

1 BRUCE A. WAGMAN (SBN 159987)  
2 bwagman@rshc-law.com  
3 Riley Safer Holmes & Cancila  
4 456 Montgomery Street, 16th Floor  
5 San Francisco, CA 94104  
6 Telephone: 415.275.8540  
7 Facsimile: 415.275.8551

8 *Attorneys for Plaintiffs The Humane Society*  
9 *of the United States, Animal Outlook,*  
10 *Mercy for Animals, Government Accountability*  
11 *Project, and Marin Humane*

12 MARGARET ROBINSON (D.C. Bar No. 241415) (*pro hac vice*)  
13 mrobinson@humanesociety.org  
14 Telephone: 202.676.2369

15 PETER A. BRANDT (SBN 241287)  
16 pbrandt@humanesociety.org  
17 Telephone: 240.388.5023

18 JONATHAN R. LOVVORN (SBN 187393)  
19 jlovvorn@humanesociety.org  
20 Telephone: 202.515.1854  
21 The Humane Society of the United States  
22 1255 23rd Street NW, Suite 450  
23 Washington, DC 20037  
24 Fax: 202.778.6126

25 *Attorneys for Plaintiff The Humane Society*  
26 *of the United States*

27 UNITED STATES DISTRICT COURT  
28 NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

THE HUMANE SOCIETY OF THE  
UNITED STATES, ANIMAL OUTLOOK,  
MERCY FOR ANIMALS, GOVERNMENT  
ACCOUNTABILITY PROJECT, and  
MARIN HUMANE,

Plaintiffs,

v.

SONNY PERDUE, in his official capacity as  
the Secretary of Agriculture, PAUL

Case No. 20-cv-01395-SBA

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

(Administrative Procedure Act case)

1 KIECKER, in his official capacity as  
2 Administrator, Food Safety and Inspection  
3 Service, UNITED STATES DEPARTMENT  
4 OF AGRICULTURE, and FOOD SAFETY  
5 AND INSPECTION SERVICE,

6 Defendants.

7 **INTRODUCTION**

8 1. In February 2020, Plaintiffs filed the instant lawsuit challenging the U.S.  
9 Department of Agriculture’s (“USDA”) and its Food Safety and Inspection Service’s (“FSIS”)<sup>1</sup>  
10 decision to allow chicken slaughterhouses to increase the rate at which they kill birds. About a  
11 month after Plaintiffs filed their initial Complaint—and in the midst of the COVID-19  
12 pandemic—FSIS dramatically increased the number of chicken slaughterhouses that it permits to  
13 operate at accelerated speeds under the decision Plaintiffs are challenging.

14 2. A 2014 FSIS regulation already allows chickens to be killed at a rate of 140 birds  
15 *each minute*. This means that every minute 140 birds are hastily shackled—by their legs and  
16 upside down—to a fast-moving line where they are supposed to be stunned, then killed, and finally  
17 submerged in scalding water. Because of the rapid speed at which the chickens are processed,  
18 millions (if not billions) of birds suffer extreme cruelty every year and an untold number are  
19 drowned or scalded to death while fully conscious. This high speed also causes many workers to  
20 suffer painful injuries and exposes consumers to food contamination and illness. Additionally, the  
21 slaughter process consumes huge amounts of water and produces vast amounts of wastewater.

22 3. Despite these problems, FSIS—which has long recognized the connection between  
23 animal welfare and food safety—authorized a 25 percent increase in chicken slaughter line speeds,  
24 virtually guaranteeing increases in animal cruelty and public health dangers. Through a February

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26  
27 <sup>1</sup> Defendants USDA and FSIS, along with Defendants Perdue and Kiecker, are collectively  
28 referred to as “FSIS” or “agency.”

1 2018 Constituent Update<sup>2</sup> and a September 2018 Federal Register notice,<sup>3</sup> FSIS made its 2018  
2 Line Speed Increase Decision, which clears the way for dozens of slaughterhouses to kill chickens  
3 at an increased rate of 175 birds per minute (“bpm”), or roughly three birds every second, if they  
4 meet certain minimal requirements. Not only did the agency authorize this increase in speed, the  
5 agency’s decision forces facilities that decide to speed up to operate at least one line faster than  
6 the previous recklessly high limit or risk losing the ability to operate at higher speeds altogether.  
7 Increasing line speeds to 175 bpm will result in more inhumane treatment of chickens, which  
8 FSIS has long recognized seriously threatens food safety. It will also cause harm to the  
9 environment and result in increased risk of injury for slaughterhouse employees.

10 4. During the 2012 to 2014 rulemaking process creating the New Poultry Inspection  
11 System (“NPIS”), an optional federal inspection system for poultry slaughterhouses, FSIS  
12 considered—and ultimately rejected—the exact line speed increase that it has now approved. In  
13 2014, after receiving a prodigious number of comments opposing the agency’s proposed speed  
14 increase, FSIS prohibited most NPIS chicken slaughterhouses from operating above 140 bpm.  
15 The agency, however, provided a narrow exception that allowed no more than 20 slaughterhouses  
16 to operate at speeds of up to 175 bpm. Yet, less than five years later and without engaging in  
17 rulemaking or providing any acceptable justification, the agency issued its 2018 Line Speed  
18 Increase Decision.

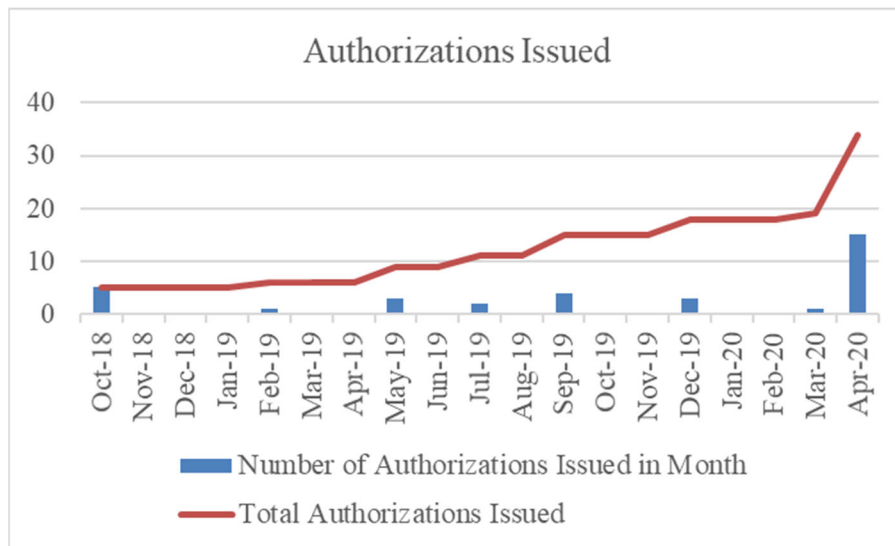
19 5. FSIS currently allows nearly half of NPIS chicken slaughterhouses to operate at  
20 speeds above 140 bpm under the Decision. As the chart below shows, after Plaintiffs filed the  
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23 <sup>2</sup> FSIS, *FSIS’ Criteria for Consideration of Waiver Requests from Young Chicken Slaughter*  
24 *Establishments to Operate at Line Speeds Up to 175 Birds Per Minute*, FSIS Constituent Update,  
Feb. 23, 2018 (hereinafter “Constituent Update”).

25 <sup>3</sup> Petition To Permit Waivers of Maximum Line Speeds for Young Chicken Establishments  
26 Operating Under the New Poultry Inspection System; Criteria for Consideration of Waiver  
27 Requests for Young Chicken Establishments To Operate at Line Speeds of Up to 175 Birds per  
28 Minute, 83 Fed. Reg. 49,048 (Sept. 28, 2018) (hereinafter “2018 Federal Register Line Speed  
Notice”). (The Constituent Update and the 2018 Federal Register Line Speed Notice are  
collectively referred to in this Complaint as “2018 Line Speed Increase Decision” or “Decision.”).

1 instant lawsuit in February 2020, the agency significantly increased the number of  
 2 slaughterhouses permitted to operate at increased speeds.<sup>4</sup>



13 6. The 2018 Line Speed Increase Decision violates the Administrative Procedure Act  
 14 (“APA”), the Poultry Products Inspection Act (“PPIA”), and the National Environmental Policy  
 15 Act (“NEPA”). The agency denied affected communities, workers, consumers, and advocates  
 16 (such as Plaintiffs) the right to participate in the agency’s rulemaking process as required by the  
 17 APA. Additionally, the 2018 Line Speed Increase Decision violates an FSIS regulation setting  
 18 out the requirements that must be met for the agency to waive regulatory provisions. Further,  
 19 without providing adequate explanation, FSIS has deviated from past agency positions, in  
 20 violation of the APA. And increased line speeds permitted, and effectively mandated, under the  
 21 Decision will result in more violations of the PPIA, FSIS’s own regulations, and FSIS policy.  
 22 Finally, despite the 2018 Line Speed Increase Decision’s potential for far-reaching environmental  
 23 impacts, FSIS made its Decision without complying with NEPA’s clear mandate for  
 24 environmental review.

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27 <sup>4</sup> The chart does not include the 20 slaughterhouses that were authorized to operate at increased  
 28 line speeds under the 2014 final rule, though as discussed in Paragraphs 183 and 199, 19 of  
 these facilities received new authorizations to operate at increased speeds under the Decision.



1 and wildlife; and advocates against practices that injure, harass, or otherwise harm animals,  
2 including farm animals. Specifically, with its mission to end suffering for all animals, HSUS  
3 endeavors to raise awareness about farm animal confinement, raising, and slaughter practices  
4 through its farm animal welfare campaign. This campaign actively advocates to regulate such  
5 farm animal practices through efforts with administrative agencies, Congress, state legislatures,  
6 and the courts. It also engages in advocacy to bring awareness to, and combat, the environmental  
7 impact of farm animal production and slaughter practices.

8 12. HSUS's farm animal welfare campaign is strongly committed to educating the  
9 public about pollution and public health threats from industrialized animal agriculture. The  
10 organization's members rely on HSUS for information regarding the impacts of animal agriculture  
11 on human health, the environment, and farm animal welfare. And the organization engages in  
12 efforts to mitigate these impacts on behalf of its members. To these ends, HSUS has invested  
13 considerable organizational resources in public education, research and investigation, and  
14 litigation concerning farm animal welfare, public health, and the environment.

15 13. Because of HSUS's and its members' interest in the impacts the slaughter process  
16 has on animal welfare, human health and safety, and the environment, HSUS has consistently  
17 been involved in FSIS's development of regulations regarding slaughterhouses, including its  
18 regulation of the slaughter line speeds at such facilities. For example, HSUS submitted comments  
19 during FSIS's NPIS rulemaking process, including comments criticizing the agency's original  
20 proposal to increase line speed maximums to 175 bpm. HSUS was able to commit its limited  
21 resources to other priorities in its farm animal advocacy campaign after FSIS rejected chicken  
22 line speed increases in 2014. However, the agency's renewed effort to increase line speeds has  
23 required HSUS to divert resources back to the issue (although the organization has been  
24 significantly limited in its ability to do so because of the procedural deficiencies inherent in FSIS's  
25 2018 Line Speed Increase Decision discussed below).

26 14. HSUS submitted comments opposing an industry-driven petition that asked FSIS  
27 to create a waiver program to allow chicken slaughterhouses to operate without *any* restriction on  
28 line speed. HSUS also submitted comments in response to a 2018 FSIS proposed rule that would,

1 among other things, revoke the maximum line speed at which pig slaughterhouses can operate,  
2 instead allowing such facilities to set their own line speeds.

3 15. HSUS, on its own behalf and on behalf of its members, has a procedural interest  
4 in ensuring that FSIS fully considers the information HSUS submits through its extensive  
5 participation as a party interested in the agency's development of regulations regarding line  
6 speeds at chicken slaughterhouses. HSUS, on its own behalf and on behalf of its members, also  
7 has a procedural interest in ensuring that FSIS provides for sufficient public participation—and  
8 fully considers information submitted in the course of such public participation—before finalizing  
9 and implementing any such regulations. Additionally, HSUS, on its own behalf and on behalf of  
10 its members, has a procedural interest in ensuring that FSIS fully considers the environmental  
11 impacts of its actions, including those relating to farm animal production and slaughter, through  
12 the procedures created by NEPA. HSUS, on its own behalf and on behalf of its members, has a  
13 procedural interest in ensuring that FSIS allows sufficient public participation—and fully  
14 considers information submitted in the course of such public participation—before finalizing  
15 major federal actions significantly affecting the quality of the human environment. These interests  
16 were injured by FSIS's failure to engage in the rulemaking process required by the APA and to  
17 conduct adequate environmental review as required by NEPA before making the 2018 Line Speed  
18 Increase Decision. As a result of FSIS's conduct, HSUS, on behalf of its members, was deprived  
19 of the opportunity to comment on the 2018 Line Speed Increase Decision through both APA and  
20 NEPA procedures.

21 16. Further, HSUS members spend time near slaughterhouses that are permitted and  
22 effectively required to operate at higher line speeds under the 2018 Line Speed Increase Decision  
23 or live near factory farms that supply such slaughterhouses, including members in Batesville,  
24 Arkansas; Imboden, Arkansas; and West Columbia, South Carolina. These members are subject  
25 to aesthetic, health, environmental, and/or other harm resulting from these slaughterhouses'  
26 operations, including from the noxious stench emitted from such slaughterhouses and pollution  
27 from trucks carrying chickens on their way to be killed at such facilities. These harms very likely  
28 have been and will continue to be worsened because of the increased speeds at which such

1 slaughterhouses operate under the 2018 Line Speed Increase Decision, which increases the  
2 number of chickens killed in an hour and allows slaughterhouses to kill more birds than they  
3 otherwise would be able to if they were limited to speeds of 140 bpm.

