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Submitted electronically and presented orally

Office of Management and Budget
Office of Information and Regulatory Affairs
725 17th Street NW
Washington, DC 20503

**Statement of Animal Outlook to the Office of Management and Budget on RIN 0583-AD85:
“Maximum Line Speed Under the New Poultry Inspection System”**

Good afternoon and thank you for allowing us to meet with you today. My name is Will Lowrey and I am Legal Counsel for Animal Outlook. With me today on the call is Piper Hoffman, Director of Litigation for Animal Outlook.

For brief context, Animal Outlook (formerly known as “Compassion Over Killing”) is a national, non-profit organization dedicated to abolishing cruelty to farmed animals. We have a deeply vested interest in the rule presently under consideration by the OMB to increase the maximum line speed for poultry slaughter:

- In 2015, Animal Outlook documented egregious animal abuse while conducting an investigation at Mountaire Farms (Establishment P7470), a chicken slaughterhouse in North Carolina.¹ While Mountaire Farms was not operating under a line speed waiver at the time of our investigation, the USDA has since granted the facility a waiver to slaughter chickens at speeds up to 175 birds per minute (“bpm”),² the same speeds contemplated in the proposed rule. Video from the Mountaire Farms investigation can be viewed at <https://vimeo.com/126637466> (password: AOinv2015).
- In 2018, a separate Animal Outlook investigation at Amick Farms (Establishment P7927), a poultry slaughterhouse in Hurlock, Maryland, also documented repeated acts of animal abuse. From the time of the investigation until the present, Amick Farms has operated under a USDA line speed waiver, allowing it to slaughter chickens at 175 bpm, which is equal to the speed the proposed rule would allow. Video from the Amick Farms investigation can be viewed at <https://vimeo.com/293241439> (password: inv432LE).

¹ ANIMAL OUTLOOK, *Mountaire Facility Animal Abuse Investigation*, <https://animaloutlook.org/investigations/mountaire/> (last visited Dec. 14, 2020).

² UNITED STATES DEPARTMENT OF AGRICULTURE, *Salmonella Initiative Program (SIP) Participants Table*, https://www.fsis.usda.gov/wps/wcm/connect/188bf583-45c9-4837-9205-37e0eb1ba243/waiver_table.pdf?MOD=AJPERES (last visited Dec. 14, 2020).

- Animal Outlook is currently a plaintiff in a lawsuit filed in February 2020 against the USDA based on its 2018 decision authorizing waivers for poultry slaughterhouses to operate at line speeds up to 175 bpm.³

We are here today to highlight risks of and legal inconsistencies in the proposed rule that the OMB should be aware of per its duties to ensure adherence to Executive Order 12866.⁴ Under Executive Order 12866, an agency must conduct a “risk assessment” on proposed regulations⁵ and “avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations.”⁶

The proposed rule is out of compliance with this Order as it creates significant risks for animal welfare (making it inconsistent with regulations under the Poultry Products Inspections Act (“PPIA”)), worker safety, food safety, and the environment. In addition to these concerns, the proposed rule likely constitutes a “major” rule under the Congressional Review Act (“CRA”) and requires Congressional review. For all of these reasons, the OMB should disapprove the proposed rule.

I. The proposed rule poses risks to animal welfare in contravention of the PPIA.

The proposed rule will significantly compromise animal welfare by increasing incidents of inhumane handling. These incidents—which constitute violations of Good Commercial Practices—are inconsistent with regulations under the PPIA.

In the United States each year, roughly 9 billion chickens are killed for meat. These chickens are transported from factory farms to slaughter facilities such as Amick Farms and Mountaire Farms. Upon arrival, workers quickly grab fully conscious chickens by their legs and shackle them upside down on a continuously moving conveyor line. The fast speed of this conveyor line forces workers to rapidly grab and hang chickens on the shackles, invariably resulting in inhumane handling.

At Amick Farms, our investigator documented workers throwing, shoving, or striking chickens to keep up with the rapid line speeds.⁷ We also documented frequent break downs of the lines, some of which caused chickens to be stuck upside down, drowning in the stun bath.⁸ We captured evidence of chickens still alive when they entered the scald bath⁹ as well as instances in which workers hung dead chickens from the shackles.¹⁰ Many of these incidents are directly attributable to the rapid slaughter line speeds at Amick Farms.

