

October 13, 2017

Carmen Rottenberg
Acting Deputy Undersecretary for Food Safety
Food Safety and Inspection Service
Room 331_E, Jamie L. Whitten Building
12th Street and Jefferson Drive, SW
U.S. Department of Agriculture
Washington DC 20250
Email: carmen.rottenberg@fsis.usda.gov

Dear Acting Deputy Undersecretary Rottenberg:

I am writing on behalf of the Southern Poverty Law Center (SPLC) to urge you to reject the recent petition by the National Chicken Council (NCC) effectively asking the USDA to waive all line speed limits in poultry plants. Approval of this petition would endanger workers and consumers, and would worsen the already abysmal injury rates for workers in this country's poultry plants. In addition to creating bad policy, approving this petition would violate the law—both the agency's existing regulations and the Administrative Procedure Act (APA).

The NCC submitted a petition on September 1, 2017, asking USDA to implement a waiver system to permit poultry plants participating in the New Poultry Inspection System (NPIS) and the Salmonella Initiative Program (SIP) to be exempt from the line speed requirements included in the 2014 USDA rule, Modernization of Poultry Slaughter Inspection. *See* 9 C.F.R. 381.69(a) (setting line speed limit at 140 birds per minute); *see also* 79 Fed. Reg. 49566 (Aug. 21, 2014).

SPLC is a nonprofit civil rights organization dedicated to seeking justice for the most vulnerable members of society. We work in the Southeast, the heart of chicken country, and for a number of years we have been advocating for and litigating on behalf of poultry workers in this region. In 2013, we released *Unsafe at These Speeds: Alabama's Poultry Industry and its Disposable Workers*, a landmark report that describes how Alabama poultry workers often suffer significant injuries and illnesses as they are forced to keep up with the punishing speed of processing lines, or face losing their jobs.

Based on more than 300 interviews, *Unsafe at These Speeds* found that these workers—both U.S. citizens and immigrants—are typically forced to endure dangerous conditions and are silenced by deportation. Nearly three out of four Alabama poultry workers interviewed described suffering a significant work-related injury or illness, such as debilitating pain in their hands, respiratory problems, cuts, gnarled fingers, and chemical burns.

The report also shows that workers in the poultry industry suffer extraordinary rates of repetitive motion injuries that are directly linked to the punishing work speeds in the plants. Because of our findings, SPLC joined a coalition of groups that worked to prevent the line speed increase proposed by USDA in 2012—a proposal the agency ultimately did *not* adopt in its final 2014 rule.

The health hazards discussed in *Unsafe at These Speeds* are well-documented by government agencies and non-profit organizations. For instance, in 2014 the Occupational Safety and Health Administration (OSHA) fined Wayne Farms more than \$100,000 after SPLC filed a complaint on behalf of numerous workers in the company’s Jack, Ala. plant.¹ OSHA found that Wayne Farms exposed its workers to safety and musculoskeletal hazards—in particular, workers on the debone line performed prolonged, repetitive, forceful tasks, often while stuck in awkward postures in order to do their jobs at the speed mandated by the line. OSHA also found that the company failed to record musculoskeletal injuries properly, allowing the plant to hide the true extent of workplace injuries.

The poultry industry’s own statistics show that workers are injured at rates almost twice the national average, and suffer illnesses at a rate that is six times as high.² As in Wayne Farms’ Alabama plant, these statistics are likely a drastic undercount. In the preamble to the final 2014 rule, USDA itself clearly stated:

“FSIS recognizes that **systematic underreporting** of work-related injuries and illnesses could make it difficult to accurately assess the extent to which poultry workers suffer from work related injuries and musculoskeletal diseases and disorders.”

79 Fed. Reg. at 49600 (emphasis added). Two further studies from the National Institute for Occupational Safety and Health (NIOSH) confirm these findings. They report staggeringly high rates of injuries directly related to the rapid, repetitive motions. In one study, 34 percent of workers had carpal tunnel syndrome (CTS), and 76 percent had evidence of nerve damage in their hands and wrists.³ In another study, 42 percent had CTS.⁴ As NIOSH’s director stated, “Line speed affects the periodicity of repetitive and forceful movements, which are key causes of musculoskeletal disorders.”⁵ In other words, the faster the line speed, the greater the risk of harm.

¹ Occupational Safety and Health Admin., “Alabama’s Wayne Farms poultry plant cited for exposing workers to musculoskeletal, other repeat, serious safety and health hazards” (Oct. 29, 2014), available at <https://www.osha.gov/news/newsreleases/region4/10292014>.