4 17. Because of FSIS's failure to conduct an environmental review under NEPA, HSUS  
5 members living near slaughterhouses permitted to operate at line speeds of up to 175 bpm under  
6 the 2018 Line Speed Increase Decision or near factory farms that supply such slaughterhouses  
7 have been deprived of information regarding how the Decision will affect the environment in their  
8 communities and nationally.

9 18. Additionally, HSUS members living in or near communities with slaughterhouses  
10 operating at line speeds of up to 175 bpm under the 2018 Line Speed Increase Decision have been  
11 and will continue to be at increased risk of suffering aesthetic and emotional injury resulting from  
12 seeing chickens kept in cruel conditions on the trucks that transport them from the facilities where  
13 they are grown to the slaughterhouses where they will be killed.

14 19. If FSIS had conducted notice-and-comment rulemaking when making its 2018  
15 Line Speed Increase Decision and conducted an environmental review of that decision, then  
16 HSUS's and its members' procedural injuries would be redressed. Had it had an opportunity to  
17 comment, HSUS would have raised the legal, animal welfare, food safety, and environmental  
18 defects inherent in FSIS's 2018 Line Speed Increase Decision on behalf of the organization and  
19 its members. Accordingly, if this Court ordered FSIS to follow proper rulemaking and NEPA  
20 procedures before increasing line speeds at chicken slaughterhouses, it would redress HSUS's  
21 procedural injuries. Moreover, if the agency was required to engage in such procedure, it could  
22 result in different and better agency action in response to issues raised in HSUS's and others'  
23 comments.

24 20. Had FSIS conducted an environmental review under NEPA, HSUS members near  
25 slaughterhouses operating at increased line speeds under the 2018 Line Speed Increase Decision  
26 or near factory farms that supply such slaughterhouses, would have additional information about  
27 the potential environmental impacts of the Decision. If this Court ordered FSIS to follow proper  
28 NEPA procedure before increasing line speeds at chicken slaughterhouses, it could redress this



1 informational injury.

2 21. Further, if this Court ruled in favor of Plaintiffs, chicken slaughterhouses would  
3 no longer be permitted (and effectively required) to operate at higher line speeds and instead  
4 would be required to operate at a maximum line speed of 140 bpm. This would likely redress  
5 HSUS's members aesthetic, health, environmental, emotional, and/or other injuries as described  
6 in Paragraphs 16 and 18.

7 22. Plaintiff ANIMAL OUTLOOK ("AO") (formerly COMPASSION OVER  
8 KILLING) is a nonprofit organization incorporated in Delaware and with its principal place of  
9 business in the District of Columbia. Founded in 1995, AO's organizational mission is to change  
10 the world for animals. AO works to challenge the status quo of animal agribusiness, expose the  
11 truth, deliver justice, revolutionize food systems, and empower others to stand up for animals by  
12 leaving them off of their plates. In furtherance of its mission, AO conducts undercover  
13 investigations of factory farms and industrialized slaughterhouses; advocates against government  
14 policies that encourage or allow cruelty to farm animals; and coordinates public campaigns to  
15 encourage the adoption of vegan diets.

16 23. AO also conducts public education on the realities of industrial animal agriculture  
17 and expends a significant amount of its resources on these education efforts. A consistent core  
18 component of its messaging has been education on the link between environmental degradation  
19 and animal agriculture. For example, AO has produced and used for years a brochure dedicated  
20 entirely to the topic of the environmental impact of animal agribusiness, called "Eating  
21 Sustainably." In addition, AO's main piece of educational literature has a section dedicated to  
22 environmental arguments for diet change. The environmental impact of animal agriculture is of  
23 great importance to AO's mission, and the organization has expended resources to develop and  
24 continue to maintain and distribute this educational material, due to the continued environmental  
25 degradation caused by industrial animal agriculture.

26 24. The 2018 Line Speed Increase Decision will increase the likelihood that animals  
27 are treated inhumanely, directly frustrating AO's mission. In November 2018, AO released an  
28 investigation of Amick Farms, a chicken slaughterhouse on Maryland's Eastern Shore that FSIS

1 allows to operate at line speeds of up to 175 bpm. AO conducted this investigation from May to  
2 August 2018. In its investigation of Amick Farms, AO documented more than 100 incidents of  
3 animal cruelty attributable to the high line speeds permitted by FSIS, including rough hanging,  
4 improper stunning, animals killed or dying otherwise than by slaughter, and ineffective slaughter.  
5 The 2018 Line Speed Increase Decision increases the risk of such cruelty.

6 25. AO intends to continue conducting investigations at chicken slaughterhouses  
7 permitted to operate at higher line speeds. The 2018 Line Speed Increase Decision will increase  
8 the likelihood that AO's investigators are injured while working on high-speed slaughter lines.

9 26. In some instances, workplace injuries caused by the high-speed slaughter lines  
10 permitted by the Decision will compel AO to spend more time and resources on investigations,  
11 instead of being able to focus on other core work of the organization.

12 27. AO suffered direct economic harm because of the increased line speeds at Amick  
13 Farms because the organization was required to compensate its investigator more than anticipated,  
14 specifically because of the investigator's injuries caused by the increased line speeds. Thus, AO  
15 suffered both economic injury, and was forced to divert its resources from other programs,  
16 specifically because of the increased line speeds at Amick Farms.

17 28. The 2018 Line Speed Increase Decision will also increase the length of time and  
18 resources AO spends at high-speed facilities in order to document heightened cruelty attributable  
19 to increased line speeds.

20 29. In fact, AO's resources were diverted, and its mission was frustrated by the  
21 widespread cruelty and violations of good commercial practices at Amick Farms. Those violations  
22 caused AO to expend and divert significant resources from its core mission and goals in order to  
23 remain at the facility for a much longer period of time so that AO could attempt to fully document  
24 the many problems caused by increased line speeds.

25 30. Given this experience, it is clear that AO will suffer direct economic harm if it  
26 undertakes these investigations because of the higher line speeds permitted under the 2018 Line  
27 Speed Increase Decision. Investigations are a priority activity for AO, and increased line speeds  
28 will continue to impact AO by driving up the cost of investigations in facilities permitted to

1 operate at increased speeds under the Decision. AO will suffer additional economic injury because  
2 in some cases, AO will spend resources deploying investigators who will be forced to end  
3 investigations early because of injuries. In other cases, workplace injuries will cause an  
4 investigation to be entirely unsuccessful. These investigators will not be able to accomplish the  
5 work AO pays them to do as often or as easily. In other cases, AO will need to remain at a facility  
6 longer than planned to document increased cruelty. This will cause direct harm to AO's mission  
7 and finances.

8 31. In connection with the economic harm, the increased line speeds permitted and  
9 effectively required by the 2018 Line Increase Speed Decision will also undermine the core  
10 function of the organization by impairing its ability to carry out those investigations.

11 32. As a result of FSIS's 2018 Line Speed Increase Decision, AO also will likely be  
12 forced to divert scarce resources from core work of the organization (including investigations into  
13 other areas of industrialized animal agriculture not including high slaughter line speeds) to  
14 conduct additional investigations of chicken slaughterhouses that FSIS permits to operate at  
15 higher line speeds under the Decision, so that AO can raise public awareness of the cruelty to  
16 which the animals are subjected at these faster speeds. AO already has conducted targeted  
17 investigations of high-speed slaughterhouses (for both chickens and pigs) in support of its  
18 campaign against FSIS's policies. As FSIS permits more chicken slaughterhouses to operate at  
19 faster line speeds, AO will be forced to focus its limited resources on costlier and more resource-  
20 intensive investigations at a significantly larger number of slaughterhouses operating pursuant to  
21 the 2018 Line Speed Increase Decision.

22 33. In fact, one of the reasons AO conducted an investigation at Amick Farms was  
23 because the facility operates at higher line speeds. AO previously investigated a pig slaughter  
24 facility operating at accelerated line speeds and was familiar with the associated animal welfare  
25 issues. Therefore, AO conducted the investigation at Amick Farms, in part, to document the  
26 impacts increased line speed has on animal welfare at chicken slaughterhouses.

27 34. In addition, AO's resources have been diverted from other litigation and  
28 communication activities to AO's efforts to combat the 2018 Line Speed Increase Decision and

1 to educate the public about the Decision, including through correspondence with USDA and social  
2 media efforts aimed at AO's supporters.

3 35. FSIS's 2018 Line Speed Increase Decision will continue to frustrate AO's mission  
4 and require the organization to divert resources as described above. Because increased line speeds  
5 are particularly detrimental to animal welfare, AO will continue to divert and expend resources  
6 to oppose the 2018 Line Speed Increase Decision and to educate the public about the Decision.  
7 AO also intends to continue investigating chicken slaughterhouses operating at higher line speeds  
8 in order to carry out its mission to eradicate cruel and abusive treatment of farmed animals.  
9 Increased slaughter line speeds run directly counter to AO's mission, and so FSIS's Decision will  
10 require diversion of the organization's limited resources to combat the heightened cruelty  
11 associated with this decision. But for the agency's actions described herein, AO would not divert  
12 and expend resources as described above.

13 36. The increased line speeds permitted by FSIS will also cause AO to suffer business  
14 injury and economic harm as described above. But for the agency's actions described herein, AO  
15 would not suffer such injury.

16 37. Were the agency to reverse its 2018 Line Speed Increase Decision, AO's mission  
17 would no longer be frustrated by the additional cruelty at slaughterhouses attributable to faster  
18 line speeds under the Decision; AO would no longer be forced to expend resources to specifically  
19 investigate high-speed chicken slaughterhouses, oppose the 2018 Line Speed Increase Decision,  
20 or educate the public about the Decision; and AO would not suffer business injury and economic  
21 harm resulting from investigators who are not able to accomplish their work as often or as easily.  
22 AO also would face a reduced risk that its resources would be drained by investigator injuries  
23 caused by faster line speeds.

24 38. AO joined Plaintiffs HSUS and Mercy for Animals in submitting comments to  
25 FSIS that opposed a petition by industry representatives to increase line speeds at chicken  
26 slaughterhouses.

27 39. AO has a procedural interest in ensuring that FSIS fully considers the information  
28 AO submits through its participation in the agency's development of regulations regarding line

1 speeds at chicken slaughterhouses. AO also has a procedural interest in ensuring that FSIS  
2 provides for sufficient public participation—and fully considers information submitted in the  
3 course of such public participation—before finalizing and implementing any such regulations.  
4 These interests were injured by FSIS’s failure to engage in the rulemaking process required by  
5 the APA and to conduct adequate environmental review as required by NEPA before issuing the  
6 2018 Line Speed Increase Decision. As a result of FSIS’s conduct, AO was deprived of the  
7 opportunity to comment on the 2018 Line Speed Increase Decision.

8 40. Plaintiff MERCY FOR ANIMALS (“MFA”) is a nonprofit organization  
9 incorporated in Delaware and with its principal place of business in Los Angeles, California.  
10 Founded in 1999, MFA represents millions of supporters throughout the world. MFA’s mission  
11 is to construct a compassionate food system by reducing suffering and ending the exploitation of  
12 animals for food. To achieve these objectives, MFA works with companies to adopt animal  
13 welfare policies and plant-based alternatives to animal products, advocates for government  
14 policies that reduce the suffering of animals used for food, and educates the public regarding farm  
15 animal welfare and the dire environmental consequences of animal agriculture.

16 41. MFA, USDA, and others have documented that the most common incidents of  
17 inhumane treatment at poultry slaughterhouses involve birds being scalded alive, birds suffering  
18 from inadequate shackling, stunning, cutting, or worker handling, and mechanical problems  
19 resulting in injury or death. These humane handling and slaughter issues are associated with fast  
20 line speeds—birds being improperly hung by workers struggling to keep up with the speed of the  
21 line, birds whose carotid arteries are not cut because the birds are moving too fast, and birds going  
22 into the scalding tank while still alive.

23 42. MFA’s investigative exposés have documented these chronic and systemic  
24 problems with poultry slaughter, as well as the devastating environmental impacts of  
25 industrialized animal agriculture. For example, MFA documented inhumane treatment and cruelty  
26 at a facility operated by Tyson Foods, Inc., which was allowed to operate at higher line speeds  
27 during a pilot test program. MFA’s exposé revealed harsh and abusive handling, improper  
28 shackling, birds dying on the conveyor belt due to suffocation or heat exhaustion, and birds

1 missing the kill blade and having their heads ripped off while they were still conscious and able  
2 to feel pain.

3 43. In addition to publishing investigative exposés, MFA educates the public on  
4 poultry slaughter practices and works with companies to adopt practices that reduce the suffering  
5 associated with high-speed slaughter lines. In particular, MFA works with companies to transition  
6 away from the hanging and shackling of live birds during the slaughter process.

7 44. MFA has participated in FSIS's development of regulations regarding slaughter,  
8 including its regulation of line speeds. MFA submitted comments in response to an industry-  
9 driven petition to FSIS, which, had requested a waiver system that would allow poultry slaughter  
10 facilities to operate without any restriction on line speed, petitioned FSIS to include poultry within  
11 the protections of the Humane Methods of Slaughter Act and the Humane Slaughter Provisions  
12 of the Federal Meat Inspection Act, and submitted comments in response to a 2018 FSIS proposed  
13 rule that would revoke the maximum line speeds (and allow unlimited speeds) for facilities that  
14 slaughter pigs. MFA has written to and met with policymakers, while also using blogs, social  
15 media, and traditional news media to educate the public on the dangers posed by increased  
16 slaughter line speeds.

