

Dr. William Shaw
Risk, Innovations and Management
Food Safety and Inspection Service, USDA
1400 Independence Avenue, SW
Patriot Plaza III, Room D27
Washington, DC 20250-3700

July 31, 2018

Opposition to Line Speed Waiver Request for Ozark Mountain Poultry, Batesville, Arkansas Facility

Dear Dr. Shaw,

The undersigned twelve organizations of poultry worker representatives, consumer safety advocates, worker rights advocates and occupational safety experts, write in opposition to the request by Ozark Mountain Poultry (P46091, Batesville, Arkansas) for a waiver to 9 CFR 381.69 (a); a request that they may be allowed to operate this facility at line speeds up to 175 birds per minutes (bpm) per slaughter/evisceration line. This request is inconsistent with the Department of Agriculture's waiver regulations, undermines the rule making process, violates the Administrative Procedure Act, as well as endangers workers and consumers alike.

The waiver request submitted by Ozark Mountain Poultry is in response to the announcement in late February by the Food Safety and Inspection Service (FSIS) in their Constituent Update newsletter that it will consider waiver requests from individual young chicken plants to permit these establishments to operate at faster line speeds than permitted under current Department regulations (9 C.F.R. 381.69(a)).¹ The agency's announcement contained 'criteria' that the agency will use in considering any such request. However, as stated in the National Employment Law Project's letter to Administrator Carmen Rottenberg on April 5, 2018, none of the so called 'criteria' announced in the newsletter meet any of the requirements established by the Department's waiver regulations for waivers under the Poultry Products Inspection Act.

The Department's waiver criteria under the Poultry Products Inspection Act provide for: "Waivers for limited periods any provision of the regulations in order to permit appropriate and necessary action in the event of a public health emergency or to permit experimentation so that new procedures, equipment, and processing techniques, may be tested to facilitate definite improvements. Provided that such waivers of the provision of the regulations are not in conflict with the purposes or provisions of the Act."²

The new so called criteria for granting line speed waivers to individual young chicken establishments, announced in the FSIS Constituent Newsletter, do not satisfy any of the Department's waiver requirements. The criteria fail because they are not time limited; they do not require identification of a new procedure, equipment or technique that establishments need a regulatory line-speed waiver to test; and they do not require that there be any definite improvement as required by agency regulations.

The Ozark Mountain Poultry request, dated 4/11/2018, meets none of the waiver requirements under the Poultry Products Inspection Act and must be rejected. Ozark Mountain Poultry is not asking for a

¹ <https://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/newsletters/constituent-updates/archive/2018/ConstUpdate022318>

² 9.C.F.R.381.3 (b)

time limited waiver; there is no public health emergency; the request contains no mention of a new procedure, equipment or processing technique; and there is no data or other mention of ‘definite improvements.’

Further, there is absolutely no mention of the impact on the safety and health of workers in the plant due to the line speed up and the increase work load demands this will place on workers who already suffer very high injury and illness rates. Overwhelming evidence supports the conclusion that allowing poultry processing establishments to operate with faster line speed limitations would dramatically worsen the already unsafe worker conditions in poultry plants.³

In 2014, following two years of public comments, the Department finalized a rule establishing a new inspection system for young chicken slaughter establishments and maintained the maximum line speed of 140 bpm. The FSIS reached these conclusions and promulgated the 2014 Final Rule after a painstaking, multi-year rulemaking effort. The Department considered extensive comments from worker advocates, consumer safety experts, the poultry industry and other affected stakeholders, and concluded that a 140 bpm maximum rate was best supported by the rulemaking record.⁴ Any decision to reject the approach in the 2014 Final Rule in favor of an approach that conflicts with FSIS’s own prior conclusions would be subject to judicial review, and would likely be arbitrary and capricious.⁵

Because the Ozark Mountain Poultry, Inc. waiver request meets none of the requirements under FSIS’s waiver regulations, and because granting the request would likely be arbitrary and capricious in violation of the Administrative Procedure Act, we urge FSIS to reject the request.

