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Carmen Rottenberg
Acting Deputy Under Secretary for Food Safety
Food Safety and Inspection Service
U.S. Department of Agriculture
331-E Jamie L. Whitten Federal Bldg.
Washington, DC 20250-3700

Re: Petition to Permit Waivers of the Maximum Line Speed Rates for Young Chicken Slaughter Establishments under the New Poultry Inspection System and *Salmonella* Initiative Program

Dear Acting Deputy Undersecretary Rottenberg:

The National Chicken Council (NCC) respectfully submits this petition requesting that the Food Safety and Inspection Service (FSIS) implement a waiver system pursuant to 9 C.F.R. § 381.3(b) to permit young chicken slaughter establishments participating in the New Poultry Inspection System (NPIS) and the *Salmonella* Initiative Program (SIP) to operate without the arbitrary line speed limitations imposed under NPIS. Specifically, we request that FSIS structure the waiver program as follows:

- An eligible establishment would have to participate in both NPIS and SIP;
- The establishment would develop a process for monitoring and ensuring it is maintaining process control at its chosen line speed, along with corrective actions to regain process control if lost; and
- The Agency would waive the line speed limitation in 9 C.F.R. § 381.69(a) and instead allow participating establishments to operate at any line speed at which they can maintain process control.

This waiver program will encourage more establishments to opt into NPIS, will not compromise food safety, and will promote and enhance Agency and industry efficiency. Twenty plants participating in the HACCP-Based Inspection Models Project (HIMP) have been authorized to operate with line speeds up to 175 birds per minute (bpm) since 2007, and FSIS has recognized that these plants provide the same or better levels of food safety than plants operating with a maximum line speed of 140 bpm. These establishments have proven that HIMP (and now NPIS) establishments can operate safely at the maximum speeds permitted, and there is no indication that higher line speeds would result in increased food safety or worker safety risk.

Granting establishments a waiver of the arbitrary line speed limitation in section 381.69(a) would

allow all NPIS establishments the flexibility to choose to operate at appropriate line speeds based on their ability to maintain process control, thereby leveling the playing field within the U.S. chicken industry, eliminating competitive barriers between the U.S. and international chicken producers, removing arbitrary limitations on operational control in establishments, and encouraging more establishments to participate in NPIS. These cost saving actions are consistent with the regulatory reform initiatives recently put in place by the President, and waivers are consistent with the Administration's emphasis on reducing regulatory burdens on the industry. This change would also be consistent with how we understand the Agency plans to implement a comparable inspection system for hog slaughter, ensuring more fair and consistent regulation across species.

I. Requested Actions

NCC requests that the Agency establish a program for granting waivers to 9 C.F.R. § 381.69(a) allowing establishments operating under NPIS to operate without an arbitrary line speed limitation, provided they maintain process control. As conditions for the waiver, establishments would be required to opt into NPIS, participate in SIP, and develop a process for monitoring and responding to loss of process control. Process control programs would be establishment-specific and would allow the establishment to identify when it is at risk of losing process control so that corrective actions, including temporarily reduced line speeds, could be taken.

FSIS has authority to implement such a waiver program under 9 C.F.R. § 381.3(b), which provides that the Administrator may, in specific classes of cases, waive any provisions of the poultry inspection regulations so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements, provided that such waivers are not in conflict with the purposes or provisions of the Poultry Products Inspection Act (PPIA).

NCC's request is consistent with FSIS's authority to issue waivers because it will allow establishments to research new procedures (*i.e.*, higher line speeds) while still requiring that establishments operating under a waiver maintain process control (*i.e.*, ensuring that operating under a waiver does not conflict with the PPIA). NCC is confident data from establishments operating under the waiver will demonstrate to FSIS that industry can operate at speeds higher than 140 or 175 bpm while still maintaining process control.

II. Background

In 1997, FSIS implemented the HACCP-Based Inspection Models Project (HIMP), a voluntary pilot program involving 20 young chicken and turkey processing plants. The goal of HIMP was to test an alternative food safety inspection system that sought to decrease pathogen contamination in poultry by refocusing FSIS inspector activities from low-value food safety activities such as carcass sorting to high-value food safety activities such as offline food safety verification tasks. An initial study of the program found HIMP to be successful in improving food safety and reducing carcass contamination during processing.