17 45. FSIS's 2018 Line Speed Increase Decision frustrates MFA's mission by  
18 dramatically increasing the number of animals who will experience the cruelty that results from  
19 increased line speeds. Additionally, by enabling facilities to operate at higher line speeds, FSIS  
20 allows companies to continue the inhumane practices of hanging and shackling more live birds—  
21 frustrating MFA's corporate outreach work that is specifically aimed at eliminating live hanging  
22 and shackling. As a result of the 2018 Line Speed Increase Decision, MFA has had to divert its  
23 resources away from its core activities, which include corporate outreach work, public education,  
24 and investigations into other areas of industrialized animal agriculture not including high-speed  
25 slaughter line. In particular, MFA has been forced to divert its resources from core activities such  
26 as investigative exposés relating to other animals or other aspects of farmed animal welfare, in  
27 order to focus investigative work on chicken slaughter facilities operating at heightened line  
28 speeds under the 2018 Line Speed Increase Decision.

1           46.     Were the agency to reverse its 2018 Line Speed Increase Decision, MFA’s mission  
2 would no longer be frustrated by the cruelty and inhumane treatment caused by the faster line  
3 speeds permitted under the Decision. MFA would no longer be forced to expend resources to  
4 investigate facilities that operate at heightened line speeds and educate its supporters and the  
5 public on the effects of heightened line speeds.

6           47.     MFA has a procedural interest in ensuring that FSIS fully considers the  
7 information MFA submits through its participation as a party interested in the agency’s  
8 development of regulations regarding line speeds at poultry slaughter facilities. MFA also has a  
9 procedural interest in ensuring that FSIS provides for sufficient public participation—and fully  
10 considers information submitted in the course of such public participation—before finalizing and  
11 implementing any such regulations. MFA was injured by FSIS’s failure to engage in the  
12 rulemaking process required by the APA and to conduct adequate environmental review as  
13 required by NEPA before making its 2018 Line Speed Increase Decision. As a result of FSIS’s  
14 conduct, MFA, on behalf of its supporters, was deprived of the opportunity to comment on the  
15 2018 Line Speed Increase Decision.

16           48.     Plaintiff GOVERNMENT ACCOUNTABILITY PROJECT (“GAP”) is a  
17 nonprofit organization incorporated in and with its principal place of business in the District of  
18 Columbia. Founded in 1977, GAP’s organizational mission is to promote corporate and  
19 government accountability by protecting whistleblowers and promoting social and political  
20 awareness of the accountability whistleblowers provide to our democratic society. GAP furthers  
21 its goal by focusing its efforts and resources on four separate areas: (1) educational outreach, (2)  
22 legislative initiatives, (3) investigations, and (4) litigation.

23           49.     Food safety has been an area of interest for GAP since the organization’s founding.  
24 In 2009, GAP formed the Food Integrity Campaign (“FIC”) to promote accountability within the  
25 United States’ food system by ensuring the health and welfare of animals, protecting the  
26 environment, treating food workers with respect, and keeping the food we eat safe. In order to  
27 promote accountability within our food system, FIC provides educational outreach to food  
28 industry employees, promotes legislative initiatives, initiates litigation, and provides multimedia

1 resources to promote transparency.

2 50. The 2018 Line Speed Increase Decision injures GAP in two ways: (1) the NPIS  
3 inspection model significantly reduces reliance on federal poultry inspectors, and the 2018 Line  
4 Speed Increase Decision has caused a significant increase in the number of facilities that opt into  
5 NPIS, and (2) the increased line speeds permitted under FSIS's decision undermine the office of  
6 the inspector so as to render federal inspection essentially meaningless.

7 51. The Whistleblower Protection Enhancement Act of 2012 ("WPEA") is the primary  
8 law that gives federal employees the right to report on potentially wrongful conduct free from  
9 reprisal. GAP led a major bipartisan effort to restore whistleblower protection rights to federal  
10 employees; this effort was a major reason the WPEA was created and eventually passed.

11 52. Since WPEA's passage, GAP has invested significant expense and personnel time  
12 in outreach to public sector employees because of the protections federal employees are given  
13 under the WPEA. Under the law, federal employees<sup>5</sup> are given the right to disclose information  
14 internally and externally. Furthermore, they are protected from retaliation if they: file a complaint  
15 or grievance; testify or help another person exercise their rights; cooperate with or disclose  
16 information to the Office of Special Counsel, an agency Inspector General, or Congress; or refuse  
17 to obey an order that would require the individual to violate a law or regulation.

18 53. These protections allow GAP to provide the necessary resources and assistance to  
19 public sector whistleblowers. But because private sector employees do not receive the WPEA  
20 protections that federal employees do, a shift in duties once held by federal employees to private  
21 sector employees would greatly reduce the value of GAP's outreach to public sector employees.

22 54. The 2018 Line Speed Increase Decision will undermine the FIC GAP has created,  
23 frustrating GAP's mission. GAP, through FIC, relies on brave food industry whistleblowers that  
24 come forward with concerns, including federal inspectors in chicken slaughterhouses. However,  
25 as more chicken slaughterhouses opt into NPIS (a requirement to obtain a line speed waiver under  
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27 <sup>5</sup> Law enforcement, military and intelligence agencies, U.S. Postal Service employees,  
28 Government Accountability Office employees, and federal contractors are exempt from the  
WPEA provisions.



1 the 2018 Line Speed Increase Decision), these efforts will be more difficult, and GAP will have  
2 to divert resources accordingly.

3 55. As a result of FSIS's 2018 Line Speed Increase Decision, the number of facilities  
4 participating in NPIS has increased. Indeed, as discussed in Paragraphs 214 and 215, there has  
5 been a spike in chicken slaughterhouses opting into NPIS since FSIS announced its decision to  
6 increase line speeds.

7 56. Marketed as "modern," the NPIS model removes federal inspectors from the front  
8 lines and replaces them with private sector employees who have few or no whistleblower  
9 protections. Because they are not afforded WPEA whistleblower protections, plant employees  
10 will be discouraged from reaching out to GAP to make food safety disclosures, and the current  
11 aid and resources GAP provides to food industry workers will be severely diminished. In order to  
12 compensate for this, GAP will be forced to divert its traditional efforts and instead develop  
13 outreach for private (rather than WPEA-protected federal) whistleblowers, which will put a drain  
14 on other areas of expenditure.

15 57. FIC will be forced to reformulate its program to focus on private industry outreach  
16 instead of federal outreach; FIC was specifically created in 2009 to address the concerns of meat  
17 and poultry inspection practices covered by WPEA. Over the past decade, FIC has helped  
18 hundreds of federal food industry whistleblowers make food safety disclosures that averted public  
19 health emergencies. However, as more facilities adopt the NPIS inspection model because of the  
20 2018 Line Speed Increase Decision, more inspection duties will be shifted to plant employees.  
21 Those plant employees will have few and/or insufficient protections to speak up safely against  
22 waste, fraud, abuse of power, or threats to public health and safety.

23 58. As more plants have converted to NPIS and as many plants receive permission  
24 from FSIS to operate at higher line speeds, FIC has needed to start "plant worker-focused"  
25 outreach and is in the process of revamping existing literature to reach diverse plant worker  
26 audiences (rather than federal inspector audiences).

27 59. Because more plants are converting to NPIS, GAP is also drafting legislation and  
28 lobbying to gain support for whistleblower protections for meat and poultry slaughterhouse and

1 processing plant workers. GAP has started a campaign to urge Congress to provide whistleblower  
2 protections to these workers. GAP has also developed a petition to demand that slaughterhouse  
3 and meat and poultry processing plant workers get whistleblower protections that are comparable  
4 to protections that federal meat and poultry inspectors receive.

5 60. If GAP is successful in winning whistleblower protections for these private sector  
6 employees and legislation is passed, FIC will need to expand its staffing to meet the increased  
7 demands of new private sector clients, including hiring Spanish proficient staff to provide  
8 outreach, training, and legal assistance to Spanish-speaking workers in poultry slaughterhouses  
9 and processing plants.

10 61. As more plants convert to NPIS, GAP will also suffer economic injury by losing  
11 the income it regularly obtains in its WPEA litigation. Under the WPEA, attorney's fees are  
12 awarded for successful whistleblower claims. GAP relies on these anticipated attorney's fees to  
13 determine which litigation to take and structure its future financial projections. Since the WPEA's  
14 enactment, GAP has been awarded more than \$2 million in attorney's fees that allow GAP to  
15 continue its mission to provide reliable and experienced counsel to whistleblowers in the form of  
16 a robust, pro bono litigation team. As more chicken slaughterhouses opt into NPIS, it will force  
17 GAP to shift finances to make up for the absent funds, which will divert resources and  
18 expenditures from other areas that help whistleblowers.

19 62. Additionally, increased slaughter line speeds reduce the ability of the inspectors  
20 working in facilities operating at such speeds to see food industry practices that compromise food  
21 safety (and therefore such inspectors' ability to blow the whistle on food safety issues). FIC has  
22 seven affidavits from current USDA/FSIS employees describing the impossible task of inspecting  
23 nearly three birds per second as "a dizzying blur." The increased line speeds force inspectors to  
24 work within impossible inspection constraints. There will be no way to keep the food industry  
25 honest if the inspectors who are hired to ensure the safety of our food cannot see the food being  
26 processed. GAP's efforts to promote accountability through the food industry will be significantly  
27 undermined when the individuals it relies on are not able to do the job they are hired to perform.  
28 Further, the quality of disclosures of food inspector whistleblowers will decrease, frustrating

1 GAP's mission further and forcing GAP to shift resources to deal with this issue.

2 63. Plaintiff MARIN HUMANE ("Marin Humane") is a 501(c)(3) nonprofit  
3 organization located and with its principal place of business in Novato, California. Marin Humane  
4 was founded more than 100 years ago to protect and advocate for animals. Marin Humane offers  
5 refuge, rehabilitation, and support services to more than 10,000 animals each year.

6 64. Pursuant to Marin County Ordinances §§ 8.04.110 and 8.04.120, Marin Humane  
7 has been appointed as the animal services agency for the county and is authorized to appoint its  
8 employees as Animal Services Officers. All Animal Services Officers are deemed to be "peace  
9 officers" and are authorized to enforce all animal-related laws of the county and the state of  
10 California.

11 65. Marin Humane also has an active anticruelty and advocacy program and routinely  
12 supports legislation directed at reducing cruelty to all animals. Marin Humane also works with  
13 local and state animal control groups, monitoring activity relating to violations of the criminal  
14 laws related to animals. Marin Humane monitors and weighs in on national issues and has a  
15 special focus on Marin County and its residents. Marin Humane investigates farm animal cruelty  
16 complaints, rescues chickens from abusive situations, and monitors chickens moving through  
17 Marin on their way to slaughter.

18 66. Marin Humane was involved in an extensive investigation of cruelty to broiler  
19 chickens, who fell off a truck in Marin, on the way to slaughter. Marin Humane worked with  
20 Plaintiff HSUS and other animal welfare groups in this investigation. Marin Humane also  
21 increased its monitoring of trucks on the way to slaughter that traveled through Marin County,  
22 and considered bringing animal cruelty claims against the transporters and slaughterhouses that  
23 received the chickens.

24 67. Marin Humane has actively supported the passage of state laws that provide greater  
25 protection for all farm animals. Marin Humane promotes and supports a mission of anticruelty for  
26 all animals, and for that reason opposes the increased line speeds permitted under the 2018 Line  
27 Speed Increase Decision.

28 68. Marin Humane has been actively involved in monitoring and investigations of

1 local agricultural businesses, including local custom slaughter facilities.

2 69. Marin Humane runs an annual Animal Law Enforcement Academy, an 80-hour,  
3 two-week program that teaches students about all aspects of legal issues raised by cruelty to  
4 animals (including farm animals) and livestock husbandry. The Academy's teachers also discuss  
5 issues surrounding slaughter. Attendees of the Academy include animal control officers, animal  
6 services officers, police officers, humane officers, and other students in the application of state  
7 statutes addressing animal cruelty issues.

8 70. Marin Humane has had an active humane education program throughout its  
9 history, and formulates position statements on the treatment of animals, including chickens, in  
10 commercial production.

11 71. Because FSIS's 2018 Line Speed Increase Decision will allow more chicken  
12 slaughterhouses to operate at accelerated line speeds, Marin Humane will need to divert its  
13 resources dedicated to its core programs in order to evaluate and investigate the possibility that  
14 chickens who will be subject to increased line speeds will be transported through Marin County.

15 72. The ability of Marin Humane to engage in educational, legislative, and advocacy  
16 activities with respect to chicken welfare is injured by FSIS's 2018 Line Speed Increase Decision  
17 because California slaughterhouses will be entitled to seek FSIS's permission to operate at  
18 heightened line speeds—speeds that will increase the number of incidents of animal cruelty  
19 throughout the state. Therefore, Marin Humane will respond by increasing its monitoring of trucks  
20 loaded with chickens that travel through the County, which is a major entry point to northern cities  
21 that may have slaughterhouses.

22 73. If Marin Humane had been given the opportunity to comment on the changes in  
23 position undertaken by FSIS with respect to chicken slaughterhouse line speeds, it would have  
24 joined in with other groups in identifying the problems with increased line speeds, such as those  
25 outlined in this Complaint.

26 74. Because of FSIS's violation of the APA, Marin Humane has suffered an injury to  
27 its statutory right to comment on and oppose federal action which will lead to increased animal  
28 cruelty.



1 description of the subjects and issues involved.” *Id.* § 553(b). After giving such notice, the agency  
2 is required to give interested parties an opportunity to participate in the rulemaking “through  
3 submission of written data, views, or arguments.” *Id.* § 553(c). The agency must then consider  
4 and respond to these comments before promulgating a final rule. *Id.*

5 81. The PPIA further requires that when applying the provisions of 5 U.S.C. § 553(c)  
6 to proposed rulemaking conducted under the PPIA, “an opportunity for the oral presentation of  
7 views shall be accorded all interested persons.” 21 U.S.C. § 463(c).

