIS Evaluation of HIMP, *supra* note 55 at 12 (indicating a correlation between line speeds and "annual slaughter volume"); *see also USDA FSIS Line Speed Rules will Improve Affordability of Pork and Poultry*, Meat Institute (Feb. 17, 2026) https://www.meatinstitute.org/press/meat-institute-usda-fsis-line-speed-rules-will-improve-affordability-pork-and-poultry ("The Meat Institute today said the US Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) Proposed Rules changes concerning pork and poultry processing rates will *increase production* and innovation, helping to ease prices for consumers and benefitting livestock and poultry producers.") (emphasis added) (Exhibit 65); Jennifer Shike, *USDA's Proposed Changes to Line Speed Rules Will* ***Boost Pork Processing Capacity,*** Farm Journal's PORK (Feb. 17, 2026) (emphasis added), available at https://www.porkbusiness.com/news/usdas-proposed-changes-line-speed-rules-will-boost-pork-processing-capacity (Exhibit 66). The Proposed Rule itself does not appear to explicitly acknowledge that it could result in a larger number of pigs slaughtered per year. This omission renders the Proposed Rule unlawful, because the ramifications of killing more animals (for worker safety, food safety, environmental protection, animal welfare, etc.) is an important aspect of the issue that FSIS fails to consider. *See State Farm*, 463 U.S. at 43. Thus, the Proposed Rule is arbitrary and capricious, in violation of the Administrative Procedure Act, *See* 5 U.S.C. § 706(2)(A).

288 *See* 5 U.S.C. § 706(2)(A), (C), (D).

improving production methods.[289] While FSIS has the authority to promulgate regulations for the "efficient execution" of the FMIA,[290] no statute allows FSIS to promulgate regulations for the purpose of increasing the *meat industry's* efficiency. This is an improper purpose that violates the FMIA, as eliminating slaughter line speeds will sacrifice food safety and the humane treatment of pigs in the name of maximizing profits for industry. FSIS is acting outside of its statutory authority.

Additionally, the Proposed Rule contravenes the FMIA and the HMSA because it is foregoing the humane treatment of animals in favor of increasing industry profits. The Proposed Rule states that FSIS "can effectively verify establishments' compliance with humane handling requirements because more inspection resources are available to conduct offline inspection activities that are more effective in verifying the humane handling of animals" under the HMSA.[291] No matter how many times the agency relies on the word "effective" in the Proposed Rule, it does not magically make the agency's reasoning align with the agency's statutory authority. Instead, FSIS is abdicating its duties under the law and allowing ineffective, untrained, self-interested individuals to regulate food safety and the humane treatment of animals. Nor is it sufficient under the FMIA and HMSA to only allow FSIS inspectors to slow lines when "in their judgment, there is a loss of process control,"[292] because when a loss of process control happens, the harm to animal welfare has already occurred. The HMSA aims to "*prevent* needless suffering,"[293] not to address suffering after the fact. The Proposed Rule gets this backward, by authorizing inspectors to react to animal suffering after it has already occurred. Thus, the Proposed Rule is unlawful.

VII. The Proposed Rule violates NEPA.

Slaughter is one of the most polluting industries in the country. Slaughterhouses, and particularly the large operations most likely to increase line speeds should the Proposed Rule be finalized, discharge contaminated wastewater, emit greenhouse gases by the ton, and generate pathogen-laden piles of solid waste. FSIS both acknowledges that eliminating line speed limits will increase production at these slaughterhouses *and* claims such increased production does not merit environmental analysis under NEPA. This inconsistent position is the definition of arbitrary and capricious. Because the Proposed Rule will cause significant environmental impacts, FSIS's use of a categorical exclusion to avoid environmental analysis is improper and contrary to NEPA.

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289 Proposed Rule at 7,911–12.
290 21 U.S.C. § 621.
291 Proposed Rule at 7,911.
292 *Id.*
293 7 U.S.C. § 1901 (emphasis added).

A. FSIS must conduct NEPA analysis prior to issuing a rule with significant environmental impacts.

When NEPA was introduced on the floor of the United States Senate in 1969, Senator Henry "Scoop" Jackson characterized the purpose of the legislation: "to insure that present and future generations of Americans will be able to live in and enjoy an environment that is not fraught with hazards to mental and physical wellbeing."[294] This purpose is manifest in NEPA itself, which institutes a national policy "to use all practicable means and measures. . . to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and [to] fulfill the social, economic, and other requirements of present and future generations of Americans."[295]

NEPA is designed to accomplish its lofty goals by requiring federal agencies "to consider and report on the environmental effect of their proposed actions."[296] Specifically, NEPA mandates that agencies prepare an environmental impact statement (EIS) for any "major Federal actions significantly affecting the quality of the human environment."[297] Such statements must address: "(1) the reasonably foreseeable environmental impacts of the proposed action; (2) the reasonably foreseeable adverse environmental impacts that cannot be avoided; (3) a reasonable range of alternatives to the proposed agency action. . . ; the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action (or action alternatives)."[298]

If an agency is unsure whether an action will result in any significant environmental impacts, it must prepare an environmental assessment to resolve the uncertainty and determine whether an EIS is necessary based on the action's "reasonably foreseeable significant impacts."[299] The significance of reasonably foreseeable impacts is determined based on the potentially affected environment (i.e. physical, biological, social, and economic factors) and the degree of the effects (i.e. long- and short-term, beneficial and adverse, impacts on public health and safety, economic impacts, and impacts on quality of life).[300] Further, agencies must provide a rational analysis comparing the impacts of implementing the proposed

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294 113 Cong. Rec. 36849.

295 42 U.S.C. § 4331(a).

296 *WildEarth Guardians v. Jewell*, 738 F.3d 298, 302 (D.C. Cir. 2013).

297 42 U.S.C. § 4332(C).

298 USDA, National Environmental Policy Act, 90 Fed. Reg. 29632, 29633 (July 3, 2025) (citing 42 U.S.C. § 4332(C)).

299 42 U.S.C. § 4336(b)(2); 7 C.F.R. § 1b.2(f)(2)(iv).