Sincerely,

A Better Balance

Center for Progressive Reform

Consumer Federation of America

Food and Water Watch

Interfaith Worker Justice

International Brotherhood of Teamsters

³ See U.S. Dep’t of Labor, Bureau of Labor Statistics, *2016 Employer-Reported Workplace Injuries and Illnesses (Annual)*, at Summary Tbl. 1 (incidence rates – detailed industry level), Supplemental News Release Tbl. 12 (highest rates for total illness cases), available at <https://www.bls.gov/web/osh.supp.toc.htm>.) ; See Nat’l Inst. for Occupational Safety & Health, *Evaluation of Carpal Tunnel Syndrome and Other Musculoskeletal Disorders among Employees at a Poultry Processing Plant* 17 (June 2015), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2014-0040-3232.pdf>. See, *Evaluation of Musculoskeletal Disorders and Traumatic Injuries among Employees at a Poultry Processing Plant* 11 (Mar. 2014), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2012-0125-3204.pdf>

⁴See 2014 Final Rule, 79 Fed. Reg. at 49,590-49,592, 49,596-49,600.

⁵See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).

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July 31, 2018

Opposition to Line Speed Waiver Request by Peco Foods Inc. Pocahontas, Arkansas

Dear Dr. Shaw,

The undersigned twelve organizations of poultry worker representatives, consumer safety advocates, worker rights advocates and occupational safety experts, write in opposition to Peco Foods Inc. (P-45483) Pocahontas, Arkansas, request for a waiver to 9 CFR 381.69 (a); a request that they be allowed to speed up their lines up to 175 birds per minute (bpm). This request is inconsistent with the Department of Agriculture's waiver regulations, undermines the rule making process, violates the Administrative Procedure Act, as well as endangers workers and consumers alike.

The waiver request submitted by Peco Foods is in response to the announcement in late February by the Food Safety and Inspection Service (FSIS) in their Constituent Update newsletter that it will consider waiver requests from individual young chicken plants to permit these establishments to operate at faster line speeds than permitted under current Department regulations (9 C.F.R. 381.69 (a)).¹ The agency's announcement contained 'criteria' that the agency will use in considering any such request. However, as stated in the National Employment Law Project's letter to Administrator Carmen Rottenberg on April 5, 2018, none of the so called 'criteria' announced in the newsletter meet any of the requirements established by the Department's waiver regulations for waivers under the Poultry Products Inspection Act.

The Department's waiver criteria under the Poultry Products Inspection Act provide for: "Waivers for limited periods any provision of the regulations in order to permit appropriate and necessary action in the event of a public health emergency or to permit experimentation so that new procedures, equipment, and processing techniques, may be tested to facilitate definite improvements. Provided that such waivers of the provision of the regulations are not in conflict with the purposed or provision of the Act."²

The new so called criteria for granting line speed waivers to individual young chicken establishments, announced in the FSIS Constituent Newsletter, do not satisfy any of the Department's waiver requirements. The criteria fail because they are not time limited; they do not require identification of a new procedure, equipment or technique that establishments need a regulatory line-speed waiver to test; and they do not require that there be any definite improvement as required by agency regulations.

The Peco Foods waiver request, dated 10/24/2017, meets none of the waiver requirements under the Poultry Products Inspection Act and must be rejected. Peco Foods is not asking for a time limited

¹ <https://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/newsletters/constituent-updates/archive/2018/ConstUpdate022318>

² 9.C.F.R.381.3 (b)

waiver; there is no public health emergency; the request contains no mention of a new procedure, equipment or processing technique; and there is no data or other mention of ‘definite improvements.’ In fact, the waiver request simply says the plant will ‘maintain’ food safety.

Further, there is absolutely no mention of the impact on the safety and health of workers in the plant due to the line speed up and the increase work load demands this will place on workers who already suffer very high injury and illness rates. Overwhelming evidence supports the conclusion that allowing poultry processing establishments to operate with faster line speed limitations would dramatically worsen the already unsafe worker conditions in poultry plants.³

In 2014, following two years of public comments, the Department finalized a rule establishing a new inspection system for young chicken slaughter establishments and maintained the maximum line speed of 140 bpm. The FSIS reached these conclusions and promulgated the 2014 Final Rule after a painstaking, multi-year rulemaking effort. The Department considered extensive comments from worker advocates, consumer safety experts, the poultry industry and other affected stakeholders, and concluded that a 140 bpm maximum rate was best supported by the rulemaking record.⁴ Any decision to reject the approach in the 2014 Final Rule in favor of an approach that conflicts with FSIS’s own prior conclusions would be subject to judicial review, and would likely be arbitrary and capricious.⁵

Because the Peco Foods, Inc. waiver request meets none of the requirements under FSIS’s waiver regulations, and because granting the request would likely be arbitrary and capricious in violation of the Administrative Procedure Act, we urge FSIS to reject the request.