Incidents of inhumane handling resulting from the high line speeds at Amick Farms are not isolated to our investigation. USDA’s Food Safety and Inspection Service (“FSIS”) has repeatedly cited Amick Farms for Good Commercial Practice violations, including several as

³ *Humane Soc’y of the U.S. v. Perdue*, No. 4:20-cv-01395 (N.D. Cal. 2020).

⁴ OFFICE OF MANAGEMENT AND BUDGET, *Office of Information and Regulatory Affairs Q&A’s*, https://obamawhitehouse.archives.gov/omb/OIRA_QsandAs (last visited Dec. 14, 2020).

⁵ Executive Order 12866, § 1(a).

⁶ *Id.* § 1(b)(10).

⁷ ANIMAL OUTLOOK, *Amick Farms: High Speed Chicken Slaughterhouse Exposed*, <https://animaloutlook.org/investigations/amick-farms/> (last visited Dec. 14, 2020).

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

recent as April and June 2020 which included multiple instances of birds entering the scald bath while still breathing.¹¹

Higher line speeds, such as those in the proposed rule, only amplify existing animal welfare concerns. At Mountaire Farms—even while the slaughterhouse was operating under normal speeds—we documented acts of extreme abuse, many involving workers attempting to keep up with the line speeds. Our investigation documented workers punching, shoving, pushing, slamming, and throwing live birds into leg shackles.¹² Some birds fell back onto the conveyor belt or onto the floor and others were caught in the shackles by their heads or only by one leg, leading to many birds missing the throat cutting blade and entering the scalding tank alive. Because workers rushed to keep up with the fast-paced shackling process, they did not have time to correct these errors. Live birds were tossed into piles with the dead since workers only had time to perform split-second checks. These birds were then crushed by other birds—live and dead—thrown on top of them. To save time, birds who had fallen off the conveyor belt were thrown across the room instead of being carried back. Despite this evidence that Mountaire Farms was abusing chickens at normal line speeds, the FSIS has since granted the slaughterhouse a waiver to run the line much faster, at speeds as high as 175 bpm. This forces workers to grab, hang, stun, and slaughter chickens even faster.

These substantially increased risks of animal welfare concerns for the 9 billion chickens slaughtered each year in the United States render the proposed rule “inconsistent”¹³ with the PPIA. Under the PPIA, poultry “must be slaughtered in accordance with good commercial practices.”¹⁴ FSIS instructs inspectors enforcing Good Commercial Practices to look for:

- workers mistreating birds or handling them in ways that will cause death or injury,
- birds showing an increased number of bruised wings or legs,
- stunning and bleeding equipment that is not functioning properly, and
- birds who are still breathing when they enter the scald tank.¹⁵

The FSIS has repeatedly stated that compliance with Good Commercial Practices means that chickens should be “treated humanely,” and should not be subjected to “mistreatment” and “needless injury and suffering.”¹⁶

¹¹ FOOD SAFETY AND INSPECTION SERVICE, Memorandum of Interviews for Amick Farms (P7927), Apr. 29, 2020 and June 18, 2020.

¹² ANIMAL OUTLOOK, *Mountaire Facility Animal Abuse Investigation*, <https://animaloutlook.org/investigations/mountaire/> (last visited Dec. 18, 2020).

¹³ Executive Order 12866, § 1(b)(10).

¹⁴ 9 C.F.R. 381.65(b).

¹⁵ FSIS PHIS Directive No. 6110.1, Verification of Good Commercial Practices, <https://www.fsis.usda.gov/wps/wcm/connect/39d791f2-6bc2-4bb4-bdfc-72504da30f76/6110.1.pdf?MOD=AJPERES> (last visited Dec. 14, 2020).