Plants participating in HIMP were authorized to increase their line speeds to 175 bpm, and despite this increase in line speeds, these HIMP plants continued to show a steady decrease in

instances of carcass contamination. The pilot was a success for FSIS, industry, and the public: the Agency and participating establishments expended fewer resources while increasing food safety for consumers.

In 2014, FSIS published the NPIS regulation, based in large part on HIMP.¹ NPIS incorporated many of HIMP's components, and in proposing the rule, FSIS explained that "permitting FSIS to conduct more food safety related offline inspection activities, will allow for better use of FSIS inspection resources, and will lead to industry innovations in operations and processing."² However, despite FSIS's findings that HIMP plants could maintain food safety standards using line speeds of up to 175 bpm, the final rule arbitrarily limited participating establishments' line speeds to 140 bpm for young chickens without meaningful justification. The arbitrarily limited line speeds have deterred many establishments from opting into the NPIS system, and significantly fewer establishments opted into the program than FSIS anticipated. As a result, FSIS has not realized the Agency cost savings and efficiencies anticipated for the program, and the chicken industry has not been able to take advantage of an otherwise modernized inspection system. We understand that FSIS continues to consider issues related to line speed, and we believe that the data gathered from establishments operating under NPIS reinforces that it is appropriate for young chicken establishments to operate at line speeds above 140 bpm.

III. Support for Requested Actions

We are aware that some of NCC's members are able to and wish to operate at line speeds in excess of 140 bpm or 175 bpm, but they are restricted arbitrarily from doing so under NPIS. We propose that FSIS institute a waiver program to allow establishments operating under NPIS and participating in SIP to operate without an arbitrary line speed limitation, running at any speed at which the establishment can maintain process control. This change will not affect food safety—if anything, it will enhance it by encouraging more participation in NPIS and SIP—and it will provide efficiency improvements and cost savings for both industry and FSIS.

A. Increasing Permissible Line Speeds Would Not Impair Food Safety

Permitting establishments to operate without an arbitrary line speed limitation would not create food safety issues. FSIS recognized in the final rule implementing NPIS that "data from the HIMP pilot demonstrate that establishments operating under HIMP are able to maintain process control at line speeds of up to 175 bpm."³ Specifically, these data demonstrate that plants operating at line speeds authorized under HIMP were "capable of consistently producing safe, wholesome, and unadulterated product, and that they consistently met pathogen reduction and other performance standards."⁴ In a 2011 comprehensive review of HIMP plant performance, FSIS found that HIMP plants performed at least as well as non-HIMP establishments in terms of

¹Modernization of Poultry Slaughter Inspection, 79 Fed. Reg. 49566 (Aug. 21, 2014).

²Proposed Rule, Modernization of Poultry Slaughter Inspection, 77 Fed. Reg. 4408, 4408 (Jan. 27, 2012).

³79 Fed. Reg. at 45951.

⁴*Id.*

Salmonella control, and concluded that “*Salmonella* positive rates at HIMP establishments were not found to be related to line speed.”⁵ FSIS also found that “[t]here is no statistical difference in fecal NR rates between establishments with different line speeds” and that “line speeds in HIMP establishments are not having a negative impact on visible fecal contamination rates.”⁶ In other words, higher line speeds do not lead to higher rates of *Salmonella*, nor do they lead to increased fecal contamination during processing. FSIS likewise found no statistically significant effects of line speed on the various other consumer protection (OCP) defect categories.⁷

A landmark 2001 study by the Research Triangle Institute (RTI) similarly found that “inspection under the new models [HIMP] is equivalent and in some ways superior to that of traditional inspection...and can maintain or even improve food safety and other consumer protection conditions relative to traditional hands-on inspection methods.”⁸ The study collected and analyzed microbial and organoleptic data at eight plants before and after the implementation of HIMP and concluded that the implementation of HIMP resulted “generally in improvements in food safety and OCP [other consumer protection] conditions”⁹

RTI observed the following performance from the eight plants that had the ability to operate under increased line speeds:

- The plants showed a significant decrease in septicemia/toxemia and fecal contamination;
- The plants continued to meet the performance standard for *Salmonella* while their overall prevalence rate for the organism remained virtually unchanged;
- The percentage of acceptable samples for *E. coli* (based on the FSIS performance criteria) increased from 77.9 percent to 93.4 percent; and
- The percentage of unacceptable samples for *E. coli* fell from 3.9 percent to 0.7 percent.¹⁰

Moreover, NCC recently surveyed member companies operating under NPIS with and without the benefit of a line speed waiver as well as non-NPIS establishments to evaluate food safety performance under the various systems in real-world conditions. The data clearly demonstrate that establishments operating under NPIS are not compromising food safety.

Forty broiler establishments participated in this survey and were evaluated over a 6-month time period.¹¹ Of the 40 establishments surveyed, 20 establishments were currently enrolled in NPIS with 16 of those establishment having line speed waivers. The other 20 establishments were

⁵FSIS, Evaluation of HACCP Inspection Models Project (HIMP) at 7, August 2011, https://www.fsis.usda.gov/shared/PDF/Evaluation_HACCP_HIMP.pdf.

⁶*Id.* at 22.

⁷*Id.* at 25.

⁸Cates, S., Anderson, D., Karns, S., & Brown, P. A. (2001). Traditional Versus Hazard Analysis and Critical Control Point-Based Inspection: Results from a Poultry Slaughter Project. *Journal of Food Protection*, 64(6), 826-832.

⁹*Id.* at 831.

¹⁰*Id.* at 831-32.

¹¹December 1, 2016 through May 31, 2017.

non-NPIS establishments that were operating under traditional, SIS, or NELS inspection systems. To ensure these plants were similar in size, weekly production volume was also collected. NPIS establishments surveyed had an approximately 6% higher average weekly production volume than non-NPIS establishments. Regarding line speeds, the 20 non-NPIS establishments averaged approximately 137 bpm while the 20 establishments operating under NPIS averaged 152 bpm. It is important to note that though the 16 establishment in this survey had line speed waivers to operate up to 175 bpm, those plants were averaging only 155 bpm. There are many factors that contribute to the speed at which an establishment processes birds including, but not limited to, type of equipment, uniformity and size of birds, demand for product, and the ability of the establishment to monitor and maintain process control. Combined, these factors can lead to establishments running below the maximum line speed permitted.

Since the original performance standards for young chicken carcasses were originally established and subsequently reduced, the broiler chicken industry has made significant strides in decreasing the prevalence of both *Salmonella* and *Campylobacter* on young chicken carcasses. This success is reflected in current FSIS data for all inspection systems where the industry average for *Salmonella* on young chicken carcasses is currently 5.42%¹² - well below the FSIS established performance standard of 7.5%. *Salmonella* prevalence on young chicken carcasses for establishments participating in this survey averaged 4.88%, with NPIS establishments performing as good as if not better than their non-NPIS counterparts. The same positive trend holds true for *Campylobacter* prevalence on young chicken carcasses. FSIS data indicate the current *Campylobacter* prevalence rate across all young chicken establishments is 1.76%¹³ - well below the FSIS established performance standard of 10.4%. *Campylobacter* prevalence on young chicken carcasses for establishments participating in this survey averaged 0.97%, with NPIS establishments again performing as good as if not better than their non-NPIS counterparts.

In February 2016, FSIS established the new parts performance standards for raw chicken parts (breasts, wings, and legs) and not-ready-to-eat (NRTE) comminuted chicken products, reflecting the increased sales of chicken parts for foodservice and retail.¹⁴ Similar to the survey results for young chicken carcasses, NPIS establishments surveyed had comparable prevalence rates for both *Salmonella* and *Campylobacter* on raw chicken parts as non-NPIS establishments. On average, establishments operating under NPIS had *Salmonella* and *Campylobacter* prevalence rates approximately 21 percent and 8 percent lower, respectively, than the rates for non-NPIS establishments during the period December 1, 2016 through May 31, 2017. Given that consumer

¹²Sampling Results from FSIS Regulated Products (July 1, 2016 – June 30, 2017).