8 82. The APA defines “rule” as “the whole or a part of an agency statement of general  
9 or particular applicability and future effect designed to implement, interpret, or prescribe law or  
10 policy or describing the organization, procedure, or practice requirements of an agency.” 5 U.S.C.  
11 § 551(4).

12 83. The APA provides for judicial review of final agency actions for persons adversely  
13 affected or aggrieved by the agency action. *Id.* § 702. Under the APA, a “reviewing court shall .  
14 . . . hold unlawful and set aside agency action” found to be “arbitrary, capricious, an abuse of  
15 discretion, or otherwise not in accordance with law,” “in excess of statutory jurisdiction, authority,  
16 or limitations, or short of statutory right,” or “without observance or procedure required by law.”  
17 *Id.* § 706(2). The APA also gives courts the power to “compel agency action unlawfully withheld  
18 or unreasonably delayed.” *Id.* § 706(1).

19 84. If an agency changes a policy or legal interpretation from a previously held  
20 position, the new policy or interpretation is arbitrary and capricious unless the agency provides a  
21 reasoned explanation for why its prior policies and standards are being deliberately changed. *See*  
22 *Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).  
23 An agency action is also arbitrary and capricious if “the agency has relied on factors which  
24 Congress has not intended it to consider, entirely failed to consider an important aspect of the  
25 problem, offered an explanation for its decision that runs counter to the evidence before the  
26 agency, or is so implausible that it could not be ascribed to a difference in view or the product of  
27 agency expertise.” *Id.* at 43.  
28

## 1           **II.     Poultry Products Inspection Act**

2           85.     The purpose of the PPIA, 21 U.S.C. § 451 *et seq.*, is to protect “the health and  
3 welfare of consumers . . . by assuring that poultry products distributed to them are wholesome,  
4 not adulterated, and properly marked, labeled, and packaged.” 21 U.S.C. § 451.

5           86.     The PPIA mandates that the “inspection [and regulation] of poultry and poultry  
6 products” is necessary to prevent the sale of “poultry products which are adulterated or  
7 misbranded.” *Id.* § 452. A poultry product is “adulterated” if, among other things: (1) “it bears or  
8 contains any poisonous or deleterious substance which may render it injurious to health;” (2) “it  
9 consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other  
10 reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;” or (3) “it is, in  
11 whole or in part, the product of any poultry which has died otherwise than by slaughter.” *Id.* §  
12 453(g).

13           87.     To prevent commerce in adulterated food, the PPIA requires FSIS inspectors to  
14 inspect “the carcass of each bird processed.” *Id.* § 455(b). “Inspection” means that the inspector  
15 gives a “critical determination whether [a carcass or part of a carcass] is adulterated or  
16 unadulterated.” *Am. Fed’n of Gov’t Employees v. Glickman*, 215 F.3d 7, 11 (D.C. Cir. 2000).  
17 Upon such inspection, “[a]ll poultry carcasses and parts thereof and other poultry products found  
18 to be adulterated shall be condemned and shall . . . be destroyed for human food purposes under  
19 the supervision of an inspector.” 21 U.S.C. § 455(c).

20           88.     Under the PPIA, “[c]arcasses of poultry showing evidence of having died from  
21 causes other than slaughter” must be condemned. 9 C.F.R. § 381.90. *See also* 21 U.S.C. §§  
22 453(g)(5); 455(c). Further, whole carcasses, or parts thereof, must be condemned if they are badly  
23 bruised. 9 C.F.R. § 381.89. Additionally, poultry must be “slaughtered in accordance with good  
24 commercial practices in a manner that will result in thorough bleeding of the carcasses and ensure  
25 that breathing has stopped prior to scalding.” *Id.* § 381.65(b). FSIS has further explained that  
26 under the PPIA and FSIS’s regulations “live poultry *must* be handled in a manner that is consistent  
27 with good commercial practices, which means *they should be treated humanely.*” *Treatment of*  
28 *Live Poultry Before Slaughter*, 70 Fed. Reg. 56,624, 56,624 (Sept. 28, 2005) (emphasis added).

1 Birds who die prior to slaughter due to mishandling and birds who are not killed in accordance  
2 with good commercial practices are considered adulterated and must be condemned. *Id.* at 56,625;  
3 accord FSIS, *Directive 6110.1, Verification of Poultry Good Commercial Practices 2* (2018). See  
4 also 21 U.S.C. § 455(c) (requiring adulterated poultry carcasses, poultry parts, and poultry  
5 products to be condemned).

6 89. Since at least 2005, FSIS has recognized the relationship between inhumane  
7 handling and adulterated poultry products. Specifically, the agency explained that “under the  
8 PPIA, poultry products are more likely to be adulterated if . . . they are produced from birds that  
9 have not been treated humanely, because such birds are more likely to be bruised or to die other  
10 than by slaughter.” *Treatment of Live Poultry Before Slaughter*, 70 Fed. Reg. at 56,624. FSIS also  
11 explained it “considers humane methods of handling animals and humane slaughter operations a  
12 high priority and takes seriously any violations of applicable laws and regulations.” *Id.*

13 90. An FSIS directive regarding poultry slaughter highlights the connection between  
14 food safety and humane handling: “In poultry operations, following [good commercial practices],  
15 including the employment of humane methods of handling and slaughtering, increases the  
16 likelihood of producing unadulterated product. . . . In general, poultry should be handled in a  
17 manner that prevents needless injury and suffering in order to produce a commercially marketable  
18 product.” FSIS, *Directive 6110.1, supra*, at 1.

19 91. Under current FSIS regulations, as amended in 2014, slaughterhouses opting into  
20 NPIS are generally subject to a maximum line speed of 140 bpm. 9 C.F.R. § 381.69(a). The final  
21 rule creating NPIS allowed a maximum of 20 facilities to operate at speeds of up to 175 bpm. See  
22 *Modernization of Poultry Slaughter Inspection*, 79 Fed. Reg. 49,566, 49,583 (Aug. 21, 2014)  
23 [hereinafter “2014 NPIS Final Rule”].

24 92. The 2018 Line Speed Increase Decision, challenged in this action, allows an  
25 unlimited number of NPIS chicken slaughterhouses to operate at a maximum speed of 175 bpm  
26 as long as they meet certain minimal requirements.

27 93. An FSIS regulation mandates that slaughterhouses operating under the line speeds  
28 authorized by the NPIS comply with all applicable requirements of law. 9 C.F.R. § 381.69(d).



1 These requirements include 29 U.S.C. § 654(a), which requires employers to provide work and  
2 workplaces “free from recognized hazards that are causing or are likely to cause death or serious  
3 physical harm to [their] employees.”

4 94. FSIS regulations require all regulated poultry slaughter facilities to monitor their  
5 ability to maintain process control, 9 C.F.R. § 381.65(g), and slaughterhouses are “required to  
6 maintain process control.” 2018 Federal Register Line Speed Notice, 83 Fed. Reg. at 49,058.

7 95. Waivers of any PPIA regulations, including the maximum line speed regulation,  
8 are only authorized in limited circumstances, and only when each of the following conditions are  
9 met: (1) the waiver is for specific classes of cases; (2) the waiver is for limited periods of time;  
10 (3) the waiver is necessary to address a public health emergency, or “to permit experimentation  
11 so that new procedures, equipment, and processing techniques may be tested to facilitate definite  
12 improvements.” 9 C.F.R. § 381.3(b). Additionally, granting the waiver cannot conflict with the  
13 purposes or provisions of the PPIA. *Id.*

### 14 **III. National Environmental Policy Act**

15 96. NEPA, 42 U.S.C. § 4331 *et seq.*, is the United States’ “national charter for the  
16 protection of the environment.” 40 C.F.R. § 1500.1. It requires agencies to carefully examine the  
17 environmental consequences of their actions. *See* 42 U.S.C. § 4332(2)(C). The statute requires  
18 agencies to take a “hard look” at environmental consequences *before* approving any major federal  
19 action. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976).

20 97. NEPA and its implementing regulations also require public participation. *See* 42  
21 U.S.C. § 4332(2)(C); 40 C.F.R. § 1500.1(b). An agency must make high quality information  
22 available to the public before an agency makes its decision and takes action. 40 C.F.R. §  
23 1500.1(b). Accurate scientific analysis and public scrutiny are essential to implementing NEPA.  
24 *Id.*

25 98. Major federal actions “include[] actions with effects that may be major and which  
26 are potentially subject to Federal control and responsibility.” *Id.* § 1508.18. Federal actions tend  
27 to fall within certain categories, including “[a]doption of official policy, such as rules, regulations,  
28 and interpretations adopted pursuant to the Administrative Procedure Act,” “formal documents

1 establishing an agency’s policies which will result in or substantially alter agency programs,” and  
2 “[a]doption of programs, such as a group of concerted actions to implement a specific policy or  
3 plan.” *Id.* § 1508.18(b).

4 99. NEPA establishes three categories for evaluating agency actions. First, agencies  
5 must prepare an Environmental Impact Statement (“EIS”) for “major Federal actions significantly  
6 affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. §  
7 1501.4(a)(1).

8 100. Second, agencies may “categorically exclude” from NEPA review classes of  
9 actions that “do not individually or cumulatively have a significant effect on the human  
10 environment.” 40 C.F.R. §§ 1508.4, 1501.4(a)(2). But, agencies must “provide for extraordinary  
11 circumstances in which a normally excluded action may have a significant environmental effect.”  
12 *Id.* § 1508.4.

13 101. Third, agencies must prepare an Environmental Assessment (“EA”) for proposed  
14 actions that do not fit into either of the first two categories. *Id.* §§ 1501.4(b), 1508.9. If the EA  
15 indicates that the proposed action “will not have a significant effect on the human environment,”  
16 then the agency can issue a Finding of No Significant Impact (“FONSI”). *Id.* §§ 1508.13,  
17 1501.4(e). If, however, the EA indicates that the proposed action may significantly affect the  
18 quality of the human environment, the agency must then prepare an EIS. *Id.* § 1501.4(c); *see also*  
19 42 U.S.C. § 4332(2)(C).

20 102. The Council on Environmental Quality (“CEQ”) has promulgated regulations  
21 implementing NEPA that are “binding on all Federal agencies.” 40 C.F.R. § 1500.3. These  
22 regulations instruct that whether an action will have a “significant” impact on the environment—  
23 thus warranting the preparation of an EIS—requires considerations of “context” (effects at the  
24 national, regional, and local levels) and “intensity” (the severity of the impact). *Id.* § 1508.27. The  
25 agency cannot avoid significance by dividing a proposed project into small component parts. *Id.*  
26 § 1508.27(b)(7).

27 103. Under NEPA, an agency must “study, develop, and describe appropriate  
28 alternatives to recommended courses of action in any proposal which involves unresolved

1 conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). CEQ’s  
2 regulations require that agencies “[r]igorously explore and objectively evaluate all reasonable  
3 alternatives” to the proposed action when preparing an EIS. 40 C.F.R. § 1502.14(a); *see also* 42  
4 U.S.C. § 4332(2)(C)(iii). The alternatives section is “the heart” of the EIS. 40 C.F.R. § 1502.14.  
5 CEQ also requires that EAs weigh available alternatives. *See id.* § 1508.9(b).

6 104. USDA regulations categorically exclude all actions of certain agencies, including  
7 FSIS, from preparation of an EA or EIS, but this exemption does not apply if the agency head  
8 determines an action may have a significant environmental effect. 7 C.F.R. § 1b.4.

## 9 **FACTUAL BACKGROUND**

### 10 **I. Summary**

11 105. Even when operating at a maximum line speed of 140 bpm, chicken  
12 slaughterhouses cause serious harm to animals, the environment, and workers. Allowing and  
13 strongly encouraging such slaughterhouses to operate at higher speeds will exacerbate these  
14 problems.

15 106. Despite the agency’s acknowledgment that animal welfare and worker safety risks  
16 already exist in chicken slaughterhouses, FSIS’s 2018 Line Speed Increase Decision—challenged  
17 in this Complaint—entitles chicken slaughterhouses operating pursuant to the New Poultry  
18 Inspection System (“NPIS”) to operate at speeds of up to 175 bpm so long as they meet certain  
19 minimal requirements. (NPIS is an optional federal inspection system for poultry  
20 slaughterhouses.)

21 107. FSIS issued the 2018 Line Speed Increase Decision even though the agency  
22 considered, but ultimately rejected, increasing chicken slaughter line speed maximums to 175  
23 bpm during the 2012 to 2014 rulemaking process that created the NPIS. After receiving numerous  
24 comments criticizing its proposal, the agency instead set the maximum line speed for NPIS  
25 chicken slaughterhouses at 140 bpm in a 2014 final rule. The final rule provided a narrow  
26 exception allowing no more than 20 chicken slaughter facilities to operate at speeds of up to 175  
27 bpm.

28 108. The 2018 Line Speed Increase Decision amends that 2014 final rule by effectively

1 creating a new line speed maximum. Nearly half of NPIS chicken slaughterhouses are now  
2 permitted to operate above 140 bpm.

3 109. Less than two months after Plaintiffs filed their initial Complaint in this matter,  
4 FSIS authorized 16 additional slaughterhouses to operate at faster speeds. In April 2020—in the  
5 middle of the national COVID-19 pandemic and despite the threat to worker and food safety—  
6 FSIS issued the highest number of authorizations ever made in a single month.

7 110. These recent authorizations to operate faster, along with the other authorizations  
8 issued under the Decision, will amplify the detrimental impacts high line speeds have on animal  
9 welfare, food safety, workers, and the environment as outlined below.

10 111. And, because the Decision sets no limit on the number of slaughterhouses that can  
11 operate at speeds of up to 175 bpm, it clears the way for dozens more chicken slaughterhouses to  
12 operate at that speed.