² Bureau of Labor Statistics, “Industry Injury and Illness Data,” available at <https://www.bls.gov/iif/oshsum.htm>.

³ Ramsey, et al., *Evaluation of Carpal Tunnel Syndrome and Other Musculoskeletal Disorders among Employees at a Poultry Processing Plant*, HHE Rep. No. 2014-0040-3232 (June 2015), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2014-0040-3232.pdf>.

⁴ Musolin, et al., *Evaluation of Musculoskeletal Disorders and Traumatic Injuries Among Employees at a Poultry Processing Plant*, HHE Rep. No. 2012-0125-3204 (Mar. 2014), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2012-0125-3204.pdf>.

⁵ Letter from John Howard, Director, NIOSH, to Alfred V. Almanza, Administrator, FSIS (Apr. 7, 2014), available at <https://www.cdc.gov/niosh/topics/poultry/pdfs/letterapril72014.pdf>.

These injuries, diseases, and disorders are nowhere to be found in the poultry industry's official injury logs. As USDA concluded in its 2014 rule, "poultry processors' injury and illness logs often do not reflect the full extent of work-related conditions experienced by poultry workers." 79 Fed. Reg. at 49600.

In addition to government agencies, numerous non-profit advocacy organizations have found that poultry workers suffer from catastrophic levels of injury and illness.⁶

We continue to do extensive outreach to poultry worker communities in the Southeast. Unfortunately, we continue to find that nothing has changed. Line speeds in poultry plants are still too fast, and workers are still suffering for the industry's profit. These fast line speeds, and the repetitive nature of work on the line, cause debilitating musculoskeletal disorders that leave workers permanently disabled and unable to work. Workers are then forced to seek disability and other public benefits to cover their cost of living. Allowing the poultry industry to run their lines at these speeds, and to keep workers performing the same repetitive tasks day in and day out, is a *de facto* subsidy of this very profitable industry, paid for by taxpayers and, ultimately, by the injured workers themselves.

The USDA was clear in its 2014 final rule that, after evaluating years of data and extensive public comments, line speeds in poultry plants should not increase beyond the allowable and already fast rate of 140 birds per minute. The agency should not reverse course now. Any such reversal on poultry line speed limits would hurt workers' health and would only serve to line the industry's pockets.

A reversal of the 2014 line speed limit would also violate USDA's own regulations. The NCC petition to set up a "waiver process" pursuant to 9 C.F.R. 381.3(b) does not meet any of the waiver requirements. These regulations require that any waiver be "for limited periods" and may be issued only for "a public health emergency or to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements." 9 C.F.R. 381.3(b). First, the industry is not asking for anything that is short term or temporary. Second, there is no public health emergency necessitating fast line speeds (nor can one think of what such an emergency would look like). Finally, faster line speeds are not a new "procedure" or "processing technique." The poultry industry wants to do the same thing it's already doing, only faster.

Finally, a broad waiver of existing line speed limits, applicable to the poultry industry as a whole, would create an exception that absolutely swallows the rule, effectively undoing the 2014 Modernization rule through secretive agency action. Any such attempt to create a new line speed rule for the poultry industry through use of a 9 C.F.R. 381.3(b) waiver would violate the APA's requirement that USDA go through a public "notice and comment" rulemaking procedure and would invite litigation.

⁶ See, e.g., Northwest Arkansas Workers' Justice Center, *Wages and Working Conditions in Arkansas Poultry Plants* (2016), available at http://www.uusc.org/sites/default/files/wages_and_working_conditions_in_arkansas_poultry_plants.pdf; Oxfam, *No Relief: Denial of Bathroom Breaks in the Poultry Industry* (2016), available at https://www.oxfamamerica.org/static/media/files/No_Relief_Embargo.pdf; Oxfam, *Lives on the Line: The Human Cost of Cheap Chicken* (2015), available at https://www.oxfamamerica.org/static/media/files/Lives_on_the_Line_Full_Report_Final.pdf;

USDA must reject this petition. Both public policy and the law demand it. USDA must not bend and break the rules to benefit already profitable corporations at the expense of the wellbeing and safety of workers.

Sincerely,

A handwritten signature in gold ink that reads "SRich". The signature is written in a cursive, flowing style.

Sarah M. Rich
Staff Attorney

CC: paul.kiecker@fsis.usda.gov