<https://www.fsis.usda.gov/wps/wcm/connect/68f5f6f2-9863-41a5-a5c4-25cc6470c09f/Sampling-Project-Results-Data.pdf?MOD=AJPERES>.

¹³Sampling Results from FSIS Regulated Products (July 1, 2016 – June 30, 2017).

<https://www.fsis.usda.gov/wps/wcm/connect/68f5f6f2-9863-41a5-a5c4-25cc6470c09f/Sampling-Project-Results-Data.pdf?MOD=AJPERES>.

¹⁴New Performance Standards for *Salmonella* and *Campylobacter* in Not-Ready-to-Eat Comminuted Chicken and Turkey Products and Raw Chicken Parts and Changes to Related Agency Verification Procedures: Response to Comments and Announcement of Implementation Schedule. 81 Fed. Reg. 7285 (February 11, 2016).

preference has shifted from purchasing whole chickens to chicken parts, these results reflect significant improvements in efforts to provide the safest product possible with the mission of protecting public health.

FSIS inspectional data reinforces that establishments operating under NPIS at line speeds greater than 140 bpm have compliance records at least as strong as those operating under other inspection models. Through the Public Health Information System (PHIS), FSIS directs in-plant inspection personnel to conduct a variety of inspectional tasks to evaluate the establishment's compliance with FSIS regulations. Because of the focus on offline verification activities, establishments operating under NPIS receive approximately 1.8 times as many PHIS verification tasks than their non-NPIS counterparts, resulting in significantly closer regulatory scrutiny. Specifically, over the six-month survey period, establishments operating under NPIS received almost 6,300 PHIS tasks compared to slightly over 3,500 tasks in non-NPIS establishments. When an establishment fails a task, the inspector usually issues a noncompliance record (NR). Dividing the number of NRs received by the establishment by the number of completed PHIS tasks yields a PHIS NR rate, which FSIS and establishment management may use to evaluate, adjust, and improve food-safety procedures. Despite receiving nearly twice as many PHIS inspection tasks and operating at higher line speeds, the NPIS establishments surveyed had PHIS NR rates that were statistically the same as their counterparts operating under non-NPIS inspection systems. In other words, these establishments were scrutinized much more closely and performed just as well.

Focusing on NRs related directly to food safety (not all NRs necessarily reflect food safety issues) reveals the same pattern. FSIS identifies regulations used to assess food safety process control as Public Health Regulations (PHR).¹⁵ NRs related to PHR regulations are called PHR NRs, and the ratio of PHR NRs to verification tasks for PHR regulations is known as the PHR Rate. FSIS uses the PHR Rate as one way to determine whether a Food Safety Assessment (FSA) is necessary in an establishment and to provide an early warning to the establishment using specific "cut points." At the 5.82% "cut point," the establishment receives an "early warning," and at the 9.46% cut point, an FSA is triggered. On average, establishments operating under NPIS received over 11,500 PHR verification tasks over the 6-month survey period – approximately 2.8 times more PHR verification tasks than establishments operating under non-NPIS inspection systems. Despite significantly intensified oversight, PHR noncompliance rates for establishments operating under NPIS averaged less than 2% – well-below the early warning "cut point" of 5.82% and below that of non-NPIS establishments.

As evidenced by this six-month industry survey of both NPIS and non-NPIS establishments, there are significant and compelling food safety incentives to allow for an increase in line speed. Across the board – from prevalence rates of both *Salmonella* and *Campylobacter* on young

¹⁵FSIS Data Analysis and Reporting: Public Health Regulations. https://www.fsis.usda.gov/wps/portal/portal/fsis/topics/careers!/ut/p/a0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOINAg3MDC2dDbwMDIHQ08842MTDy8_YINhUvyDbUREAyhhHFw!!/?1dmy¤t=true&urile=wcm%3Apath%3A/fsis-content/internet/main/topics/data-collection-and-reports/fsis-data-analysis-and-reporting/data-reporting/public-health-regulations. Accessed August 21, 2017.

chicken carcasses and parts to lower PHIS and PHR NR rates – establishments operating under NPIS operate as well as, if not better, than their non-NPIS counterparts, despite operating at higher line speeds and with significantly increased inspectional oversight. This evidence reinforces that increased line speed and corresponding production volume can result in robust food safety outcomes and subsequent public health protection. Indeed, were there any reason to believe this was not the case, FSIS certainly would not have continued to allow the former HIMP plants the option of operating at speeds up to 175 bpm. Furthermore, there is no indication in our data, in the RTI study, or in the FSIS HIMP study suggesting that establishments were approaching any upper-level limitation in their ability to maintain process control at the line speeds allowed under HIMP or NPIS. The success of HIMP plants operating at line speeds of up to 175 bpm strongly suggests that facilities would be equally successful in operating at even higher speeds if granted a waiver to do so.