## 13 **II. Detrimental Impacts of High Slaughter Line Speeds**

### 14 **A. *High Line Speeds Threaten Animal Welfare and Food Safety***

15 112. Animal welfare is significantly compromised as slaughter line speeds increase.  
16 Yet, through its 2018 Line Speed Increase Decision, FSIS is allowing facilities to increase their  
17 line speeds even though the agency has long understood that the inhumane treatment of birds at  
18 slaughterhouses undermines food safety.

#### 19 **1. Inhumane Treatment of Chickens During Slaughter**

20 113. Roughly nine billion chickens are killed for their meat in the United States each  
21 year. These birds are often called “broilers” or “broiler chickens.” Most broiler chickens are raised  
22 on “factory farms,” where chickens—who have been bred to grow at an unnaturally fast rate—  
23 are crowded into barren warehouses.

24 114. These chickens reach slaughter weight approximately six weeks after they hatch.  
25 They are then violently caught by the legs and shoved into tightly packed cages to be transported  
26 to slaughter. Their journey is fundamentally cruel. The crowded birds suffer from bruises and  
27 injuries inflicted during catching, food and water deprivation, and potential temperature extremes.  
28 Birds frequently die on their way to slaughter.

1           115. The birds who survive transport are then slaughtered while hanging upside down,  
2 shackled by their legs, on a constantly moving conveyor line—where the goal is killing the  
3 maximum number of animals in the shortest amount of time, with little regard for animal welfare.  
4 This causes a regular pattern of innumerable cruelties to the birds.

5           116. When the transport trucks carrying chickens arrive at slaughter facilities, cages are  
6 moved from the trucks to a slaughter line where workers are supposed to segregate the birds who  
7 have died during transport from live birds. Workers grab live, and fully conscious, chickens by  
8 their legs and shackle them upside down on the overhead line for conveyance through the facility.  
9 High line speeds and production demands result in the inhumane handling of birds as they are  
10 hung on the line, including birds being roughly handled by workers trying to keep up with the  
11 high speed of the line and birds being improperly shackled by one leg.

12           117. Once shackled, the mechanized line is supposed to drag each chicken through an  
13 electrified vat of water called a “stun bath.” If birds actually effectively enter the bath, it is  
14 supposed to provide an electrical shock that will stun and immobilize the animals before they are  
15 killed. Effective stunning minimizes the distress and suffering chickens experience during the  
16 slaughter process because it renders the animals unconscious for the duration of that process.

17           118. However, there are numerous problems with the stunning process in the United  
18 States, resulting in chickens who are not actually or adequately stunned. So rather than being  
19 unconscious during the subsequent killing and processing phases, many birds are fully conscious  
20 for some, or all, of the remaining slaughter process.

21           119. After stunning is attempted, chickens’ carotid arteries are supposed to be cut by an  
22 automated “killing blade.” Effective carotid cutting is required to ensure the birds die from  
23 exsanguination as required by FSIS regulations. *See* 9 C.F.R. § 381.65(b).

24           120. However, many birds remain fully conscious and mobile when they reach the  
25 automated kill knife and are able to avoid the blade. Because birds escape the kill knife frequently,  
26 chicken slaughterhouses employ a “back-up killer”—who is watching as many as 140 birds per  
27 minute pass by, and who stands at the point on the line where the chickens emerge after the kill  
28 blade and, if possible, identifies live birds and manually cuts the necks of birds who have not been

1 properly killed.

2 121. After the kill blade phase of slaughter, chickens proceed down the line to the  
3 “scalding,” a tank of hot water intended solely for use on dead, exsanguinated birds. (The scalding  
4 water loosens feathers from carcasses.) Because chickens regularly miss the electrified water of  
5 the stun bath or are not sufficiently stunned, and because those birds may also miss the killing  
6 blade, many chickens enter the scald tank fully conscious and die in scalding hot water.

7 122. The agency is aware that chickens regularly enter the scalding while still alive, and  
8 then die in scalding water. As FSIS explains, “[t]he evidence of bright red cadaver birds means  
9 that the birds . . . were breathing prior to entering the scald vat.” FSIS, *Poultry Postmortem*  
10 *Inspection* 6 (2014). The term “red birds” is used for birds who die in this manner.

11 123. The manner in which these “red birds” die violates FSIS regulations, which require  
12 that slaughter “result in thorough bleeding of the carcasses and ensure that breathing has stopped  
13 prior to scalding.” *See* 9 C.F.R. § 381.65(b).

## 14 2. Adverse Impacts of Higher Slaughter Line Speeds on Chicken Welfare

15 124. The animal welfare problems in the slaughter process are further exacerbated by  
16 the high speed of the mechanized slaughter line. And, as FSIS has long recognized, these problems  
17 threaten food safety: “[P]oultry products are more likely to be adulterated if, among other  
18 circumstances, they are produced from birds that have not been treated humanely, because such  
19 birds are more likely to be bruised or to die other than by slaughter.” *Treatment of Live Poultry*  
20 *Before Slaughter*, 70 Fed. Reg. at 56,624.

21 125. FSIS recently increased slaughter line speed maximums through its 2018 Line  
22 Speed Increase Decision, allowing chicken slaughterhouses to operate their lines at speeds of up  
23 to 175 bpm if they meet certain minimal requirements.

24 126. Undercover investigations and FSIS’s own records demonstrate that many of the  
25 animal welfare problems identified in this Complaint were observed in poultry slaughterhouses  
26 before FSIS issued its 2018 Line Speed Increase Decision.

27 127. Allowing more chicken slaughterhouses to operate their lines at speeds of up to  
28 175 bpm will exacerbate the inhumane nature of chicken slaughter and will increase the risk of

1 loss of process control.

2 128. Faster shackling at this increased speed may lead to less care in the handling of  
3 live birds and increased instances of bruising or broken and dislocated bones. Accelerated line  
4 speeds may also increase the risk that birds are improperly stunned, which could result in their  
5 throats not being properly cut. Higher line speeds also impede opportunities to observe and correct  
6 instances where birds miss the kill blade and continue to the scalding still alive.

7 129. Increased line speeds will make it more difficult for inspectors to examine the  
8 carcass of each bird as required by the PPIA. This problem will be made worse because the NPIS  
9 model, in which slaughter facilities operating at higher speeds must participate, allows  
10 slaughterhouses to reduce the number of FSIS inspectors along the slaughter line.

11 130. Many animal welfare and food safety risks have been documented in at least one  
12 facility allowed to operate at speeds of up to 175 bpm. In 2018, Plaintiff Animal Outlook's ("AO")  
13 undercover investigator worked at Amick Farms in Hurlock, Maryland. The facility is permitted  
14 to operate at speeds of up to 175 bpm, and the investigator documented numerous examples of  
15 inhumane handling of chickens.

16 131. For example, during the live-hanging process, the investigator documented  
17 frequent physical mistreatment of birds, including workers improperly grasping chickens by their  
18 wings or heads and injuring chickens by unnecessarily pressing them against the moving conveyor  
19 belt.

20 132. The investigator also witnessed the hanging of dead birds in shackles (meaning  
21 they would continue to be processed for human consumption). On one occasion, a supervisor  
22 instructed workers to hang a group of chickens of whom approximately 95 percent were dead.  
23 These birds had visible injuries, such as blood spots, dangling wings, and broken legs, and were  
24 stiff to the touch when hung.

25 133. In addition, the investigator frequently saw live birds hung on the line even though  
26 they appeared adulterated in various ways (such as having green skin that leaked pus or by being  
27 coated with a black, oily substance that resembled tar).

28 134. The investigator documented consistent, daily line breakdowns at Amick Farms.

1 During these breakdowns, the line was stopped for lengths of time ranging from several minutes  
2 to more than an hour. The investigator documented chickens who were trapped in the stun bath  
3 during this time. Their heads remained underwater for the entirety of the breakdown, and they  
4 undoubtedly either drowned or died from electrocution in the stun bath while the slaughter line  
5 stalled. During a comparable investigation at a facility operating at line speeds of up to 140 bpm,  
6 AO investigators have not observed these sorts of breakdowns, indicating these breakdowns may  
7 have been the result of Amick Farms' operation at higher line speeds.

8 135. The investigator also documented "red birds," an indication that these birds entered  
9 the vat of scalding hot water while alive.

10 136. As evidenced by Plaintiff AO's investigation, more chickens at facilities operating  
11 at speeds of up to 175 bpm will be subjected to mishandling as they are shackled on the slaughter  
12 line by workers attempting to keep up with the faster line speed. Further, more birds will be  
13 drowned alive in scalding hot water after they are ineffectively stunned and/or miss the kill blade  
14 and are not caught by backup personnel. And as mechanical problems shut down overwhelmed  
15 slaughter lines, birds may drown in the stun bath as well.

16 137. There are alternatives to FSIS's 2018 Line Speed Increase Decision of which the  
17 agency is aware. For example, FSIS could have conditioned line speed increases on a  
18 slaughterhouse's adoption of multi-stage controlled atmospheric stunning or killing. In this  
19 system, birds are stunned or killed in an enclosed chamber before they are shackled, so adoption  
20 of this system could have several advantages over the electrical stun bath system and could help  
21 to maintain process control.

### 22 ***B. High Line Speeds Jeopardize Worker Safety***

23 138. Workers in the poultry industry face numerous hazards, including high noise  
24 levels, dangerous equipment, the threat of musculoskeletal disorders, and toxic chemicals.

25 139. A 2016 Government Accountability Office report found that injury rates in the  
26 meat and poultry slaughter industries remain higher than the rates for the manufacturing industry  
27 overall. The incidence rate of occupational illnesses for the poultry industry is more than six times  
28



1 the average for all U.S. industries. And the serious injury rate for poultry workers—injuries that  
2 require time off or restricted activity to recuperate—is almost double that of private industry.

3 140. Musculoskeletal disorders are common among poultry processing workers. For  
4 example, the incidence rate of carpal tunnel syndrome among poultry processing workers was  
5 more than seven times the national average in 2013.

6 141. Poultry workers are also at high risk of very serious injuries, such as amputations.

7 142. These worker safety problems are so well documented that, under the PPIA, FSIS  
8 has promulgated regulations aimed at protecting workers in poultry slaughterhouses (though these  
9 regulations have failed dismally).

10 143. The problems just described have occurred in large numbers at the already too-  
11 high line speed maximum of 140 bpm. There will be a direct correlation between an increase in  
12 line speeds and an increase in these types of injuries.

13 144. There have been reports of at least two recent employee deaths at chicken  
14 slaughterhouses operating at increased line speeds.

15 145. The 2018 Line Speed Increase Decision thus further threatens worker safety  
16 because workers in slaughterhouses operating at faster line speeds will be at increased risk of  
17 injury as they are forced to keep up with these faster slaughter lines.

18 146. Plaintiff AO's undercover investigator experienced injuries and health problems  
19 when he worked at Amick Farms in Hurlock, Maryland (a facility allowed to operate at line speeds  
20 of up to 175 bpm). The investigator worked on the slaughter line, hanging birds in shackles on  
21 the mechanized conveyor line.

22 147. Within a week of starting at Amick Farms, the investigator suffered swollen  
23 knuckles so severe that he could not make a fist. He was told by his supervisor and Amick Farms'  
24 medical staff that his pain and injuries were routine and that his body would adjust. He continued  
25 having these issues and was ultimately forced to seek outside medical care and to take several  
26 days off to recover from his injuries. When the investigator took this time off, Amick Farms  
27 attempted to fire him. He was not allowed to return to work unless he signed a document stating  
28 that his injury was not related to his work at Amick Farms. Several months later, he continued to

1 experience pain in his hands.

2 148. The investigator also became ill from inhaling ammonia, emitted from the  
3 chickens' waste, at the plant. The investigator experienced eye, nose, and throat irritation that  
4 intensified both during the course of the workday and during the course of his employment at the  
5 plant. Initially, the investigator did not notice residual effects from ammonia exposure, but by his  
6 third week of employment at the slaughterhouse, he developed a regular cough and, at night,  
7 experienced cold sweats and fevers (one as high as 104.6 degrees).

8 149. Accelerated line speeds will increase and intensify the concentration of ammonia  
9 to which poultry line workers are exposed. More birds are being processed on the line in the same  
10 amount of time, which means more urine and feces and more waste byproducts, including  
11 ammonia. Further, increased line speeds lead to more rough handling of birds, likely resulting in  
12 even more waste being released both because the birds experience extreme stress, and because  
13 they are squeezed more as they are shackled to the slaughter line.

14 150. AO's investigator also developed rashes on his skin; they typically formed on areas  
15 of skin that had the most exposure to the slaughterhouse environment. By the time the investigator  
16 completed his investigation, he had rashes on his face, arms, wrists, and neck. He observed  
17 numerous other employees who had similar rashes.

18 151. Faster line speeds can also increase workers' risk of exposure to infectious  
19 diseases. The United Food and Commercial Workers International Union explains that  
20 authorizations to operate at speeds above 140 bpm "guarantee that workers are more crowded  
21 along a meatpacking line and more workers are put at risk of either catching or spreading the virus  
22 [that causes COVID-19]." Letter from Anthony Perrone, Int'l President, United Food &  
23 Commercial Workers Int'l Union, to Sonny Perdue, Secretary, USDA (Apr. 20, 2020).

24 152. During the COVID-19 pandemic, slaughterhouses and meat processing plants  
25 were (and at present remain) areas of heightened risk of exposure to and spread of the virus.

26 153. On May 1, 2020, the Centers for Disease Control and Prevention ("CDC") issued  
27 a report about the spread of COVID-19 among meat and poultry processing workers. The CDC  
28 recommended that meat and poultry processing facilities "reduce [the] rate of animal processing"

1 to allow workers to maintain physical distancing on the production line. CDC, *COVID-19 Among*  
2 *Workers in Meat and Poultry Processing Facilities—19 States, April 2020*, 69 *Morbidity &*  
3 *Mortality Wkly. Rep.* 557, 559 (2020).