¹⁶ The FSIS has repeatedly and unequivocally made clear that it requires such under the Poultry Products Inspection Act. *See, e.g.*, Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. 56,624 (Sept. 28, 2005) (“The Food Safety and Inspection Service (FSIS) is reminding all poultry slaughter establishments that, under the Poultry Products Inspection Act (PPIA) and Agency regulations, live poultry must be handled in a manner that is consistent with good commercial practices, which means they should be treated humanely.”); FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018) (“Poultry are to be slaughtered in a manner that

Animal Outlook's investigations and subsequent Memorandum of Interview's ("MOI") documented by the FSIS have repeatedly demonstrated exactly these types of incidents. As such, implementation of the proposed rule would be "inconsistent" with regulations under the PPIA and would violate the terms of Executive Order 12866 as well as the Administrative Procedure Act.

II. The proposed rule poses risks to worker safety.

The proposed rule poses a grave threat to the safety of poultry workers subjected to higher line speeds. First, the proposed rule threatens worker safety by exposing workers to greater risks of COVID-19 infection. The meatpacking industry is a well-known hotbed for COVID-19 transmission; a November 2020 study published in the National Academy of Sciences observed that "beef, pork, and poultry plants each show a significant relationship with COVID-19 cases and deaths" and are responsible for 310,000 COVID-19 infections, or up to 8% of total cases.¹⁷ In addition, as of December 16, 2020, the Food and Environment Reporting Network reports that 564 meat packing plants have confirmed cases of COVID-19 amounting to 51,433 infected workers and 262 deaths.¹⁸ Faster line speeds will inhibit the ability of poultry workers to social distance and increase the threat of transmission.¹⁹

Aside from the risk of increased COVID-19 transmission, faster line speeds endanger worker safety through an increased risk of physical injury. A 2017 study by the National Employment Law Project ("NELP") found that across the country, poultry workers experienced an average of 27 hospitalizations per day for work-related amputations, making poultry plant work one of the country's most dangerous jobs.²⁰ Another study conducted in 2016 by the Government Accountability Office found that safety risks to workers in the poultry industry are significantly higher than the manufacturing industry and include a wide range of injuries such as sprains,

ensures that breathing has stopped before scalding, so that the birds do not drown, and that slaughter results in thorough bleeding of the poultry carcass. Compliance with these requirements helps ensure that poultry are treated humanely. In general, poultry should be handled in a manner that prevents needless injury and suffering in order to produce a commercially marketable product."); 79 Fed. Reg. 49,566, 49,610 (Aug. 21, 2014) ("[Verification Inspector]s will be verifying that establishments are following good commercial practices and will be checking for mistreatment or improper handling of birds. If inspection personnel observe that the establishment is not following good commercial practices, they will take appropriate enforcement action."); Letter from Carmen M. Rottenberg, Acting Deputy Under Sec'y, Off. of Food Safety, FSIS, USDA, to Vandhana Bala, Gen. Couns., Mercy for Animals (Mar. 14, 2018), <https://www.fsis.usda.gov/wps/wcm/connect/fe3ee914-9dba-4332-b6d4-c4a238375c45/17-06-FSIS-Response-Letter-03142018.pdf?MOD=AJPERES> ("under the PPIA and Agency regulations, live poultry must be handled in a manner that is consistent with GCP, which means they should be treated humanely").

¹⁷ C. Taylor et al., NATIONAL ACADEMY OF SCIENCES, *Livestock Plants and COVID-19 Transmission*, <https://www.pnas.org/content/early/2020/11/25/2010115117> (last visited Dec. 14, 2020).

¹⁸ FOOD AND ENVIRONMENT REPORTING NETWORK, *Mapping Covid-19 outbreaks in the food system*, <https://thefem.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/> (last visited Dec. 16, 2020).

¹⁹ UNITED FOOD AND COMMERCIAL WORKERS, *America's Meatpacking Union, Sen. Cory Booker, Rep. Marcia Fudge Demand USDA Stop Endangering Poultry Workers on Frontlines of COVID-19 Pandemic*, <https://www.ufcw.org/press-releases/linespeedsafety/> (last visited Dec. 14, 2020).