Sincerely,

A Better Balance

Center for Progressive Reform

Consumer Federation of America

Food and Water Watch

Interfaith Worker Justice

International Brotherhood of Teamsters

³ See U.S. Dep’t of Labor, Bureau of Labor Statistics, *2016 Employer-Reported Workplace Injuries and Illnesses (Annual)*, at Summary Tbl. 1 (incidence rates – detailed industry level), Supplemental News Release Tbl. 12 (highest rates for total illness cases), available at <https://www.bls.gov/web/osh.supp.toc.htm>.) ; See Nat’l Inst. for Occupational Safety & Health, *Evaluation of Carpal Tunnel Syndrome and Other Musculoskeletal Disorders among Employees at a Poultry Processing Plant* 17 (June 2015), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2014-0040-3232.pdf>. See, *Evaluation of Musculoskeletal Disorders and Traumatic Injuries among Employees at a Poultry Processing Plant* 11 (Mar. 2014), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2012-0125-3204.pdf>

⁴See 2014 Final Rule, 79 Fed. Reg. at 49,590-49,592, 49,596-49,600.

⁵See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).

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July 31, 2018

Opposition to Line Speed Waiver Request for Pilgrim's Pride Corporation facility in Sanford, North Carolina

Dear Dr. Shaw,

The undersigned twelve organizations of poultry worker representatives, consumer safety advocates, worker rights advocates and occupational safety experts, write in opposition to the request by Pilgrim's Pride Corporation (P1201, Sanford, North Carolina) for a waiver to 9 CFR 381.69 (a); a request that they may be allowed to operate this facility at line speeds up to 175 birds per minutes (bpm) per slaughter/evisceration line. This request is inconsistent with the Department of Agriculture's waiver regulations, undermines the rule making process, violates the Administrative Procedure Act, as well as endangers workers and consumers alike.

The waiver request submitted by Pilgrim's Pride is in response to the announcement in late February by the Food Safety and Inspection Service (FSIS) in their Constituent Update newsletter that it will consider waiver requests from individual young chicken plants to permit these establishments to operate at faster line speeds than permitted under current Department regulations (9 C.F.R. 381.69 (a)).¹ The agency's announcement contained 'criteria' that the agency will use in considering any such request. However, as stated in the National Employment Law Project's letter to Administrator Carmen Rottenberg on April 5, 2018, none of the so called 'criteria' announced in the newsletter meet any of the requirements established by the Department's waiver regulations for waivers under the Poultry Products Inspection Act.

The Department's waiver criteria under the Poultry Products Inspection Act provide that the FSIS Administrator may "[w]aive for limited periods any provision of the regulations in order to permit appropriate and necessary action in the event of a public health emergency or to permit experimentation so that new procedures, equipment, and processing techniques, may be tested to facilitate definite improvements. Provided that such waivers of the provision of the regulations are not in conflict with the purposes or provisions of the Act."²

The new so called criteria for granting line speed waivers to individual young chicken establishments, announced in the FSIS Constituent Newsletter, do not satisfy any of the Department's waiver requirements. The criteria fail because they are not time limited; they do not require identification of a new procedure, equipment or technique that establishments need a regulatory line-speed waiver to test; and they do not require that there be any definite improvement as required by agency regulations.

¹ <https://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/newsletters/constituent-updates/archive/2018/ConstUpdate022318>

² 9.C.F.R.381.3 (b)

The Pilgrim's Pride request, dated 3/22/2018, meets none of the waiver requirements under the Poultry Products Inspection Act and must be rejected. Pilgrim's Pride is not asking for a time limited waiver; there is no public health emergency; the request contains no mention of a new procedure, equipment or processing technique; and there is no data or other mention of 'definite improvements.' In fact, the waiver request simply says the plant will 'maintain' food safety.

Further, the Pilgrim's Pride request claims, in error, that a NIOSH study (and other data referred to but not made available) provides there is no evidence to substantiate the assertion that increased line speeds will increase worker injuries. The NIOSH study they refer to actually documented very high rates of carpal tunnel syndrome in poultry plants. That study concluded that:

"Poultry processing involves a combination of highly repetitive and forceful movements that places employees at an increased risk for upper extremity WMSDs [Lipscomb et al. 2008; Cartwright et al. 2012]. We found that the risk of carpal tunnel syndrome increased with increasing exposure to the occupational risk factors for musculoskeletal disorders. These results suggest the need for ergonomic interventions and improvement of work processes and medical evaluation. Despite repeated studies in this industry in the past 20 years that found high prevalence of carpal tunnel syndrome, poultry processing jobs continue to be hazardous."³