#### 4 **C. High Line Speeds Harm the Environment**

5 154. The production of chickens causes environmental harm. The raising of chickens  
6 used for food produces waste, consumes water, and requires the use of fossil fuels to transport  
7 animals from the confined feeding operations where they are raised to the slaughterhouses where  
8 they are killed.

9 155. The slaughter of chickens also causes environmental harm. Studies from the U.S.  
10 Environmental Protection Agency (“EPA”) have detected pollutants in the untreated wastewater  
11 of poultry processing facilities “at treatable levels in at least 10 percent of all the [untreated]  
12 wastewater samples.” EPA, *EPA-821-R-04-011, Technical Development Document for the Final*  
13 *Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source*  
14 *Category (40 C.F.R. 432) 7-17 to -19 (2004)* (“treatable levels” were set “at five times the baseline  
15 value”).

16 156. Additionally, an EPA study of 88 chicken processing facilities found a mean value  
17 of more than nine gallons of wastewater generated per bird—more wastewater per live-weight  
18 pound than other types of meat processing. *Id.* at 6-7 to -8.

19 157. The EPA recognizes that poultry slaughter wastewater may contain “pathogens of  
20 enteric origin, such as *Salmonella sp.* and *Campylobacter jejuni*, gastrointestinal parasites, and  
21 pathogenic enteric viruses.” *Id.* at 6-11.

22 158. The wastewater from chicken slaughterhouses is frequently discharged into  
23 waterways, and many slaughterhouses fail to comply with terms of their Clean Water Act permits  
24 for such discharges.

25 159. Further, USDA is aware that poultry slaughter is an immense drain on water  
26 supplies.

27 160. These environmental harms are worsened as more chickens are produced and  
28 slaughtered.

1           161. A slaughterhouse that increases its line speed is able to kill more birds in the same  
2 amount of time. For example, a single facility that increases the speed of just one of its lines from  
3 140 bpm to 175 bpm and continues to operate that line for 40 hours a week would be able to kill  
4 an additional 84,000 chickens each week and more than 4.3 million additional chickens in a year.

5           162. To meet such a slaughterhouse's increased production levels, chickens would  
6 either have to be transported from additional production facilities that are farther away—thereby  
7 increasing pollution from transit—or nearby contract growers would have to expand their  
8 operations to produce more birds. By producing more birds, those growers would create more  
9 waste, use more water, and burn more fossil fuels while transporting animals from the farms to  
10 the slaughterhouse.

11           163. The process of slaughtering more birds would also cause additional environmental  
12 harm. Killing more birds will generate more wastewater, which threatens water quality at the  
13 local, state, and/or national level. In addition, slaughtering more birds would require more water,  
14 and thus would put an additional strain on water supplies.

15           164. Alternatives to FSIS's 2018 Line Speed Increase Decision exist, and FSIS is aware  
16 of these alternatives. For example, FSIS could have conditioned line speed increases on a  
17 slaughterhouse's adoption of multi-stage controlled atmospheric stunning or killing. The amount  
18 of water used in the stunning process is reduced in slaughterhouses that use this system because  
19 birds are killed or stunned using gas. The electrical stun bath is not used to stun birds, so the  
20 stunning process requires less water.

21           **III. Procedural History: FSIS's Regulation of Line Speed Maximums at Chicken**  
22           **Slaughterhouses**

23           ***A. FSIS's 2014 New Poultry Inspection System Rulemaking and Decision Not to***  
24           ***Increase Line Speeds***

25           165. In 2014, FSIS issued the 2014 NPIS Final Rule, creating the NPIS for young  
26 chicken and turkey establishments; such establishments could elect to operate under this system  
27 or continue to operate under existing inspection systems. 79 Fed. Reg. at 49,566.

28           166. The 2012 proposed rule would have allowed NPIS chicken slaughterhouses to

1 increase line speeds to a maximum of 175 bpm. Modernization of Poultry Slaughter Inspection,  
2 77 Fed. Reg. 4,408, 4,423 (Jan. 27, 2012) [hereinafter “2012 NPIS Proposed Rule”].

3 167. In response to its proposal to increase line speeds, FSIS received “the most  
4 comments on” the detrimental impacts accelerated line speeds would have on slaughterhouse  
5 worker safety. 2014 NPIS Final Rule, 79 Fed. Reg. at 49,591. FSIS also received more than a  
6 thousand comments highlighting how increased line speeds would be harmful to animal welfare.  
7 *Id.* at 49,609-10.

8 168. In March 2014, a few months before the NPIS rule was finalized, 68 members of  
9 the U.S. House of Representatives sent a letter to the USDA Secretary that, among other things,  
10 raised concerns about the impact the 175 bpm line speed maximum would have on worker safety  
11 along with the impact it would have on animal welfare and, in turn, food safety.

12 169. In the subsequent 2014 NPIS Final Rule, FSIS declined to implement the proposed  
13 line speed maximum of 175 bpm. Instead, the final rule prohibited most NPIS chicken  
14 slaughterhouses from operating above 140 bpm. *Id.* at 49,591.

15 170. An exception was granted to the 20 former participants in the HACCP-Based  
16 Inspection Models Project<sup>6</sup> (“HIMP”). While participating in the HIMP pilot, these facilities were  
17 allowed to operate at line speeds of up to 175 bpm.

18 171. In the 2014 NPIS Final Rule, FSIS explained that former HIMP chicken  
19 slaughterhouses would be permitted to continue to operate at up to 175 bpm under a waiver. *Id.*  
20 at 49,583. FSIS also explained that if one of those facilities went out of business or decided to  
21 give up its waiver, the agency would select another establishment to operate at higher line speeds  
22

23  
24 \_\_\_\_\_  
25 <sup>6</sup> HACCP refers to the Hazard Analysis and Critical Control Point program, which is a USDA  
26 system “whereby meat and poultry establishments can identify and evaluate the food safety  
27 hazards that can affect the safety of their products, institute controls necessary to prevent those  
28 hazards from occurring or keeping them within acceptable limits, monitor the performance of  
controls, and maintain records routinely.” Pathogen Reduction; Hazard Analysis and Critical  
Control Point (HACCP) Systems, 61 Fed. Reg. 38,806, 38,814 (July 25, 1996).

1 but that, at a maximum, 20 chicken slaughterhouses would be permitted to operate at a maximum  
2 speed of 175 bpm. *Id.*

3 172. During the NPIS rulemaking, FSIS considered the impact increased line speeds  
4 would have on worker safety. In the 2012 NPIS Proposed Rule, FSIS “recognize[d] that  
5 evaluation of the effects of line speed on food safety should include the effects of line speed on  
6 establishment employee safety.” 77 Fed. Reg. at 4,423.

7 173. Accordingly, the agency asked the National Institute of Occupational Safety and  
8 Health to evaluate the impacts of increased line speeds on worker safety. *Id.* at 4,423-24. The  
9 agency also “requeste[d] specific comments on the effects of increased line speeds and production  
10 volume on worker safety.” Proposed Rule; Extension of Comment Period, 77 Fed. Reg. 24,873,  
11 24,877 (Apr. 26, 2012).

12 174. The 2014 NPIS Final Rule included two regulations related to worker safety. The  
13 agency relied on the PPIA when it promulgated the substance of this final rule. 79 Fed. Reg. at  
14 49,633.

15 **B. FSIS’s 2018 Line Speed Increase Decision Without Notice-and-Comment Rulemaking**

16 175. In September 2017, the National Chicken Council (“NCC”) petitioned FSIS,  
17 asking the agency to create a waiver system that would allow slaughterhouses participating in  
18 NPIS to receive waivers to operate without any restrictions on line speeds if they met certain  
19 requirements. *See generally* NCC, Petition to Permit Waivers of the Maximum Line Speed Rates  
20 for Young Chicken Slaughter Establishments under the New Poultry Inspection System and  
21 *Salmonella* Initiative Program (Sept. 1, 2017) (hereinafter “NCC Petition”).

22 176. In January 2018, FSIS denied the NCC Petition. However, in the denial letter, the  
23 agency explained that it would set out so-called “criteria” for granting line speed waivers, which  
24 would allow facilities to operate at line speeds of up to 175 bpm. Letter from Carmen Rottenberg,  
25 Acting Deputy Under Sec’y, Office of Food Safety, USDA, to Michael Brown, President, NCC  
26 (Jan. 29, 2018).

27 177. Because FSIS did not issue a proposed rule after it received the NCC Petition, the  
28 public was never able to comment on the agency’s 2018 Line Speed Increase Decision nor FSIS’s

1 purported factual or legal basis for this decision.

2 178. In a February 23, 2018 FSIS Constituent Update, FSIS set out requirements the  
3 agency would apply in granting or denying applications for waivers of the maximum line speed  
4 of 140 bpm. Chicken slaughterhouses holding such waivers would be permitted to operate at  
5 speeds of up to 175 bpm. Constituent Update, *supra*, at 1-2.

6 179. The 2018 Federal Register Line Speed Notice reiterated the requirements for line  
7 speed waivers set out in the Constituent Update and added a limited number of additional  
8 requirements. 2018 Federal Register Line Speed Notice, 83 Fed. Reg. at 49,050.

9 180. Among the requirements to receive a line speed waiver, a slaughterhouse “[m]ust  
10 be able to demonstrate that the new equipment, technologies, or procedures that allow the  
11 establishment to operate at faster line speeds will maintain or improve food safety.” *Id.*;  
12 Constituent Update, *supra*, at 1.

13 181. Relatedly, a slaughterhouse applying for a line speed waiver must “[d]escribe[]  
14 how existing or new equipment, technologies, or procedures will allow for the operation at a faster  
15 line speed” and “support[] how the modifications to its food safety system to operate at the faster  
16 line speed will maintain or improve food safety.” 2018 Federal Register Line Speed Notice, 83  
17 Fed. Reg. at 49,050; Constituent Update, *supra*, at 2.

18 182. The agency claimed it intends to use data collected from the chicken  
19 slaughterhouses granted line speed waivers to assess such facilities’ ability to maintain process  
20 control at higher slaughter speeds and to inform future rulemaking. 2018 Federal Register Line  
21 Speed Notice, 83 Fed. Reg. at 49,052. The agency provided no timeline for when it would conduct  
22 such rulemaking, nor did it indicate how many waivers it would issue to collect such data. *Id.*

23 183. The agency also stated its intention to issue former HIMP establishments, which  
24 already held waivers to operate at speeds of up to 175 bpm, “new waiver letters” containing the  
25 requirements identified in the 2018 Federal Register Line Speed Notice. *Id.* If these former HIMP  
26 facilities failed to meet any of the requirements, FSIS could revoke their line speed waivers. *Id.*

27 184. FSIS revoked the waiver of at least one former HIMP facility for its failure to  
28 comply with the requirements outlined in the 2018 Federal Register Line Speed Notice.

1           185. The agency subsequently issued that former HIMP facility a new line speed waiver  
2 several months after the revocation.

3           186. The 2018 Line Speed Increase Decision requires waiver recipients to consistently  
4 operate at least one line at a speed of more than 140 bpm to retain their waiver. *Id.* at 49,051;  
5 Constituent Update, *supra*, at 2. This is a new requirement for line speed waivers, and it  
6 effectively forces facilities to operate at heightened speeds.

7           187. The 2018 Line Speed Increase Decision changes the maximum line speed at which  
8 NPIS facilities can operate. So long as an NPIS chicken slaughterhouse meets certain minimal  
9 requirements, FSIS will permit it to operate at line speeds of up to 175 bpm.

10           188. The 2018 Line Speed Increase Decision changes the number of chicken  
11 slaughterhouses that can operate at a maximum speed of 175 bpm. In the 2014 NPIS Final Rule,  
12 the agency made clear that no more than 20 chicken slaughterhouses could operate at that speed,  
13 but the 2018 Line Speed Increase Decision places no limit on the number of waivers that FSIS  
14 can issue—meaning that under the Decision, an unlimited number of NPIS chicken  
15 slaughterhouses can operate at speeds of up to 175 bpm.

16           189. FSIS did not engage in APA rulemaking before issuing the 2018 Line Speed  
17 Increase Decision. Before increasing NPIS chicken slaughterhouse line speed maximums through  
18 the Decision, FSIS did not publish in the Federal Register a notice of proposed rulemaking for the  
19 Decision; did not reference the legal authority under which it was issuing the Decision; did not  
20 provide the public with an opportunity to submit written or oral comments on a proposed rule; did  
21 not publish a final rule in the Federal Register for the Decision; and did not set an effective date  
22 for the Decision at least 30 days after publication of a final rule in the Federal Register.

23           190. Beginning in 2018, FSIS conducted rulemaking to eliminate line speed limits in  
24 pig slaughterhouses. Modernization of Swine Slaughter Inspection, 83 Fed. Reg. 4,780, 4,795-96  
25 (Feb. 1, 2018). And in 2012, the agency proposed (but ultimately rejected) increasing line speed  
26 limits at chicken slaughterhouses through rulemaking. 2012 NPIS Proposed Rule, 77 Fed. Reg. at  
27 4,423.

28           191. Because FSIS did not conduct notice-and-comment rulemaking before issuing the



1 2018 Line Speed Increase Decision, Plaintiffs did not have the opportunity to review the agency’s  
2 proposed action, to provide input and comments on that action, to identify deficiencies in the  
3 agency’s reasoning, to explain why the action was unlawful, or to engage in their right to exhaust  
4 administrative remedies under the APA. This likely contributed to FSIS’s failure to follow other  
5 procedures when it issued the Decision, such as performing NEPA review, complying with its  
6 own PPIA regulations, and engaging in reasoned decision-making.