Moreover, establishments would have to be able to maintain process control at whatever line speed they select. As a condition to receiving a waiver, establishments would be expected to develop a process for monitoring process control and restoring process control if lost. Such programs would be establishment-specific and might include testing and statistical monitoring tools and gradual decreases or increases to line speed as a result of those steps.

As history with NPIS and HIMP supports, establishments would select line speeds based on a variety of factors. Some establishments would operate at higher line speeds than others. As FSIS has explained, plants determine their line speeds based on factors such as their equipment and facilities, bird size and flock conditions, and their ability to maintain process control while operating at a given line speed.¹⁶ Thus, if given the opportunity to increase their line speeds, some plants will choose to do so while others will not. As of 2014, HIMP plants were operating at an average speed of 131 bpm.¹⁷ Of course, some establishments operate at speeds faster than average, others slower. Under our requested waiver program, establishments would be free to select their line speeds based on their ability to maintain process control and other relevant considerations rather than arbitrary limitations.

B. The Current Regulation Imposes Cost on Industry and Creates Competitive Disparities Among U.S. Establishments

By arbitrarily limiting the line speed at which the majority of establishments may operate, the current regulation imposes costs on industry and FSIS and creates competitive disparities. Slower line speeds impose cost on plants by arbitrarily slowing the pace of operations. Slower operations, in turn, increase operation costs, all of which affects the price consumers pay at retail.

NPIS was intended to be a voluntary program in which plants would have greater operational flexibility, including more control over line speeds, in return for subjecting themselves to greater regulatory food safety scrutiny. In short, the program was intended to improve food safety outcomes and generate cost efficiencies for both plants and FSIS. But without the incentive of

¹⁶*Id.*

¹⁷79 Fed. Reg. at 45950.

operating at a 175 bpm line speed, fewer plants have opted into the program than would be the case had FSIS adopted the originally proposed 175 bpm limit, the speed tested in HIMP plants for more than a decade. Indeed, in the proposed rule for NPIS, FSIS anticipated that 219 establishments would opt into NPIS.¹⁸ To date, only 62 have actually done so. The arbitrary line speed caps have been a major barrier to establishments opting into NPIS. Thus, restricting the line speeds to 140 bpm has caused the industry and the Agency to forego potential cost savings associated with making better use of resources, all without any offsetting benefit to food safety.

The current regulation also arbitrarily creates a competitive disadvantage for establishments that did not participate in the original HIMP pilot (including a number of establishments that did not exist when HIMP began). Even if an establishment were to participate in NPIS as currently structured, it would not receive the full advantage of operating at 175 bpm or higher. The current regulation therefore creates competitive disparity among U.S. plants by arbitrarily setting two standards among industry.

C. Increasing the Permissible Line Speed is Consistent with the President’s Regulatory Reform Agenda

Granting waivers to establishments to operate without arbitrary line speed limitations would provide regulatory cost savings and reduce the regulatory burden for chicken processors, outcomes that align with the President’s regulatory reform initiatives. Moreover, FSIS could apply the cost savings associated with allowing establishments to operate at increased line speeds to offset the costs of future new regulations that will actually generate food safety benefits.

Since first taking office, President Trump has initiated several regulatory reform measures intended to decrease regulatory burden on industry, eliminate ineffective or unnecessary regulations, and make the federal government more efficient. Executive Order (EO) 13771 on Reducing Regulation and Controlling Regulatory Costs states that it is the policy of the executive branch to be “prudent and financially responsible in the expenditure of funds, from both public and private sources,” and it requires that for each new regulation issued, at least two existing regulations must be eliminated to offset the cost of the new regulation.¹⁹ The White House Office of Management and Budget’s (OMB’s) guidance documents on how the EO should be implemented state that regulatory actions that produce cost savings, including regulatory actions that expand consumption and/or production options, qualify as “EO 13771 deregulatory actions” for purposes of offsetting future regulations.²⁰

¹⁸77 Fed. Reg. at 4437.