300 7 C.F.R. § 1b.2(f)(3).

action versus the impacts of not implementing the action, with special attention to the long-term environmental productivity.[301]

NEPA is currently embroiled in legal uncertainty following a rogue federal appellate opinion that concluded the Council on Environmental Quality—the federal authority tasked with helping agencies like FSIS comply with NEPA—lacked authority to promulgate regulations.[302] To fill the void left by decades of CEQ regulations, USDA published an interim final rule with its agency-specific NEPA regulations.[303] During the public comment period on the Proposed Rule, USDA issued a final rule that largely adopted the regulations set forth in the interim final rule.[304] In those regulations, USDA sets forth several categorical exclusions exempting certain classes of actions from NEPA's procedural requirements. One of these categorical exclusions purports to exclude the majority of actions implemented by FSIS.[305] However, both the NEPA statute and USDA's regulations make clear that categorical exclusions do not exempt FSIS actions from NEPA where "extraordinary circumstances" exist that may or will lead to reasonably foreseeable and significant environmental impacts.[306]

Contrary to the USDA's recent assertions,[307] the Proposed Rule change is a major federal action that will cause significant environmental impacts that must be considered and disclosed before the rule can be finalized.[308] Because the rule is

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301 *Id.*

302 *Marin Audubon Soc'y v. Fed. Aviation Admin.*, 121 F.4th 902, 912-14 (2024).

303 90 Fed. Reg. 29632.

304 National Environmental Policy Act, 91 Fed. Reg. 17062 (April 3, 2026) (adopting the interim final rule "with minor changes").

305 40 C.F.R. § 1b.4(a)(5). This categorical exclusion likely exceeds USDA's authority under NEPA, which defines categorical exclusions as covering "a category of actions." 42 U.S.C. § 4336e(1). This phrase cannot be stretched to include the functions of an entire agency—particularly an agency that oversees and regulates an industry with as many pollution hazards as the meat and poultry product industry. *See Or. Wild v. U.S. Forest Serv.*, No. 1:22-cv-01007-MC, 2026 U.S. Dist. LEXIS 6263 (Jan. 13, 2026), at *30 ("But the Forest Service cannot promulgate a CE that applies to projects of unknown impact anticipating the safety valve of extraordinary circumstances review to justify the CE on a project-by-project basis after the fact."); *Clinch Coal v. U.S. Forest Serv.*, No. 2:21-cv-00003, 2025 U.S. Dist. LEXIS 169068 (Dec. 3, 2025), at *2 ("CE's are generally limited to small and routine actions that do not have significant environmental impacts."); *see generally* Center for Biological Diversity et al., Petition for Rulemaking (June 20, 2024) (Exhibit 67).

306 42 U.S.C. § 4332(C); 7 C.F.R. § 1b.3(f).

307 91 Fed. Reg. 17062, 17072.

308 *Seven County Infrastructure Coalition v. Eagle Cnty.*, 145 S. Ct. 1497, 1507 (2025) ("The goal of [NEPA] is to inform agency decisionmaking. . .").

national in scope and predicted to intensify production at some of the 27 swine slaughter facilities to which FSIS expects the rule will apply, significant and adverse environmental impacts—including those that affect species and habitat listed under the Endangered Species Act, sensitive environmental areas, and prime agricultural lands[309]—are likely to result. NEPA demands that USDA consider these reasonably foreseeable environmental impacts prior to making any final decision about swine slaughter line speeds.

B. Pig slaughterhouses are already major sources of pollution.

Slaughter operations are the source of significant environmental impacts.[310] At current operating speeds federally inspected slaughterhouses kill approximately more than 127 million pigs every year.[311] Slaughtering and processing this many pigs means that swine slaughterhouses already produce, discharge, and emit enormous amounts of pollution. Nevertheless, one of USDA's primary justifications for the proposed rule is to increase production efficiency, and thereby profits, for industrial slaughterhouses large enough to take advantage of faster line speeds. As these facilities speed up and increase production, they will also increase the degree to which they pollute the surrounding environment.

Over the past few decades, pig production and slaughter operations have transitioned from diversely-held, small and medium facilities to industrial scale factories operated by just a handful of corporations.[312] This trend has resulted in

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309 *See* 7 C.F.R. § 1b.3(i) (requiring USDA to consider these and other relevant resource concerns when evaluating an action for extraordinary circumstances).

310 *See Humane Soc'y v. Johanns*, 520 F. Supp. 2d 8, 27 (2007) (noting that in a case about FSIS's inspection protocols for horse slaughter, neither FSIS nor the industry intervenors refuted the claim that slaughter operations significantly impact the environment).

311 Proposed Rule at 7,914.

312 USDA Econ. Res. Serv., Hogs & Pork – Sector at a Glance (Jan. 8, 2025), https://www.ers.usda.gov/topics/animal-products/hogs-pork/sector-at-a-glance ("The U.S. hog industry has undergone significant structural changes in the last 40 years, the most important of which has been the rapid shift to fewer and larger operations. Since 1990, the number of farms with hogs has declined by more than 70 percent as individual enterprises have grown larger."); Tina A. Saitone et al., Consolidation and Concentration in U.S. Meat Processing: Updated Measures Using Plant-Level Data, 64 Rev. Industrial Org. 35, 36 (2023) (Exhibit 68); James M. MacDonald et al., USDA Econ. Res. Serv., Consolidation of U.S. Meatpacking 7-9 (February 2000) (Exhibit 69); EPA, LITERATURE REVIEW OF CONTAMINANTS IN LIVESTOCK AND POULTRY MANURE AND IMPLICATIONS FOR WATER QUALITY 1 (July 2013) (Exhibit 70); ROBERT L. KELLOGG, ET AL., USDA, MANURE NUTRIENTS RELATIVE TO THE CAPACITY

extremely dense concentrations of swine operations in just a few regions of the country.[313] Cramming so many pigs and the slaughterhouses that process them into relatively few places means that pollutants from these operations are hyper-concentrated, overwhelming frontline communities and the ecosystems in which they are situated.[314]

Slaughterhouses produce enormous amounts of pollution to surrounding waters. Pollutants generated and handled at slaughterhouses include "high levels of

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OF CROPLAND AND PASTURELAND TO ASSIMILATE NUTRIENTS: SPATIAL AND TEMPORAL TRENDS FOR THE UNITED STATES ii (Dec. 2000).