²⁰ DEBBIE BERKOWITZ & HOOMAN HEDAYATI, OSHA SEVERE INJURY DATA FROM 29 STATES: 27 WORKERS A DAY SUFFER AMPUTATION OR HOSPITALIZATION; POULTRY PROCESSING AMONG MOST DANGEROUS INDUSTRIES (NELP, Apr. 2017), <https://s27147.pcdn.co/wp-content/uploads/OSHA-Severe-Injury-Data-2015-2016.pdf>.

strains, open wounds, burns, cuts, lacerations, and carpal tunnel syndrome.²¹ More recently, a 2020 report found that 14 of the 15 poultry plants that received line speed waivers in April 2020 have a record of severe injuries and/or were previously cited by the Occupational Safety and Health Administration.²²

Animal Outlook experienced these issues firsthand. During our investigation of Amick Farms—which was operating under a line speed waiver at the time—our investigator was employed on the slaughter line and tasked with hanging chickens in shackles. As a result of performing this repetitive work at breakneck speeds, our investigator suffered swollen knuckles so severe he could not make a fist. His supervisor and Amick Farms medical staff advised him that this was a “routine” injury and his body would adjust. Yet, for several months following the investigation, he continued experiencing severe pain in his hands.

Increasing poultry slaughter lines gravely jeopardizes the safety of poultry workers. Through increased risk of COVID-19 exposure and physical injuries, the proposed rule places already vulnerable workers in even greater jeopardy. Implementing the proposed rule would be inconsistent with worker safety requirements under the Occupational Safety and Health Act, and with the FSIS’s 2014 decision not to increase the line speed limit based on a rulemaking record that demonstrated the harms such an increase would pose to workers. There is no reasonable basis for the agency to change its position. To the contrary, given the severe impacts of COVID-19 on poultry slaughterhouse workers, there is more reason than ever not to increase line speeds. Disregarding this evidence would be the height of arbitrary and capricious rulemaking.

III. The proposed rule poses risks to food safety.

Faster line speeds create a greater risk of contaminated meat entering the food supply. Animal Outlook has witnessed and documented this firsthand.²³ During our Amick investigation, our investigator documented chickens with green skin and powdery pus leaking from their carcasses, potentially indicative of deep pectoral myopathy. Other chickens were bright red, indicating they had not properly bled out before they entered the scalding bath and some had dark purple bruises covering their entire legs. Still other birds shackled on the line had a black, oily substance on their bodies that smelled similar to tar.

By increasing the speed at which birds are slaughtered, the proposed rule reduces emphasis on food safety and exposes consumers to hazardous substances such as fecal matter and pathogens.

IV. The proposed rule threatens the environment.

Increasing line speeds is likely to significantly increase the total number of chickens slaughtered annually in the United States, and to increase environmental harms caused by slaughterhouses as well as the factory farms that supply them. The environmental harms of chicken slaughter are

²¹ GOVERNMENT ACCOUNTABILITY OFFICE, ADDITIONAL DATA NEEDED TO ADDRESS CONTINUED HAZARDS IN THE MEAT AND POULTRY INDUSTRY, (Apr. 2016), <https://www.gao.gov/assets/680/676796.pdf>.

²² NELP, USDA ALLOWS POULTRY PLANTS TO RAISE LINE SPEEDS, EXACERBATING RISK OF COVID-19 OUTBREAKS AND INJURY (June 2020), <https://s27147.pcdn.co/wp-content/uploads/Policy-Brief-USDA-Poultry-Line-Speed-Increases-Exacerbate-COVID-19-Risk.pdf>.

²³ ANIMAL OUTLOOK, *Amick Farms: High Speed Chicken Slaughterhouse Exposed*, <https://animaloutlook.org/investigations/amick-farms/> (last visited Dec. 14, 2020).

well-documented and include significant waste and water pollution.²⁴ Given the significant environmental effects, the National Environmental Policy Act (NEPA) requires the FSIS, at a minimum, to prepare an Environmental Assessment for the proposed rule. Failure to do so not only contravenes NEPA, it also deprives Animal Outlook and others of information about the full environmental impacts of the rule, and the ability to meaningfully comment on the rule.