¹⁹Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, 82 Fed. Reg. 9339 (Feb. 3, 2017).

²⁰See M-17-21, Memorandum: Guidance Implementing Executive Order 13771, Titled “Reducing Regulation and Controlling Regulatory Costs,” Apr. 5, 2017 (“Generally, “one-time” regulatory actions (i.e., those actions that are not periodic in nature) that expand consumption and/or production options would qualify as EO 13771 deregulatory actions.”); Memorandum: Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled “Reducing Regulation and Controlling Regulatory Costs,” Feb. 2, 2017 (“Any existing

Instituting a waiver program to allow plants to operate in excess of the current maximum line speeds therefore arguably would be considered an EO 13771 deregulatory action because it would expand production options and produce cost savings for industry. When FSIS finalized the NPIS rule, much of the anticipated cost savings were never realized due to the rule's arbitrary 140 bpm line speed limitation. If FSIS were to eliminate the line speed for plants that receive a waiver, these cost savings would be realized, and FSIS could apply the cost savings toward offsetting a future regulatory action.

Increasing the line speed also would satisfy a number of the objectives of Executive Order 13777 on Enforcing the Regulatory Reform Agenda.²¹ EO 13777 calls for each agency to establish a Regulatory Reform Task Force that is responsible for evaluating existing regulations and making recommendations regarding which regulations should be repealed, replaced, or modified. Each agency Task Force is directed to identify regulations that, among other things, eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create serious inconsistency; or otherwise interfere with regulatory reform initiatives and policies. As previously discussed, the 140 bpm line speed limitation is unnecessary because there is no food safety risk associated with operating at higher line speeds. The restriction imposes costs that exceed any benefits because it imposes costs on industry without any corresponding increase in food safety. Eliminating the arbitrary line speed limits for plants participating in the waiver program also would eliminate an inconsistency created by the disparate treatment of the former HIMP plants compared to all other plants.

Finally, President Trump issued a memorandum directing all executive departments and agencies to support the expansion of manufacturing in the United States through reductions in regulatory burdens affecting domestic manufacturing, and issuing waivers for the maximum line speeds would be consistent with this directive.²²

D. Current Safeguards Will Continue to Protect Worker Safety under Increased Line Speeds

The poultry industry continues to make tremendous improvement in the area of worker safety as evident by the most recent Department of Labor's Bureau of Labor Statistics (BLS) report.²³ The incidence of nonfatal occupational injuries and illnesses in the poultry sector – which includes slaughter and processing – remains at an all-time low. The total recordable poultry processing illness and injury rate for 2015 was 4.3 cases per 100 full-time workers (per year) which was

regulatory action that imposes costs and the repeal or revision of which will produce verifiable savings may qualify.”)

²¹Executive Order 13777, Enforcing the Regulatory Agenda, 82 Fed. Reg. 12285 (March 1, 2017).

²²See Presidential Memorandum: Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing (Jan. 24, 2017).

²³Department of Labor Bureau of Labor Statistics Report – 2015 Injury and Illness Report. <https://www.bls.gov/iif/oshwc/osh/os/ostb4732.pdf>.

lower than the 2015 rate of 4.7 for the entire food manufacturing sector. Poultry processing's 2015 rate of 4.3 represents an 81 percent decrease from 1994 (the oldest data available on the BLS website), when the recorded rate was 22.7, demonstrating the enormous progress the industry has made in improving safety for its workforce. Furthermore the more than five-fold decrease in injury rates in the poultry industry from 1994-2015 coincided with a period of substantial increases in line speeds, bird size, and automation. Technological improvements in processing tend to correspond to safer workplaces.