[313] *USDA Econ. Res. Serv., Hogs & Pork – Sector at a Glance* (Jan. 8, 2025), https://www.ers.usda.gov/topics/animal-products/hogs-pork/sector-at-a-glance ("U.S. hog operations tend to be heavily concentrated in the Midwest—particularly Iowa and southern Minnesota—and in eastern North Carolina, but hog operations are also found in Oklahoma and in Texas."); FOOD & WATER WATCH, FACTORY FARM NATION: 2024 EDITION, HOGS ON FACTORY FARMS, https://storymaps.arcgis.com/stories/cc02f97b1129447db2420eb8b6b258e1 (Exhibit 71) (showing dense concentrations of hog factory farms in Pennsylvania, North Carolina, and throughout the Midwest); EPA, TECHNICAL DEVELOPMENT DOCUMENT FOR PROPOSED EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY 27 (Dec. 2023) (Exhibit 72) (listing Pennsylvania, Texas, New York, Missouri, and Nebraska as the states with the highest percentage of meat first processing plants, which includes pig slaughterhouses); ENVIRONMENTAL INTEGRITY PROJECT, WATER POLLUTION FROM SLAUGHTERHOUSES 7 (Oct. 11, 2018) (Exhibit 73) ("Concentrations of the largest slaughterhouses are clustered in rural areas including northwest Arkansas, central Mississippi, Iowa, northern Georgia, east central Pennsylvania, southern Indiana, and Sussex County, Delaware.").

[314] *USDA Econ. Res. Serv., Hogs & Pork – Sector at a Glance* (Jan. 8, 2025), https://www.ers.usda.gov/topics/animal-products/hogs-pork/sector-at-a-glance ("The hog industry trending toward fewer and larger hog farming enterprises has brought environmental issues to the forefront of public policy. As animal density increases, so do concerns regarding facilities' air and water quality, occupational health, and waste management. . . These trends indicate growing conflicts between nearby residents and hog producers concerning odor, water contamination, and other environmental problems associated with concentrated production."); *see generally* ENVIRONMENTAL INTEGRITY PROJECT, WATER POLLUTION FROM SLAUGHTERHOUSES (Oct. 11, 2018) (explaining that slaughterhouses are located near the factory farms that supply them, and describing pollution impacts); EPA, ENVIRONMENTAL ASSESSMENT FOR REVISIONS TO THE EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY, EPA-821-R-23-012 (Dec. 11, 2023) (Exhibit 74) (describing pollution impacts of U.S. slaughterhouses, including environmental justice impacts).

oxygen-demanding substances (like blood, fat, urine, and feces), total suspended solids, ammonia, nitrogen, phosphorus, oil and grease, fecal bacteria, and pathogens," as well as detergents, heavy metals, chlorides, pharmaceuticals, pesticides, and heat pollution.[315] Slaughterhouse wastewater is also "considered a reservoir for antibiotic-resistant bacteria,"[316] contributing to the major threat antimicrobial resistance poses to public health. Nutrient pollution is particularly concerning because slaughterhouses and processing facilities are the nation's largest industrial source of phosphorus and second largest industrial source of nitrogen.[317] Together, these pollutants "drive algal growth, create low oxygen dead zones that suffocate fish and other aquatic life, and turn waterways into bacteria-laden public health hazards."[318] Nitrogen pollution also leads to high concentrations of nitrates, a chemical that is linked to life-threatening health conditions like blue baby syndrome, birth defects, thyroid disorders, and various forms of cancer.[319]

Pig slaughterhouses operating at existing line speeds already discharge these dangerous pollutants to waterways, often in amounts and concentrations that violate their Clean Water Act National Pollutant Discharge Elimination System

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315 ENVIRONMENTAL INTEGRITY PROJECT, WATER POLLUTION FROM SLAUGHTERHOUSES 8 (Oct. 11, 2018); EPA, Draft Memorandum, Subject: Pollutants of Concern (POC) Analysis for the Meat and Poultry Products (MPP) Proposed Rule – DCN MP00190, at 6-7, Tbl. 2, Docket ID No. EPA-HQ-OW-2021-0736 (Jan. 23, 2024); EPA, ENVIRONMENTAL ASSESSMENT FOR REVISIONS TO THE EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY, EPA-821-R-23-012, 2-1—2-28 (Dec. 11, 2023); EPA, TECHNICAL DEVELOPMENT DOCUMENT FOR PROPOSED EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY 37-39 (Dec. 2023) (characterizing meat processing facilities' waste streams).

316 Mykhailo Savin et al., *Antibiotic-Resistant Bacteria, Antibiotic Resistance Genes, and Antibiotic Residues in Wastewater from a Poultry Slaughterhouse After Conventional and Advanced Treatments*, 11 Science Reports (2021), https://www.nature.com/articles/s41598-021-96169-y.

317 EPA, Preliminary Effluent Limitations Guidelines Program Plan 15 2-1 (2021).

318 ENVIRONMENTAL INTEGRITY PROJECT, WATER POLLUTION FROM SLAUGHTERHOUSES 8 (Oct. 11, 2018).

319 Jason Semprini, *Early Prenatal Nitrate Exposure and Birth Outcomes: A Study of Iowa's Public Drinking Water (1970-1988)*, 4 PLOS Water, https://journals.plos.org/water/article?id=10.1371/journal.pwat.0000329 (Exhibit 75).

("NPDES") permits.[320] About 20 percent of all federally regulated meat first slaughterhouses have NPDES permits that authorize discharges directly to nearby surface waters,[321] meaning violations threaten wildlife, recreational opportunities, and drinking water sources. Approximately 50 percent are indirect dischargers, meaning they send their wastewater to a publicly-owned treatment plant.[322] According to EPA, 73 percent of treatment plants that receive slaughterhouse wastewater violated their own NPDES permit limitations for pollutants found in slaughterhouse wastewater.[323] In this manner, indirectly discharging also threaten water quality and may even cost taxpayers money in the form of treatment plant upgrades to deal with excess pollution. The remaining 30 percent of meat first processing plants dispose of their contaminated wastewater by applying it to land near the slaughterhouse or treating it in onsite septic tanks, where pollutants can runoff into surface waters or leach into groundwater, threatening public health and the environment.[324]

Slaughterhouses also use incredible amounts of water.[325] While there is a problematic lack of information on water use at swine processing facilities

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320 EPA, ENVIRONMENTAL ASSESSMENT FOR REVISIONS TO THE EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY, EPA-821-R-23-012, 1-3—1-5 (Dec. 11, 2023).