7 192. After it was already in effect, FSIS provided its purported legal basis for the 2018  
8 Line Speed Increase Decision in the 2018 Federal Register Line Speed Notice.

9 193. The agency claims to have addressed animal welfare concerns by adding a new  
10 criterion in the 2018 Federal Register Line Speed Notice, one not included in the Constituent  
11 Update. Under this new criterion, to be eligible for a waiver, a facility must not have received a  
12 non-compliance record (“NR”) for violation of good commercial practices (“GCP”) in the past  
13 120 days. 2018 Federal Register Line Speed Notice, 83 Fed. Reg. at 49,050.

14 194. Under FSIS’s current enforcement practices, NRs for GCP violations only  
15 document a subset of the instances of inhumane handling that FSIS officials have identified in  
16 chicken slaughterhouses.

17 195. Although FSIS identifies other circumstances under which line speed waivers  
18 issued through the 2018 Line Speed Increase Decision can be revoked, FSIS does not require  
19 waiver revocation if birds are treated inhumanely after a facility is permitted to operate at higher  
20 line speeds under such a waiver.

21 196. In issuing the 2018 Line Speed Increase Decision, the agency did not consider the  
22 impact the Decision would have on slaughterhouse worker safety. Although acknowledging “that  
23 working conditions in poultry slaughter establishments is an important issue,” FSIS avoided  
24 addressing this issue by claiming—in direct conflict with its prior position—that the agency “has  
25 neither the authority nor expertise to regulate issues related to establishment worker safety.” *Id.*  
26 at 49,057.

1           **C. Waivers Issued Under FSIS's 2018 Line Speed Increase Decision**

2           197. The 2018 Line Speed Increase Decision places no limit on the number of chicken  
3 slaughterhouses that can receive waivers to operate at increased line speeds under the Decision.

4           198. As of the date of the filing of this First Amended Complaint, FSIS allows at least  
5 53 NPIS chicken slaughterhouses to kill birds at speeds above 140 bpm. *Salmonella Initiative*  
6 *Program (SIP) Participants Table* (May 4, 2020),  
7 [https://www.fsis.usda.gov/wps/wcm/connect/188bf583-45c9-4837-9205-](https://www.fsis.usda.gov/wps/wcm/connect/188bf583-45c9-4837-9205-37e0eb1ba243/Waiver_Table.pdf?MOD=AJPERES)  
8 [37e0eb1ba243/Waiver\\_Table.pdf?MOD=AJPERES](https://www.fsis.usda.gov/wps/wcm/connect/188bf583-45c9-4837-9205-37e0eb1ba243/Waiver_Table.pdf?MOD=AJPERES).

9           199. Of these 53 slaughterhouses, 19 are former HIMP participants. *Id.* On knowledge  
10 and belief, in 2019, FSIS issued these 19 former HIMP facilities new waiver letters to operate at  
11 speeds of up to 175 bpm under the 2018 Line Speed Increase Decision.

12           200. Since October 2018, FSIS has issued at least 34 additional line speed waivers to  
13 chicken slaughterhouses previously limited to operating at 140 bpm (in other words, to  
14 slaughterhouses that were not HIMP participants). *Id.* On knowledge and belief, these 34  
15 slaughterhouses received waivers to operate at speeds of up to 175 bpm under the 2018 Line  
16 Speed Increase Decision.

17           201. Plaintiffs filed their initial Complaint in the instant lawsuit on February 25, 2020.  
18 Shortly thereafter, FSIS dramatically increased the number of chicken slaughterhouses that it  
19 permits to operate at higher line speeds.

20           202. Specifically, between March 30, 2020 and April 17, 2020, the agency announced  
21 it had issued 16 new line speed waivers—while the United States was in the midst of the  
22 unprecedented public health crisis caused by the COVID-19 pandemic. The waivers issued during  
23 this period represent 30 percent of the 53 total waivers granted and 47 percent of the 34 waivers  
24 granted to slaughterhouses that did not participate in HIMP.

25           203. During the week of April 20, 2020, there was significant media coverage of FSIS's  
26 issuance of a high number of waivers during the COVID-19 pandemic, especially as evidence  
27 mounted that slaughterhouses and meat processing plants present especially high risks for the  
28 spread of the novel coronavirus.

1           204. On or about April 22, 2020, FSIS abruptly told a reporter that it had “stopped  
2 accepting additional requests” for waivers. Fatima Hussein, *USDA Oks Record Number of Poultry*  
3 *Line-Speed Waivers in April*, Bloomberg Law (Apr. 22, 2020, 3:33 PM),  
4 [https://news.bloomberglaw.com/safety/usda-oks-record-number-of-poultry-line-speed-waivers-](https://news.bloomberglaw.com/safety/usda-oks-record-number-of-poultry-line-speed-waivers-in-april)  
5 [in-april](https://news.bloomberglaw.com/safety/usda-oks-record-number-of-poultry-line-speed-waivers-in-april).

6           205. The agency claims to have stopped accepting waiver requests on March 20, 2020.  
7 FSIS, *FSIS No Longer Accepting Poultry Line Speed Waivers*, FSIS Constituent Update, Apr. 24,  
8 2020. Yet, FSIS did not announce this change in an agency publication until April 24, 2020—  
9 more than a month after it supposedly stopped accepting waiver requests. *Id.*

10           206. In an April 24, 2020 Constituent Update, FSIS claimed that “[b]ased on the  
11 waivers [it] has approved, the agency will have enough data from establishments to assess and  
12 determine whether to move forward with rulemaking.” *Id.*

13           207. The agency has not provided a timeline for when it will determine whether  
14 rulemaking is warranted. *See id.*

15           208. Although the agency said that it has “stopped accepting” new requests for waivers,  
16 it *did not* say that it will not issue additional waivers. *See id.*

17           209. The agency’s issuance of the 2018 Line Speed Increase Decision and its  
18 subsequent actions under the Decision—including the agency’s newly realized and self-serving  
19 position that it does not need to accept any additional waiver applications—have been conducted  
20 without any APA procedural protections. Because of its refusal to follow the most basic tenets of  
21 administrative procedure, the agency could reverse course at any time and begin accepting and  
22 granting waiver requests.

23           210. Indeed, FSIS has already modified positions related to the 2018 Line Speed  
24 Increase Decision that were originally announced in FSIS’s Constituent Update newsletter. The  
25 agency first announced the criteria it would use to issue chicken line speed waivers in a February  
26 23, 2018 Constituent Update. A few months later, in the 2018 Federal Register Line Speed Notice,  
27 the agency modified these criteria. *See supra* Paragraphs 178-179.  
28

**D. 2018 Line Speed Increase Decision and NPIS Conversion**

211. In order to operate at increased line speeds under the 2018 Line Speed Increase Decision, a chicken slaughterhouse must have operated under NPIS for at least a year. 2018 Federal Register Line Speed Notice, 83 Fed. Reg. at 49,050; Constituent Update, *supra*, at 1.

212. According to FSIS, as of April 24, 2020, 116 chicken slaughterhouses have converted to NPIS. *New Poultry Inspection System (NPIS)*, USDA FSIS (Apr. 24, 2020), <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/haccp/haccp-based-inspection-models-project/himp-study-plans-resources/npis-plants>. As of April 24, 2020, FSIS permits roughly 46 percent of these NPIS chicken slaughterhouses to operate at speeds above 140 bpm.

213. Both NCC and a high-ranking official at USDA's Office of Food Safety have indicated that allowing facilities to operate at speeds above the 2014 NPIS Final Rule's maximum line speed of 140 bpm could incentivize slaughterhouses to convert to NPIS.

214. The table below details the number of chicken slaughterhouses that have converted to NPIS (as of March 2020)<sup>7</sup> since the 2014 NPIS Final Rule was issued:

<b>Year</b>	<b>Number of Chicken Slaughterhouses Converting to NPIS</b>
2015	23
2016	13
2017	12
2018 (FSIS announced plans for the 2018 Line Speed Increase Decision in January 2018)	35
2019	21
2020 (as of March 16, 2020)	3 (plus 17 pending conversion requests)
<b>Total</b>	<b>107</b>

<sup>7</sup> Because the table reflects data only through March 16, 2020, the total is lower than that in Paragraph 212, which reflects the number of chicken slaughterhouses that had converted as of April 24, 2020.

1           215. There has been a steep increase in the NPIS conversion rate for chicken  
2 slaughterhouses since FSIS’s January 2018 announcement that the agency would allow chicken  
3 slaughterhouses participating in NPIS to seek waivers to increase their line speed maximums to  
4 175 bpm. As of March 16, 2020, 55 percent of the chicken slaughterhouses operating under NPIS  
5 converted after FSIS’s January 2018 announcement.

6           216. Because the 2018 Line Speed Increase Decision requires facilities to operate under  
7 NPIS for at least a year before seeking a waiver, it is likely more chicken slaughterhouses will  
8 seek line speed waivers as they become eligible to do so.

9           217. If Plaintiffs are successful in this suit and this Court vacates the 2018 Line Speed  
10 Increase Decision and the waivers issued under it, both former HIMP slaughterhouses and non-  
11 former HIMP slaughterhouses with line speed waivers issued under the Decision will be required  
12 to operate at a speed of no more than 140 bpm—the maximum NPIS line speed permitted by PPIA  
13 regulations. *See* 9 C.F.R. § 381.69(a).

14           218. FSIS did not prepare an EIS or EA and FONSI to evaluate the potential  
15 environmental impacts of the 2018 Line Speed Increase Decision.

16           219. As many as 187 chicken slaughterhouses were expected to opt into NPIS. 2014  
17 NPIS Final Rule, 79 Fed. Reg. at 49,617. When some of those facilities obtain line speed waivers  
18 to operate at up to 175 bpm under the 2018 Line Speed Increase Decision and those facilities  
19 begin killing more chickens, freshwater will be threatened by increased pollution and depletion.  
20 Further, to meet these facilities’ increased production levels, chickens would have to be  
21 transported greater distances or nearby growers would have to raise more chickens, either of  
22 which threatens the environment.

23           220. The agency claimed its 2018 Line Speed Increase Decision is categorically  
24 excluded from NEPA under 7 C.F.R. § 1b.4. 2018 Federal Register Line Speed Notice, 83 Fed.  
25 Reg. at 49,058. Under that regulation, FSIS actions are categorically excluded “unless the agency  
26 head determines that an action may have a significant environmental effect.” 7 C.F.R. § 1b.4.

27           221. The agency claimed it “did not anticipate” that its decision to increase line speeds  
28 would have individual or cumulative effects on the environment because “[e]xpected sales of

1 poultry products to consumers will determine the total number of birds that a poultry  
2 establishment slaughters, not the maximum line speed under which it operates.” 2018 Federal  
3 Register Line Speed Notice, 83 Fed. Reg. at 49,058.

4 222. In determining that the 2018 Line Speed Increase Decision was categorically  
5 excluded from NEPA review, FSIS did not account for significant environmental and public  
6 health threats resulting from the fact that slaughterhouses operating at speeds above 140 bpm can  
7 respond to changes in market demand by killing more birds than they would otherwise be able to  
8 kill if their slaughter line speeds were capped at 140 bpm.

### 9 CLAIMS FOR RELIEF

#### 10 **Claim One: FSIS’s 2018 Line Speed Increase Decision Violated the APA Because It Does** 11 **Not Comply with FSIS’s Regulation Setting the Requirements for Regulatory Waivers**

12 223. The allegations set forth above are incorporated by reference.

13 224. FSIS has promulgated a specific regulation that governs the limited circumstance  
14 in which waivers of its poultry products inspection regulations can be granted. FSIS’s waiver  
15 regulation allows the agency to waive compliance with poultry inspection regulations only “for  
16 limited periods,” and “in specific classes of cases . . . to permit experimentation so that new  
17 procedures, equipment, and processing techniques may be tested to facilitate definite  
18 improvements.” 9 C.F.R. § 381.3(b).

19 225. The 2018 Line Speed Increase Decision does not require FSIS to place an end date  
20 on the waivers it issues. Therefore, the Decision allows FSIS to issue waivers that are not for  
21 limited periods.

22 226. The 2018 Line Speed Increase Decision places no limit on the number of  
23 slaughterhouses that can operate at a maximum speed of 175 bpm. Therefore, the Decision allows  
24 FSIS to issue waivers that are not limited to specific classes of cases.

25 227. To obtain a line speed waiver under the 2018 Line Speed Increase Decision, a  
26 slaughterhouse must only “be able to demonstrate that the new equipment, technologies, or  
27 procedures that allow the establishment to operate at faster line speeds will *maintain* or improve  
28 food safety.” 2018 Federal Register Line Speed Notice, 83 Fed. Reg. at 49,050; Constituent

1 Update, *supra*, at 1 (emphasis added). Therefore, the Decision allows FSIS to issue waivers for  
2 reasons other than testing to “facilitate definite improvements.”

3 228. To obtain a line speed waiver under the 2018 Line Speed Increase Decision, a  
4 slaughterhouse must “[d]escribe[] how *existing* or new equipment, technologies, *or* procedures  
5 will allow for the operation at a faster line speed.” 2018 Federal Register Line Speed Notice, 83  
6 Fed. Reg. at 49,050; Constituent Update, *supra*, at 2 (emphasis added). Further, FSIS allows  
7 nearly half of NPIS chicken slaughterhouses to operate at line speeds above 140 bpm. Therefore,  
8 the Decision allows FSIS to issue waivers that do not involve experimentation to test new  
9 procedures, equipment, and processing techniques.

10 229. The 2018 Line Speed Increase Decisions constitutes final agency action that  
11 affects the legal rights and duties of third parties and has the force and effect of law.