In 2017, an industry survey was performed of establishments that had recently opted into NPIS and those that had been former HIMP (current NPIS) establishments. In 2014 and 2015, all plants surveyed, on average, were operating well below the industry's total recordable and Days Away, Restrictions and Transfers (DART) rates. Although the 2016 total recordable and DART rates have yet to be released by BLS, the 2016 total recordable and DART rates obtained in this survey were well below the 2015 BLS results.

NCC understands that past discussions of increasing line speeds have raised concerns related to worker safety. NCC's members are strongly committed to worker safety, and we agree that worker safety is a factor plants must consider when deciding the most appropriate line speed for their operations (among other factors, such as maintaining process control). It is also extremely important to note that when line speeds are discussed, this pertains only to the evisceration portion of the process. Chicken processing plants are "divided" into two segments which are commonly referred to as first processing and second processing. The evisceration portion of the operation occurs in first processing which is the most highly automated portion of the operation itself. The line speed increases the industry is requesting pertain only to the evisceration portion of the establishment. The majority of the labor involved in processing chicken is actually in second processing where birds are trimmed, deboned, and cut into pieces. Line speeds will not increase in second processing but rather establishments will need to expand to increase capacity in second processing if they choose to opt into NPIS. This will also lead to job creation in those establishments that opt into NPIS as more employees will be needed for trimming, deboning, and cutting chicken into pieces – all at the same rate as they currently operate today. To that end, FSIS already has several high-level safeguards in place to ensure plants' operations account for the wellbeing of their workers. Because worker safety is influenced by a variety of factors, many of which are outside of FSIS's jurisdiction or control, FSIS should continue its current holistic approach to worker safety, in cooperation with other federal agencies, rather than regulating for worker safety at the processing level.

FSIS accounts for worker safety in the current line speed regulation by including a provision requiring plants to comply with federal worker safety requirements. Subpart (d) of the 9 C.F.R. § 381.69 makes clear that all plants, regardless of the line speed at which they operate, must provide workers with a workplace free from recognized hazards that are likely to cause death or serious physical harm and to comply with all Occupational Safety and Health Administration (OSHA) standards. The current maximum line speed regulation therefore already contemplates that plants may operate at line speeds only as fast as will allow them to continue satisfying their obligation to preserve worker safety, despite the maximum line speed permitted. NCC is only requesting a waiver of subpart (a), which sets the maximum line speed, not subpart (d), which contains the requirement to protect worker safety. Establishments operating under a waiver

therefore will only be able to operate at speeds that allow them to protect worker (including FSIS personnel) and food safety.

Separately, each establishment participating in NPIS is also required to submit an annual attestation to FSIS stating that the establishment maintains a program to monitor and document any work-related conditions of establishment workers. This program must include the following elements: a) policies to encourage early reporting of symptoms of injuries and illnesses, and assurance that the plant has no policies or programs in place that would discourage the reporting of injuries and illnesses; (b) notification to employees of the nature and early symptoms of occupational illnesses and injuries; and (c) monitoring of injury and illness logs, as well as nurse or medical office logs, workers' compensation data, and any other injury or illness information available. This waiver would not affect the attestation requirement.

FSIS also noted in the preamble to the NPIS proposed rule that there is an important distinction between line speed and work pace.²⁴ A worker's exposure to musculoskeletal disorder (MSD) risk factors, such as repetitive or prolonged hand activity, is affected by his or her work pace. Work pace, in turn, is the product of many factors, one of which is line speed. Other factors affecting work pace include staffing levels, plant layout, and product flow, factors which FSIS does not regulate but that establishments may adjust as appropriate to ensure that line speeds do not jeopardize worker safety.

Because many of the factors that influence worker safety are outside of its control, FSIS should continue its current, high-level approach to ensuring poultry facilities provide a safe work environment while continuing to partner with its sister agencies responsible for worker safety. FSIS's current regulations allow establishments to choose the operating procedures that are best suited to their circumstances (*e.g.*, line speed, number of workers) while simultaneously ensuring that these procedures do not jeopardize worker safety. FSIS's current regulations therefore would adequately address any worker safety implications associated with increased line speeds because establishments would remain under an obligation to comply with occupational safety and health standards, including the duty to provide a safe work environment.