321 EPA, TECHNICAL DEVELOPMENT DOCUMENT FOR PROPOSED EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY 37 (Dec. 2023).

322 *Id.*

323 EPA, TECHNICAL DEVELOPMENT DOCUMENT FOR PROPOSED EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY 3 (Dec. 2023).

324 *Id.* at 37; EPA, ENVIRONMENTAL ASSESSMENT FOR REVISIONS TO THE EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY, EPA-821-R-23-012, ES-2, 1-5, 2-2, 6-2, 7-4 (Dec. 11, 2023); *see also* National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations, 66 Fed. Reg. 2960, 2980 (Jan. 12, 2001) (describing pollution risks from land application of CAFO wastewater); National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 68 Fed. Reg. 7176, 7237 (Feb. 12, 2003) (same).

325 FSIS, THE USE OF WATER IN ANIMAL PRODUCTION, SLAUGHTER, AND PROCESSING, 2018-2020 NATIONAL ADVISORY COMMITTEE ON MICROBIOLOGICAL CRITERIA FOR FOODS 9 (April 22, 2021), https://www.fsis.usda.gov/sites/default/files/media_file/2021-07/NACMCF_2018-2020_Water_Reuse.pdf (Exhibit 76) ("In general, meat processing may account for up to 24% of freshwater consumption in the food and beverage industries.").

specifically, studies indicate consumption may be as high as 186 gallons per animal slaughtered.[326] Diverting this amount of water from American surface waters and aquifers is environmentally significant, with impacts flowing to everything from drinking water availability to the health of wildlife populations.

Additionally, slaughterhouses generate substantial amounts of solid waste and air pollution. EPA has called solid waste "[t]he most significant non-water quality impact" of slaughterhouses.[327] Carcasses of dead animals and sludge extracted during on-site wastewater treatment create significant waste disposal issues as they are often "contaminated with high numbers of microorganisms including bacteria, viruses, prions, fungi, yeasts, and associated microbial toxins."[328] These wastes contribute to slaughterhouses' impacts on air quality because solids are generally hauled offsite for treatment in trucks.[329] The greenhouse gas emissions from trucking solid waste are in addition to greenhouse emissions from electricity consumed by the slaughterhouses themselves, as well as carbon dioxide, ammonia, hydrogen sulfide and other noxious, odorous emissions created by on-site treatment processes.[330] Exposure to these air pollutants can cause a range of adverse health effects including irritation of the eyes, nose and throat; chemical burns to respiratory tracts, skin, and eyes; gastrointestinal hemorrhaging; mood disorders; anemia; and even lethal respiratory issues.[331]

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326 Timothy Bowser Jacob Nelson, Slaughterhouse Water Use and Wastewater Characteristics (Sept. 2021), https://extension.okstate.edu/fact-sheets/slaughterhouse-water-use-and-wastewater-characteristics-fapc-240.

327 EPA, TECHNICAL DEVELOPMENT DOCUMENT FOR THE FINAL EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY (40 CFR 432) 12-5 (2004), https://perma.cc/4SEF-CNWX.

328 Ingrid H. Franke-Whittle & Heribert Insam, *Treatment Alternatives of Slaughterhouse Wastes, and Their Effect on the Inactivation of Different Pathogens*, 39 CRITICAL REVS. MICROBIOLOGY 139, 139, 141-42 (2013) (Exhibit 77).

329 EPA, TECHNICAL DEVELOPMENT DOCUMENT FOR PROPOSED EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY 114 (Dec. 2023).

330 EPA, TECHNICAL DEVELOPMENT DOCUMENT FOR THE FINAL EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY (40 CFR 432) 12-3—12-5 (2004), https://perma.cc/4SEF-CNWX.

331 AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, TOXICOLOGICAL PROFILE FOR AMMONIA, 15, 25 (2004), https://www.atsdr.cdc.gov/toxprofiles/tp.asp?id=11&tid=2; Phoebe Gittelson et al., *The False Promise of Biogas: Why Biogas Is An Environmental Justice Issue*, 15 Envt'l Justice 352, 353, 356 (2022) (Exhibit 78); Virginia T. Guidry et al.,

Slaughterhouse pollution is also a source of pathogens that can introduce zoonotic diseases to the human environment. As demonstrated by the 2009 pandemic, swine flu can be passed directly from pigs to humans and has the potential to kill millions of people, particularly given recent hostility toward vaccinations.[332] While the disease is generally under control in the human population today, new variants still pose very real threats to humans.[333]

Similarly, pig slaughterhouses are potential hotspots for highly pathogenic avian influenza (bird flu). In October 2024, USDA and the Oregon Department of Agriculture announced the first known case of bird flu in pigs.[334] This development was particularly concerning because "pigs are known to be a mixing vessel for zoonotic and human influenza viruses," increasing the opportunities for the virus to mutate into more contagious or severe variants.[335] Slaughterhouse pollution of all kinds leads to adverse health impacts in surrounding communities, many of which are underserved by medical providers.[336]

C. FSIS must conduct NEPA analysis because the Proposed Rule will cause significant and adverse environmental impacts.

Increasing line speeds will increase the rate at which pollution is discharged to the environment as well as overall pollution loading. Expelling pollution more quickly is problematic because pollutants have less time to dilute, increasing the odds that humans and other forms of life will be exposed to dangerous concentrations. However, increased pollutant loading attributable to the increased

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Hydrogen Sulfide Concentrations at Three Middle Schools Near Industrial Livestock Facilities, J. EXPOSURE SCI. & ENVT'L EPIDEMIOLOGY 1, 6 (2016) (Exhibit 79).

[332] *See generally* Sami Al Hajjar et al., THE FIRST INFLUENZA PANDEMIC OF THE 21ST CENTURY, 30 ANN. SAUDI MED. (2010), https://pmc.ncbi.nlm.nih.gov/articles/PMC2850175/pdf/ASM-30-01.pdf (Exhibit 80).