V. The proposed rule may require Congressional approval.

Depending on the estimated economic impact, the proposed rule may require Congressional approval before it can be implemented. The Congressional Review Act (“CRA”) allows Congress to review “major” rules issued by federal agencies before the rules take effect.²⁵ A “major rule”—as identified by the OMB under the CRA²⁶—includes one that has resulted in or is likely to result in an annual effect on the economy of \$100 million or more.²⁷ Upon review, Congress may disapprove new rules, resulting in the rules having no force or effect.²⁸

While Animal Outlook is not aware of any forecast of the proposed rule’s annual effect on the economy, it is worth noting that the FSIS estimated an 87.64 million dollar annual impact from a similar rule that increased line speeds in pig slaughter plants.²⁹ In addition, a 2017 National Chicken Council petition submitted in favor of increasing poultry line speeds emphasized the rule’s financial benefit on poultry exports, stating that the rule “will put U.S. producers on more equal footing . . . at a time when the United States is seeking to increase its exports of agricultural products.”³⁰ We urge the OMB to take seriously its mandate to carefully and accurately assess the likely economic effects of the proposed rule and determine whether it qualifies as a “major rule.” In the event the proposed rule has an annual effect on the economy of \$100 million or more—which this rule may—the OMB should require Congressional review before implementation as mandated by the CRA.

VI. The OMB should reject the proposed rule.

In sum, the proposed rule creates substantial risks to animal welfare, worker safety, food safety, and the environment. Moreover, the prevalence of Good Commercial Practice violations based

²⁴ See ENVIRONMENTAL INTEGRITY PROJECT, WATER POLLUTION FROM SLAUGHTERHOUSES, (Oct. 2018), https://www.environmentalintegrity.org/wp-content/uploads/2018/10/Slaughterhouse_Report_Final.pdf; THE PEW ENVIRONMENT GROUP, BIG CHICKEN: POLLUTION AND INDUSTRIAL POULTRY PRODUCTION IN AMERICA (July 2011), <https://www.pewtrusts.org/~media/legacy/uploadedfiles/peg/publications/report/pegbigchickenjuly2011pdf.pdf>; L. Baskin-Graves, *Rapid Health Assessment of a Proposed Poultry Processing Plant in Millsboro, Delaware*, 18 Int. J. Environ. Res. Public Health 3429 (Sep. 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6765835/#:~:text=Research%20has%20confirmed%20that%20concentrated,volumes%20of%20waste%20%5B4%5D>.

²⁵ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, *Congressional Review Act*, [https://www.gao.gov/legal/other-legal-work/congressional-review-act#:~:text=The%20CRA%20defines%20a%20major,%3B%20or%20\(3\)%20significant%20adverse](https://www.gao.gov/legal/other-legal-work/congressional-review-act#:~:text=The%20CRA%20defines%20a%20major,%3B%20or%20(3)%20significant%20adverse) (last visited Dec. 14, 2020).

²⁶ 5 U.S.C. § 804(2).

²⁷ 5 U.S.C. § 804(2)(A).

²⁸ 5 U.S.C. § 802(a).

²⁹ 84 Fed. Reg. 52,300, 52,335.

³⁰ National Chicken Council Petition, Sep. 1, 2017, <https://www.fsis.usda.gov/wps/wcm/connect/7734f5cf-05d9-4f89-a7eb-6d85037ad2a7/17-05-Petition-National-Chicken-Council-09012017.pdf?MOD=AJPERES> (last visited Dec. 14, 2020).

on inhumane handling is wholly inconsistent with the PPIA. In addition, the proposed rule may constitute a “major rule” under the CRA and require Congressional approval. Because the FSIS’ proposal to increase maximum line speeds under the New Poultry Inspection System poses grave dangers for humans, animals, and the environment, is in opposition to existing regulations, the proposal should be rejected by the OMB as incompatible with the terms of Executive Order 12866.

Please free to contact me if you would like to discuss further. You may call me at 804-307-4102 or email wlowrey@animaloutlook.org.

Sincerely,

A handwritten signature in black ink, reading "Will Lowrey", written on a light yellow rectangular background.

Will Lowrey
Counsel
Animal Outlook