In sum, there are multiple safeguards in place to ensure plants continue to operate in compliance with federal worker safety requirements, regardless of the line speed at which they operate. Moreover, FSIS's approach of addressing worker safety at a high level, rather than at a process level, is appropriate in light of the many factors that contribute to the safety of a work environment. FSIS therefore could increase the permissible line speeds with the assurance that worker safety would continue to be accounted for by those establishments that choose to take advantage of the faster speeds.

E. Ensuring that the U.S. Chicken Industry Retains its Global Competitiveness

Not only does the existing regulation put some U.S. broiler establishments at a competitive disadvantage domestically to those being allowed to operate line speeds up to 175 bpm but this arbitrary limit on line speed places American chicken processors at a competitive disadvantage

²⁴79 Fed. Reg. at 49598.

with their international competitors. Broiler chicken plants elsewhere in the world—including South America, Asia, Canada, and Europe—are able to safely operate at line speeds of over 200 bpm. Creating a waiver system to allow establishments to operate without arbitrary line speed limits will put U.S. producers on more equal footing, especially at a time when the United States is seeking to increase its exports of agricultural products.

In 2016, the U.S. chicken industry exported more than 3 million metric tons of broiler chicken meat at a value of \$2.853 billion.²⁵ The value of these exports is the lowest in a decade while the volume is the second lowest in that same time frame. There are many factors that influence the volume and value of chicken broiler meat exports from the U.S. including, but not limited to, avian influenza, feed cost, consumer demand – both domestically and internationally – and production cost. The U.S. was the global leader in chicken broiler meat exports through 2009. However, in 2010 Brazil assumed that role.²⁶ With an increasingly competitive global export market, U.S. chicken processors should not also have to contend with arbitrary production limitations.

Maintaining the United States' global competitiveness in the broiler chicken meat market is a top priority for the broiler industry and it will help ensure the overall sustainability of the industry itself. One of the reasons that the U.S. has lost its competitive edge is due to restrictions on line speeds. In many leading broiler-producing countries around the world, line speeds operate well above 200 bpm. This includes Brazil which has edged out the U.S. as the world leader in broiler meat exports. Food safety and worker safety should always come first, but there is no reason that the U.S. chicken industry should not be allowed to operate safely at higher speeds.

These results indicate that the broiler industry is being put at a competitive disadvantage to other global leaders in broiler meat production. Imposing arbitrary and non-science based line speeds on the broiler chicken industry only further increases the cost of production and hinders our ability to once again become the global leader in broiler exports.

Granting establishments a waiver of the arbitrary line speed limitation in section 381.69(a) would allow all NPIS establishments the flexibility to choose to operate at appropriate line speeds based on their ability to maintain process control, thereby leveling the playing field within the U.S. broiler industry, eliminating competitive barriers between the U.S. and international broiler producers, removing arbitrary limitations on operational control in establishments, and encouraging more establishments to participate in NPIS.

Conclusion

For the reasons stated herein, NCC respectfully requests that FSIS institute a waiver to 9 C.F.R. 381.69(a) to allow establishments that participate in both NPIS and SIP to operate at any line speed they choose, provided they maintain process control. As FSIS's history with HIMP plants demonstrates, there would be no increased food safety risk associated with this change. FSIS's

²⁵United States Department of Agriculture, Foreign Agricultural Service, Global Agricultural Trade System. <https://apps.fas.usda.gov/gats/default.aspx>.

²⁶Global Trade Atlas.

current regulations would also continue to provide adequate protections for worker safety. The incentive to operate at greater line speeds would encourage more plants to participate in NPIS and SIP, allowing both industry and FSIS to capitalize on the cost savings anticipated in the proposed rule.

Moreover, this deregulatory action would advance the President's objective to reduce unnecessary regulatory burdens and would produce cost savings FSIS could use to offset the cost of new regulations that would provide increased public health benefits. In sum, issuing a waiver to the maximum permissible line speeds would create efficiency gains without sacrificing food safety or worker safety, all while enabling FSIS to advance food safety through separate regulations.

Thank you for your consideration of this petition. Please do not hesitate to contact me if I can provide any additional information.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Michael J. Brown', with a long horizontal flourish extending to the right.

Michael J. Brown
President

cc: Paul Kiecker, Acting Administrator, USDA-FSIS