[333] *Spain Informs WHO of Possible Human Swine Flu Case with Low Transmissivity* (updated Feb. 27, 2026), https://www.reuters.com/business/healthcare-pharmaceuticals/spain-alerts-who-swine-flu-virus-believed-have-been-transmitted-between-people-2026-02-27/.

[334] USDA APHIS, *Federal and State Veterinary Agencies Share Update on HPAI Detection in Oregon Backyard Farm, Including First H5N1 Detections in Swine* (Oct. 30, 2024), https://www.aphis.usda.gov/news/agency-announcements/federal-state-veterinary-agencies-share-update-hpai-detections-oregon.

[335] Lisa Schnirring, University of Michigan, *USDA Announces First H5N1 Avian Flu Detection in U.S. Pigs* (Oct. 30, 2024), https://www.cidrap.umn.edu/avian-influenza-bird-flu/usda-announces-first-h5n1-avian-flu-detection-us-pigs.

[336] Julia Kravchenko et al., *Mortality and Health Outcomes in North Carolina Communities Located in Close Proximity to Hog Concentrated Animal Feeding Operations*, 79 NORTH CAROLINA MED. J. 278, 284-86 (2018) (Exhibit 81).

production that FSIS predicts will result from this rule change is likely to result in even more intractable environmental impacts. Because the impacts of ratcheting up pig slaughter all across the country will be significant, the Proposed Rule presents extraordinary circumstances that must be assessed and disclosed to the public pursuant to NEPA.

Unsurprisingly, "production is directly correlated with the volume of process wastewater generated [with] higher production result[ing] in higher wastewater generation."[337] The same principle applies to solid waste and air emissions: increasing production will increase the amount of pollution generated. Higher line speeds also expose increase zoonotic disease exposure risks because they force workers to come into contact with more pigs per shift, multiplying the opportunities for workers to come into contact with an animal infected with a contagious pathogen. The Proposed Rule would also authorize plants to require that workers process animals at the breakneck speed of more than 19 pigs per minute. This reduces the already short amount of time workers have to identify signs that a pig may be infected with swine flu or another zoonotic illness. As discussed elsewhere in this comment, such high-speed work increases the likelihood that fecal material and other disease-spreading material will make it further down the line, exposing more workers to potential infection. And high-speed operations likely increase the risk of worker injuries like lacerations, creating additional pathways for pathogens to enter the bodies of workers.

Despite these obvious risks, the Proposed Rule entirely neglects to consider the likelihood that eliminating pig slaughter line speed limits will increase risks from zoonotic diseases.[338] In the U.S., hundreds of millions of birds died or were precautionarily killed as a result of the recent H5N1 outbreak.[339] Nevertheless, FSIS has not considered any potential public health, food security, or economic impacts from increased swine and avian flu risks from increased line speeds. Even if swine flu remains mostly contained to pig populations, FSIS still failed to

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337 EPA, Technical Development Document for Proposed Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category 40 (Dec. 2023).

338 *See* FSIS Directive 6000.1, Responsibilities Related to Foreign Animal Diseases and Reportable Conditions – Revision 2 (Nov. 20, 2025) ("[T]he unchecked spread of [foreign animal diseases] and emerging diseases [] into agricultural environments will have a ripple effect on many segments of the U.S. economy, including disruption of livestock and poultry marketing, trade, and food security. Outbreaks of certain animal diseases, especially zoonotic diseases, can cause considerable economic and social disruption.").

339 Juan Mena-Vasquez et al., Emerging Threats of HPAI H5N1 Clade 2.3.4.4b in Swine: Knowledge Gaps and the Imperative for a One Health Approach, 12 Frontiers in Vet. Sci. 1, 2 (Aug. 2025) (Exhibit 82).

consider whether eliminating line speed limits could increase transmittivity and speed mutation at pig feeding operations, and the concomitant impacts such increases would have on the food system. This oversight is especially egregious given the government's recent experience in managing the COVID-19 pandemic. FSIS's lack of concern about zoonotic diseases is also particularly concerning at present because the federal government is experiencing workforce reductions that will impede the government's ability to assess public health impacts of altered slaughterhouse operations and to respond to any public health crises that may arise. FSIS itself lost approximately 8 percent of its workforce in 2025, and reorganization plans threaten further losses and disruption.[340] The CDC has experienced similar capacity reductions and chaotic restructuring.[341] Clearly, now is not the time to undertake a rulemaking that threatens the healthfulness of the human environment. FSIS must assess these risks in addition to the water, air, and solid waste impacts that will result from eliminating line speed limits.[342]

Rather than considering the foreseeable environmental impacts of the Proposed Rule, FSIS claims that increasing line speeds will not necessarily increase production levels because slaughter numbers are driven by expected sales and consumer demand.[343] This massive oversimplification is undermined by FSIS's own analysis. Not only did FSIS previously conclude this same rule change could result in more pigs being slaughtered,[344] FSIS now predicts that eliminating speed limits for swine slaughter lines will result in 500 million pounds of additional pork products.[345] FSIS also acknowledges that higher line speeds are associated with higher slaughter headcounts by assuming high-volume slaughterhouses are the most likely to operate at higher line speeds. In fact, the number of market hogs slaughtered was one of only two factors FSIS considered to predict the number of slaughterhouses that would operate at higher line speeds upon promulgation of the

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340 National Sustainable Agriculture Coalition, *USDA Staffing Crisis: Food Safety Agencies Struggle as Federal Workforce Shrinks* (Nov. 14, 2025), https://sustainableagriculture.net/blog/usda-staffing-crisis-food-safety-agencies-struggle-as-federal-workforce-shrinks/.

341 Phie Jacobs, *Whiplash at CDC as Hundreds of Employees are Terminated, Then Reinstated* (Oct. 14, 2025), https://www.science.org/content/article/whiplash-cdc-hundreds-employees-are-terminated-then-reinstated.

342 *See Found. on Econ. Trends v. Heckler*, 756 F.2d 143, 153-54 (1985) (NEPA requires consideration and disclosure of environmental impacts from release of bacterial pollutants).