12 230. The 2018 Line Speed Increase Decision violates FSIS’s regulation governing  
13 regulatory waivers because it permits the agency to issue waivers that do not satisfy one or more  
14 of the required conditions for waivers set out in 9 C.F.R. § 381.3(b).

15 231. Accordingly, FSIS’s 2018 Line Speed Increase Decision constituted an agency  
16 action that was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with  
17 law” in violation of the APA, 5 U.S.C. § 706(2)(A).

18 **Claim Two: FSIS Violated the APA by Amending Existing Regulations Without**  
19 **Complying with Mandatory Rulemaking Procedures**

20 232. The allegations set forth above are incorporated by reference.

21 233. Under current FSIS regulations, NPIS young chicken slaughterhouses are  
22 prohibited from operating above 140 bpm. 9 C.F.R. § 381.69(a).

23 234. The 2018 Line Speed Increase Decision amends 9 C.F.R. § 381.69(a) by allowing  
24 an unlimited number of NPIS chicken slaughterhouses to operate at speeds above 140 bpm, and  
25 up to 175 bpm, if they meet certain minimal requirements. By effecting that amendment, the 2018  
26 Line Speed Increase Decision therefore changes the maximum line speed for NPIS young chicken  
27 slaughterhouses.

28 235. FSIS’s waiver regulation allows the agency to waive compliance with poultry

1 inspection regulations only “for limited periods,” and “in specific classes of cases . . . to permit  
2 experimentation so that new procedures, equipment, and processing techniques may be tested to  
3 facilitate definite improvements.” *Id.* § 381.3(b).

4 236. The 2018 Line Speed Increase Decision effectively amends 9 C.F.R. § 381.3(b)  
5 because it allows FSIS to issue waivers that do not comply with 9 C.F.R. § 381.3(b)’s  
6 requirements and instead creates different requirements that NPIS chicken slaughterhouses must  
7 meet to obtain waivers of 9 C.F.R. § 381.69(a)’s maximum line speed of 140 bpm.

8 237. FSIS failed to comply with procedural rulemaking requirements of the APA when  
9 issuing its 2018 Line Speed Increase Decision, which amends one or more existing FSIS  
10 regulations. *See* 5 U.S.C. § 553.

11 238. When issuing the 2018 Line Speed Increase Decision, FSIS also failed to comply  
12 with the PPIA’s procedural requirement that interested persons be accorded an opportunity for  
13 oral presentation of views when APA § 553(c) rulemaking is conducted under the PPIA. *See* 21  
14 U.S.C. § 463(c).

15 239. Accordingly, FSIS’s issuance of the 2018 Line Speed Increase Decision  
16 constituted an agency action “without observance of procedure required by law,” in violation of  
17 the APA, 5 U.S.C. § 706(2)(D).

18 **Claim Three: FSIS’s Issuance of the 2018 Line Speed Increase Decision Violated the APA**  
19 **Because the Agency Engaged in Arbitrary and Capricious Decision-Making that Will**  
20 **Cause Increased Violations of the PPIA, PPIA Regulations, and FSIS Policy**

21 240. The allegations set forth above are incorporated by reference.

22 241. In issuing the 2018 Line Speed Increase Decision, FSIS failed to consider  
23 important aspects of the problem—the risks to slaughterhouse worker safety and animal welfare  
24 at facilities operating at higher line speeds.

25 242. In issuing the 2018 Line Speed Increase Decision, FSIS did not assert that  
26 increasing line speeds would do anything to ameliorate the animal welfare problems associated  
27 with high line speeds at any facility operating with a line speed waiver.

28 243. In issuing the 2018 Line Speed Increase Decision, FSIS changed its positions  
regarding: (a) how many NPIS chicken slaughterhouses the agency will permit to operate at



1 speeds of up to 175 bpm; (b) whether rulemaking is necessary to change maximum line speeds in  
2 slaughterhouses; (c) its earlier commitment to protecting the humane treatment of poultry and, by  
3 extension, food safety; (d) its authority to promulgate regulations related to slaughterhouse worker  
4 safety under the PPIA; (e) the relationship between line speed, slaughterhouse worker safety, and  
5 food safety; and (f) whether FSIS can consider the issue of slaughterhouse worker safety in setting  
6 maximum line speeds under the PPIA. FSIS failed to provide a reasoned analysis for its change  
7 in any of these positions.

8 244. FSIS failed to meaningfully consider alternatives to the 2018 Line Speed Increase  
9 Decision that could reduce the adverse animal welfare and worker safety impacts of increasing  
10 line speeds, such as conditioning line speed increases on adoption of controlled atmospheric  
11 stunning or killing.

12 245. Therefore, the agency engaged in arbitrary and capricious decision-making when  
13 it issued the 2018 Line Speed Increase Decision.

14 246. Under the PPIA, “[c]arcasses of poultry showing evidence of having died from  
15 causes other than slaughter” must be condemned. 9 C.F.R. § 381.90. *See also* 21 U.S.C. §§  
16 453(g)(5); 455(c). Further, whole carcasses, or parts thereof, must be condemned if they are badly  
17 bruised. 9 C.F.R. § 381.89. Additionally, poultry must be “slaughtered in accordance with good  
18 commercial practices in a manner that will result in thorough bleeding of the carcasses and ensure  
19 that breathing has stopped prior to scalding.” *Id.* § 381.65(b). Since at least 2005, FSIS has taken  
20 the position, that under the PPIA and FSIS’s regulations, “live poultry must be handled in a  
21 manner that is consistent with good commercial practices, which means they should be treated  
22 humanely.” *Treatment of Live Poultry Before Slaughter*, 70 Fed. Reg. at 56,624.

23 247. The 2018 Line Speed Increase Decision will result in more chickens being treated  
24 inhumanely. Such inhumane treatment will cause more chickens to suffer bruising, die other than  
25 by slaughter, and be scalded alive. As a result, the 2018 Line Speed Increase Decision will  
26 increase the risk that the resulting products will be adulterated and in violation of the PPIA, FSIS’s  
27 regulations, and FSIS policy. *See* 21 U.S.C. §§ 453(g), 458(a)(1)-(3); 9 C.F.R. §§ 381.65(b),  
28 381.89, 381.90; *Treatment of Live Poultry Before Slaughter*, 70 Fed. Reg. at 56,624-26.

1           248. The PPIA requires FSIS inspectors to inspect “the carcass of each bird processed.”  
2 21 U.S.C. § 455(b).

3           249. The 2018 Line Speed Increase Decision conflicts with the policy underlying the  
4 PPIA by increasing the risk that FSIS inspectors will not be able to inspect “the carcass of each  
5 bird processed.” *See id.*

6           250. FSIS regulations require all regulated poultry slaughter facilities to monitor their  
7 ability to maintain process control, 9 C.F.R. § 381.65(g), and slaughterhouses are “required to  
8 maintain process control.” 2018 Federal Register Line Speed Notice, 83 Fed. Reg. at 49,058.

9           251. Waivers issued pursuant to the 2018 Line Speed Increase Decision will cause an  
10 increased risk of loss of process control at those facilities that operate at higher speeds, in violation  
11 of FSIS requirements. *See* 9 C.F.R. § 381.65(g); 2018 Federal Register Line Speed Notice, 83  
12 Fed. Reg. at 49,058.

13           252. An FSIS regulation mandates that slaughterhouses operating under the line speeds  
14 authorized by the NPIS comply with all applicable requirements of law, including 29 U.S.C. §  
15 654(a), which requires employers to provide work and workplaces “free from recognized hazards  
16 that are causing or are likely to cause death or serious physical harm to [their] employees.” 9  
17 C.F.R. § 381.69(d).

18           253. The 2018 Line Speed Increase Decision will cause an increased risk of  
19 slaughterhouse worker injury in violation of 9 C.F.R. § 381.69(d).

20           254. FSIS engaged in arbitrary and capricious decision-making when it issued the 2018  
21 Line Speed Increase Decision. As a result, the Decision will increase the risk of violations of one  
22 or more provisions of the PPIA, the PPIA’s implementing regulations, and FSIS policy.

23           255. FSIS’s regulation governing regulatory waivers does not allow FSIS to issue  
24 regulatory waivers that are “in conflict with the purposes or provisions of the [PPIA].” *Id.* §  
25 381.3(b). The Decision, therefore, violates 9 C.F.R. § 381.3(b) because waivers issued under the  
26 Decision are “in conflict with the purposes or provisions of the [PPIA].”

27           256. For these reasons, FSIS’s issuance of the 2018 Line Speed Increase Decision  
28 constituted an agency action that was “arbitrary, capricious, an abuse of discretion, or otherwise

1 not in accordance with law” in violation of the APA, 5 U.S.C. § 706(2)(A).

2 **Claim Four: FSIS Violated the APA Because the Agency Did Not Comply with NEPA**  
3 **When It Issued the 2018 Line Speed Increase Decision**

4 257. The allegations set forth above are incorporated by reference.

5 258. Under NEPA, agencies must prepare an EIS for “major Federal actions  
6 significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R.  
7 § 1501.4(a)(1).

8 259. Under CEQ’s regulations requiring agencies to consider both context and intensity  
9 in determining the significance of environmental impacts, the 2018 Line Speed Increase Decision  
10 constitutes a major federal action significantly affecting the quality of the human environment.  
11 *See* 40 C.F.R. § 1508.27. Therefore, an EIS is required.

12 260. FSIS improperly relied on the categorical exclusion created by 7 C.F.R. § 1b.4.  
13 Because the 2018 Line Speed Increase Decision will have a significant environmental effect, the  
14 program is ineligible for a categorical exclusion under 7 C.F.R. § 1b.4.

15 261. In its invocation of the categorical exclusion, FSIS did not discuss whether CEQ’s  
16 significance factors render the 2018 Line Speed Increase Decision ineligible for a categorical  
17 exclusion.

18 262. FSIS did not adequately explain its conclusion that the categorical exclusion  
19 applies to the 2018 Line Speed Increase Decision because: (a) the agency failed to consider  
20 important aspects of the problem; (b) the agency relies on speculation, rather than concrete data,  
21 to support that conclusion; (c) the agency’s conclusion conflicts with the information before the  
22 agency; and (d) the agency did not explain several non-obvious, essential assumptions regarding  
23 its conclusion that increasing line speeds at facilities would not result in an increase in the number  
24 of chickens slaughtered and that the program would not, therefore, have any significant  
25 environmental impact.

26 263. In determining the 2018 Line Speed Increase Decision would not have any  
27 significant environmental effect, FSIS did not acknowledge or explain that it was treating  
28 materially similar factual situations—changes in the regulation of line speed in the pork and

1 chicken industries—differently. In the former, the agency reasoned increased efficiencies could  
2 lead to an increase in the number of animals killed; in the latter, the agency concluded increased  
3 line speeds would have no impact on the number of animals killed.

4 264. Under NEPA, an agency must “study, develop, and describe appropriate  
5 alternatives to recommended courses of action in any proposal which involves unresolved  
6 conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E).

7 265. FSIS failed to consider alternatives to the 2018 Line Speed Increase Decision that  
8 could reduce the environmental impacts of its action, such as conditioning line speed increases on  
9 adoption of controlled atmospheric stunning or killing.

10 266. FSIS failed to comply with one or more requirements of NEPA and its  
11 implementing regulations when it issued the 2018 Line Speed Increase Decision.

12 267. Accordingly, FSIS’s issuance of the 2018 Line Speed Increase Decision is an  
13 action that violates NEPA, 42 U.S.C. § 4332(2)(C), and is therefore “arbitrary, capricious, an  
14 abuse of discretion, or otherwise not in accordance with law” and is “without observance of  
15 procedure required by law,” in violation of the APA, 5 U.S.C. § 706(2)(A), (D).

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**PRAYER FOR RELIEF**

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order:

- a. Declaring that the 2018 Line Speed Increase Decision violates 9 C.F.R. § 381.3(b), and thus FSIS’s issuance of the Decision was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of the APA, 5 U.S.C. § 706(2)(A);
- b. Declaring that FSIS’s issuance of the 2018 Line Speed Increase Decision without engaging in notice-and-comment rulemaking or providing interested persons an opportunity for the oral presentation of views was an agency action “without observance of procedure required by law,” in violation of the APA, 5 U.S.C. § 706(2)(D);
- c. Declaring that FSIS engaged in arbitrary and capricious decision-making when it issued the 2018 Line Speed Increase Decision, and thus issuance of the Decision was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of the APA, 5 U.S.C. § 706(2)(A);
- d. Declaring that FSIS issued the 2018 Line Speed Increase Decision without proper NEPA review, and thus issuance of the Decision was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and “without observance of procedure required by law,” in violation of the APA, 5 U.S.C. § 706(2)(A), (D);
- e. Vacating FSIS’s 2018 Line Speed Increase Decision, including vacating the February 23, 2018 Constituent Update, September 28, 2018 Federal Register notice, and any waivers issued to slaughterhouses under the Decision;
- f. Remanding this matter to FSIS and enjoining FSIS from increasing chicken slaughter line speed limits unless the agency complies with the APA, the PPIA, and NEPA when authorizing such an increase;

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- g. Awarding Plaintiffs attorney fees and all other reasonable expenses incurred in pursuit of this action; and
- h. Granting other such equitable and/or declaratory relief as the Court deems necessary, just, and proper.

Dated: May 18, 2020

Respectfully submitted,

/s/ Bruce A. Wagman  
 Bruce A. Wagman  
 Riley Safer Holmes & Cancila

*Attorneys for Plaintiffs The Humane Society of the United States, Animal Outlook, Mercy for Animals, Government Accountability Project, and Marin Humane*

Margaret Robinson (*pro hac vice*)  
 Peter A. Brandt  
 Jonathan R. Lovvorn

*Attorneys for Plaintiff The Humane Society of the United States*