343 Proposed Rule at 7,925.

344 83 Fed. Reg. 4780, 4819 ("With the slight increase in pork product sales, some establishments may choose to increase the number of swine slaughtered, which could result in an increase in the number of condemned carcasses and parts that must be disposed of."); 84 Fed. Reg. 52,300, 52342 (same).

345 Proposed Rule at 7,919.

proposed rule.[346] Accordingly, slaughterhouses killing more pigs using existing staff, facilities, and operating hours is an entirely foreseeable result of increased line speeds. Failing to assess the environmental impacts of this increased production overlooks an important aspect of this rule change, violated NEPA, and would render finalization of the Proposed Rule in its current form arbitrary and capricious.[347]

FSIS's current position also relies on a 19-year-old economic model that analyzed 22-year-old data, ignoring recent consumer data and export trends that point to even steeper production volume increases.[348] Assuming FSIS is correct that increasing line speeds would lead to more efficient slaughter operations, production efficiencies should result in lower retail prices. Indeed, FSIS predicts the average pork product price will drop by 14 cents per pound as a result of the rulemaking.[349] If consumers are offered cheaper meat, demand will presumably rise, resulting in more pigs slaughtered to meet that demand. Again, the Proposed Rule affirms this analysis, stating that "increases in production efficiency [] can be represented by increasing the market supply" and expressly predicting a 500 million-pound increase in pork product production.[350] The degree to which demand responds to price is known as "elasticity," and the 19-year-old model that FSIS used to inform this rulemaking assumes a low elasticity for pork products.[351] However, pork is experiencing a resurgence in popularity among U.S. consumers.[352] International pork demand has also grown over the past two decades and is projected to continue growing, and that demand is relatively elastic (responsive to price changes) in some of the U.S. pork industry's main export destinations, particularly when price elasticity is considered in tandem with expenditure elasticity.[353]

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346 Proposed Rule at 7,914. The other factor was the speed at which the operations' lines were already operating.

347 *See California v. Norton*, 311 F.3d 1163, 1176 (2002) (in applying a categorical exclusion, agencies must apply the exclusion to the facts at hand in a non-arbitrary, non-capricious manner).

348 Proposed Rule at 7,919 (citing MARY K. MUTH ET AL., RTI INTERNATIONAL, PORK SLAUGHTER AND PROCESSING SECTOR FACILITY-LEVEL MODEL (June 2007)).

349 *Id.*

350 *Id.*

351 MARY K. MUTH ET AL., RTI INTERNATIONAL, PORK SLAUGHTER AND PROCESSING SECTOR FACILITY-LEVEL MODEL 2-13—2-14 (June 2007).

352 USDA Econ. Res. Serv., Hogs & Pork – Market Outlook (March 17, 2026), https://www.ers.usda.gov/topics/animal-products/hogs-pork/market-outlook (projecting 2.5 production growth in 2026 as compared to 2025).

353 USDA, Foreign Agric. Serv., *U.S. Pork & Pork Exports in 2025*, https://www.fas.usda.gov/data/commodities/pork-pork-products; Clara D. Buoyssou et al., *Food for Thought: A Meta-Analysis of Animal Food Demand Elasticities Across World Regions*, 122 FOOD POLICY 1, 1 , 7, 14-15 (2024) (Exhibit 83).

Increased capacity at slaughterhouses will also drive up pollution from the factory farms that supply them with pigs. Like slaughterhouses themselves, the CAFOs that supply the vast majority of pigs to swine slaughterhouses create major pollution problems that contribute to the harms the heavily concentrated meat industry thrusts upon communities.[354] CAFO wastes are another "primary source of nitrogen phosphorus to surface and groundwater," and also contain a cocktail of other hazardous pollutants, including bacteria, pathogens, salts, sediments, pesticides, pharmaceuticals, heavy metals, bedding materials, and ions such as magnesium, sodium, potassium, and chloride.[355] Pig CAFOs discharge these pollutants to state waters through a variety of pathways, including "surface runoff and erosion, overflows from lagoons, spills and other dry-weather discharges, leaching into soil and ground water, and volatilization of compounds (e.g., ammonia) and subsequent redeposition on the landscape."[356] CAFOs also produce the same air pollutants of concern that slaughterhouses do, magnifying the health and climate impacts associated with ammonia, hydrogen sulfide, particulate matter,

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354 *See generally* CARRIE HRIBAR, NAT'L ASS'N OF LOCAL BDS. OF HEALTH, UNDERSTANDING CONCENTRATED ANIMAL FEEDING OPERATIONS AND THEIR IMPACT ON COMMUNITIES (2010), https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf (Exhibit 84); DOUG GURIAN-SHERMAN, UNION OF CONCERNED SCIENTISTS, CAFOS UNCOVERED: THE UNTOLD COST OF CONFINED ANIMAL FEEDING OPERATIONS at 10 (Apr. 2008), https://www.ucsusa.org/sites/default/files/2019-10/cafos-uncovered-full-report.pdf; Joan A. Casey et al., Industrial Food Animal Production and Community Health, 2 Current Envt'l Health Reports 259 (2015).

355 EPA, *Estimated Animal Agriculture Nitrogen and Phosphorus from Manure*, https://www.epa.gov/nutrientpolicy-data/estimated-animal-agriculture-nitrogen-and-phosphorus-manure; JoAnn Burkholder et al., *Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality*, 115 ENVT'L HEALTH PERSPECTIVES 308-10 (2007) (Exhibit 85).

356 National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 68 Fed. Reg. 7,176, 7,181 (Feb. 12, 2003); JoAnn Burkholder et al., *Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality*, 115(2) ENVTL. HEALTH PERSPS. 308 (Feb. 2007), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1817674/; EPA, NPDES Permit Writers' Manual for Concentrated Animal Feeding Operations 4-18 (Feb. 2012).

and carbon dioxide.[357] These significant environmental impacts contribute to a host of adverse health impacts in frontline communities.[358]

On the other end of the supply chain, increasing production at rendering plants and other secondary processing facilities would also engender increased environmental impacts. For instance, in 2004, EPA estimated that rendering facilities produce between 211 and 578 gallons of wastewater for every 1,000 pounds of finished product.[359] Pollutants of concern for these facilities are essentially the same as those produced at the slaughterhouses themselves.[360]

In making its final decision on this Proposed Rule, NEPA requires FSIS to consider these significant environmental impacts. Any rule that anticipates the possibility of increased industry profits by way of increased pig slaughter but ignores the foreseeable toll that increased production would take on the environment is arbitrary and capricious and violates NEPA.

VIII. The Proposed Rule is unlawful because it is unconstitutionally vague.

The void-for-vagueness doctrine derives from the Due Process Clause of the Fifth Amendment and "requires the invalidation of laws that are impermissibly vague."[361] The doctrine "addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way."[362] Laws must

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357 Virginia T. Guidry et al., *Hydrogen Sulfide Concentrations at Three Middle Schools Near Industrial Livestock Facilities*, J. EXPOSURE SCI. & EPIDEMIOLOGY 1, 1, 6 (2016); Maria C. Mirabelli et al., *Race, Poverty, and Potential Exposure of Middle School Students to Air Emissions from Confined Swine Feeding Operations*, 114 ENVTL. HEALTH PERSPECTIVES 591, 591 (2006).

358 Julia Kravchenko et al., *Mortality and Health Outcomes in North Carolina Communities Located in Close Proximity to Hog Concentrated Animal Feeding Operations*, 79 N.C. MED. J. 278, 284-86 (2018).

359 EPA, TECHNICAL DEVELOPMENT DOCUMENT FOR THE FINAL EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY (40 CFR 432) 6-15 – 6-16 (2004), https://perma.cc/4SEF-CNWX.

360 *See* EPA, ENVIRONMENTAL ASSESSMENT FOR REVISIONS TO THE EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY, EPA-821-R-23-012, 2-1–2-28 (Dec. 11, 2023) (discussing pollution from both slaughterhouses and secondary processing facilities).

361 *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

362 *Id.* (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972)).

"give the person of ordinary intelligence a reasonable opportunity to know what is prohibited" and "provide explicit standards for those who apply them."[363] Federal regulations are among the types of laws that may be unconstitutionally vague.[364]

FSIS proposes to allow pig slaughter establishments "to determine their own line speeds based on their ability to maintain process control."[365] This proposal is vague in several ways. First, it suggests that plants could theoretically operate their lines *at any speed*, so long as process control is maintained. There would be no cap. That means there would be no clear answer to the question, *how fast is too fast*? FSIS does not explain why, in the interest of regulatory clarity, it does not at least identify a numerical upper limit. Strangely, it declines to establish such a definite limit, despite sharing detailed data about how fast slaughter plants operated during previous studies conducted by the agency. For example, FSIS reports:

> [I]n calendar year 2013, the estimated line speeds of the 5 HIMP market hog establishments varied from 885 to 1,295 hph, with an estimated average line speed of 1,099 hph. The 21 non-HIMP comparison establishments had estimated line speeds of 571 to 1,149 hph, with an estimated average line speed of 977 heads per hour.[366]

In addition, FSIS explains that, during the 2022 TLTs, "participating establishments operated at an average line speed of 1,276 hph (with individual establishment maximum line speeds ranging from 1,206 to 1,450) . . . ."[367] The agency offers no explanation for why it did not use these numbers to calculate and propose a specific upper line speed limit. Nor does it suggest that the Proposed Rule is somehow clearer or more understandable *without* a defined upper speed limit than it would be with one. The Proposed Rule relies on generalized concepts—such as "process control" and "discretionary intervention"—without establishing clear, enforceable standards. FSIS has had inconsistent treatment of condemnable conditions, lack of standardized guidance for documentation, and variability in how authority is exercised in practice.[368] Where compliance depends on undefined or inconsistently applied standards, FSIS enforcement becomes arbitrary. In this context, the vagueness of the Proposed Rule's language directly affects whether unsafe or diseased products would be identified, documented, and allowed into commerce.

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363 *Grayned*, 408 U.S. at 108.

364 *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. at 253.

365 Proposed Rule at 7,905.

366 *Id.* at 7,908, fn 18. In a 2014 report, FSIS notes that these speeds "likely vary from the actual line speeds" and that the estimated line speeds "may be above the actual operating line speeds and above the allowed maximum for non-HIMP establishments." 2014 FSIS Evaluation of HIMP*, supra* note 55 at 12 n.3.

367 Proposed Rule at 7,912.

368 Exhibit B

Second, the Proposed Rule is vague because it relies upon on "maintaining process control."[369] FSIS explains that "[a]n establishment is maintaining process control when their food safety system is performing as intended to consistently control hazards."[370] But it is not clear what "as intended" or "consistently" mean. As intended by whom? And how often may hazards occur and still be considered "consistently controlled"? This leaves the definition of "process control" unclear. Indeed, FSIS appears to recognize the ambiguity of that term, because the proposed regulatory language of section 310.26(c) leaves it to the discretion of individual inspectors to determine whether process control is being maintained. The Proposed Rule defers to inspectors to determine whether line speeds need to be slowed "when, *in their judgment*, there is a loss of process control."[371]

However, leaving such a determination to the discretion of inspectors contributes to the vagueness of the Proposed Rule, because there is evidence that inspectors do not exercise their judgment, or enforce the maintenance of process control, in a uniform—or consistently correct—way. For example, when recording violations of the federal humane slaughter regulations,[372] some inspectors appear to issue memorandum of interviews (MOIs) rather than noncompliance records (NRs). According to FSIS's internal directives, inspectors should issue NRs, not MOIs, for regulatory violations.[373] MOIs should be issued to document inspector discussions with plant management and situations that may warrant concern or documentation but no regulatory violation is being cited.[374]

According to an analysis conducted by the Animal Welfare Institute (AWI), in 2022, FSIS inspectors issued 309 MOIs. However, "[a]ccording to AWI's review, a majority of the 309 MOIs were issued for HMSA regulatory violations, including failure to provide water and/or feed, excessive use of force to drive animals, overcrowded pens, mistreatment of nonambulatory animals, maintenance problems resulting in unsanitary or unsafe conditions, and multiple stunning attempts."[375] It is not clear why, in these cases, inspectors issued MOIs rather than NRs.[376] It may

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369 Proposed Rule at 7,905.

370 *Id.* at 7,905 n. 1.

371 *Id.* at 7,926.

372 *See* 9 C.F.R. §§ 313.1–313.50.

373 *See, e.g.*, FSIS Directive 6900.2, Revision 3, Ch. V (Sept. 24, 2020), available at https://www.fsis.usda.gov/policy/fsis-directives/6900.2 (Exhibit 86); *see also* Proposed Rule at 7,910 ("If inspectors observe noncompliance with a regulatory requirement, they are to document the finding on a noncompliance record (NR) to the establishment.").

374 *See* FSIS Directive 6900.2, Revision 3, *supra* note 373.

375 *Humane Slaughter Update, Federal and State Oversight of the Welfare of Livestock at Slaughter*, *supra* note 175, at 11.

376 *See* Exhibit B Comment from Jill Mauer ("Animal handling conditions can also degrade under pressure. USDA says animal welfare will increase under NSIS

have been because they were mistaken in their understanding of what constitutes a regulatory violation and what does not. Or it may have been because they felt that an incident did not constitute a regulatory violation when in reality it did. In any event, the lack of uniformity suggests that the exercise of inspector discretion can result in inconsistent and incorrect enforcement, which reinforces the vague nature of a regulation that relies upon inspector judgment.

This is particularly problematic in the context of ensuring animal welfare as line speeds increase. The Proposed Rule suggests that one of the reasons slaughter plants should be able to operate at higher line speeds is because the TLT plants have been issued relatively few humane handling NRs. FSIS reports that, between the start date of each TLT waiver (between March and August of 2022) and February 2025, inspectors "issued only eleven NRs related to humane handling" in the six participating plants.[377] Thus, FSIS concludes, "establishments operating at increased line speeds are able to meet humane handling requirements."[378] This ignores the relatively small sample size (just six plants processing 18.8% of the share of market hog production).[379] Moreover, the agency does not consider MOIs related to humane handling or slaughter that may have been issued to these plants for regulatory noncompliances during that time. Nor does it assess whether inspectors in those plants were consistently issuing NRs rather than MOIs for humane handling noncompliances.

FSIS emphasizes that none of the NRs issued to the TLT plants "documented any incidents of market hogs slipping or falling, which indicates that no animals at TLT establishments were forced to move faster than normal walking speeds in an effort to maintain increased line speeds."[380] This is misleading, because slipping or falling is not the only indicator of animals being forced to move faster than normal. For instance, some of the NRs issued to TLT plants documented excessive force being used to drive pigs, which could be another indicator of animals being made to walk faster than normal. For example, an inspector in the Clemens Food Group plant recorded the following noncompliance:

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because inspectors will have more offline time to do it. But the reality is we are routinely understaffed. The USDA relies on the Humane Animal Tracking System (HATS) to track various humane handling tasks performed by inspectors and provides data about compliance with humane handling regulations. We are supposed to use HATS to issue non-compliances and take enforcement actions. When NSIS first started, inspection personnel were supposed to record 8 HATS hours a day. Now, plants average under 3 HATS hours daily.").

377 Proposed Rule at 7,911

378 *Id.*

379 *Id.* at 7,914; *see also* U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-775, *supra* note 62, at 15–16 (similarly expressing concern about the small sample size (five participating plants) of FSIS's HIMP pig pilot project).

380 Proposed Rule at 7,911.

> 01/20/2023 at approximately 1415 hours, while preforming a routine HATs category IV and VI task I observed that there were pigs being unloaded and driven into a pen for antemortem inspection, I observed a team member with a rattle paddle hitting hogs excessively. I observed the team member raise his arm with the paddle at shoulder height, with his elbow bent and hit the pigs with force. I observed multiple pigs within this group of swine with marks approximately 6 inch x 8 inch in size that resembled a rattle paddle mark on the North West side of the barn.[381]

Further, NRs are not the only records that document slips and falls. MOIs may also record inspector observations or concerns about such incidents. For example, an inspector at Quality Pork Processors described the following occurrence:

> Around 20:45 on August 7, 2024, when I, Dr. REDACTED was headed to the barn to do ante mortem inspection; I first came upon a couple maintenance trying to pry the [CO_2 stunning] gondola door open with crowbars. I stopped to watch the process standing next to Processing General Foreman REDACTED noticing that the hogs in the gondola were not moving and no sounds of vocalization were heard. The gondola door was finally opened, and I counted 15 hogs came out of the single gondola, the establishment's max is 10. Mr. REDACTED told me he was going to see how that happened. . . . I also told him that I was going to issue a MOI because even though the stunning process worked and the hogs didn't return to consciousness, my concern is possibly causing undue excitement/stress on the hogs; or causing them to slip/trip of fall having so many be put into a single gondola.[382]

The excessive force documented in the NR, and the overcrowding and concerns about undue stress, slipping, and falling recorded in the MOI, are examples that suggest that FSIS "offered an explanation for its decision that runs counter to the evidence before" it.[383]

In sum, by imposing no line speed limits and allowing pig slaughter plants to operate as fast as they choose, the Proposed Rule fails to make clear to an ordinary person what is prohibited. And by leaving it to the judgment of inspectors to determine what constitutes loss of process control, the Proposed Rule invites arbitrary enforcement. The risk of such an outcome is made especially clear in the

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381 FSIS, Science & Data, Data Sets & Visualizations, Inspection Task Data, NR QCF3213012720N-1.

382 FSIS, Science & Data, Data Sets & Visualizations, Inspection Task Data, MOI QMO0113083008G.

383 *State Farm*, 463 U.S. at 43.

context of humane handling, where there is evidence (not considered by the Proposed Rule) that inspectors have mistakenly and arbitrarily issued MOIs when they should have issued NRs. This is not the type of precise regulation or "explicit standard" contemplated by the U.S. Supreme Court or the Constitution, and it is not sufficient to ensure pigs are handled and slaughtered humanely, as required by the HMSA and FMIA. For these reasons, the Proposed Rule is impermissibly vague.

IX. Conclusion

FSIS must abandon the Proposed Rule. To do otherwise would be arbitrary, capricious, and otherwise contrary to law.

Sincerely,

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