In fact, overwhelming evidence supports the conclusion that allowing poultry processing establishments to operate with faster line speed limitations would dramatically worsen the already unsafe worker conditions in poultry plants.⁴

In 2014, following two years of public comments, the Department finalized a rule establishing a new inspection system for young chicken slaughter establishments and maintained the maximum line speed of 140 bpm. The FSIS reached these conclusions and promulgated the 2014 Final Rule after a painstaking, multi-year rulemaking effort. The Department considered extensive comments from worker advocates, consumer safety experts, the poultry industry and other affected stakeholders, and concluded that a 140 bpm maximum rate was best supported by the rulemaking record.⁵ Any decision to reject the approach in the 2014 Final Rule in favor of an approach that conflicts with FSIS's own prior conclusions would be subject to judicial review, and would likely be arbitrary and capricious.⁶

³ See, *Evaluation of Musculoskeletal Disorders and Traumatic Injuries among Employees at a Poultry Processing Plant* 11 (Mar. 2014), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2012-0125-3204.pdf>

⁴ See U.S. Dep't of Labor, Bureau of Labor Statistics, *2016 Employer-Reported Workplace Injuries and Illnesses (Annual)*, at Summary Tbl. 1 (incidence rates – detailed industry level), Supplemental News Release Tbl. 12 (highest rates for total illness cases), available at <https://www.bls.gov/web/osh.supp.toc.htm>.) ; See Nat'l Inst. for Occupational Safety & Health, *Evaluation of Carpal Tunnel Syndrome and Other Musculoskeletal Disorders among Employees at a Poultry Processing Plant* 17 (June 2015), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2014-0040-3232.pdf>. See, *Evaluation of Musculoskeletal Disorders and Traumatic Injuries among Employees at a Poultry Processing Plant* 11 (Mar. 2014), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2012-0125-3204.pdf>

⁵ See 2014 Final Rule, 79 Fed. Reg. at 49,590-49,592, 49,596-49,600.

⁶ See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).

Because the Pilgrim's Pride Inc. waiver request meets none of the requirements under FSIS's waiver regulations, and because granting the request would likely be arbitrary and capricious in violation of the Administrative Procedure Act, we urge FSIS to reject the request.

Sincerely,

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July 31, 2018

Opposition to Line Speed Waiver Request by Gerber Poultry Kidron, Ohio Facility

Dear Dr. Shaw,

The undersigned twelve organizations of poultry worker representatives, consumer safety advocates, worker rights advocates and occupational safety experts, write in opposition to Gerber Poultry's, P-20604, Kidron, Ohio, request for a waiver to 9 CFR 381.69 (a); a request that they may be allowed to operate its evisceration line over 140 birds per minutes (bpm) and up to 175 bpm. This request is inconsistent with the Department of Agriculture's waiver regulations, undermines the rule making process, violates the Administrative Procedure Act, as well as endangers workers and consumers alike.

The waiver request submitted by Gerber Poultry is in response to the announcement in late February by the Food Safety and Inspection Service (FSIS) in their Constituent Update newsletter that it will consider waiver requests from individual young chicken plants to permit these establishments to operate at faster line speeds than permitted under current Department regulations (9 C.F.R. 381.69 (a)).¹ The agency's announcement contained 'criteria' that the agency will use in considering any such request. However, as stated in the National Employment Law Project's letter to Administrator Carmen Rottenberg on April 5, 2018, none of the so called 'criteria' announced in the newsletter meet any of the requirements established by the Department's waiver regulations for waivers under the Poultry Products Inspection Act.

The Department's waiver criteria under the Poultry Products Inspection Act provide for: "Waivers for limited periods any provision of the regulations in order to permit appropriate and necessary action in the event of a public health emergency or to permit experimentation so that new procedures, equipment, and processing techniques, may be tested to facilitate definite improvements. Provided that such waivers of the provision of the regulations are not in conflict with the purposes or provisions of the Act."²

The new so called criteria for granting line speed waivers to individual young chicken establishments, announced in the FSIS Constituent Newsletter, do not satisfy any of the Department's waiver requirements. The criteria fail because they are not time limited; they do not require identification of a new procedure, equipment or technique that establishments need a regulatory line-speed waiver to test; and they do not require that there be any definite improvement as required by agency regulations. The Gerber Poultry waiver request, dated 3/16/2018, meets none of the waiver requirements under the

¹ <https://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/newsletters/constituent-updates/archive/2018/ConstUpdate022318>

² 9.C.F.R.381.3 (b)

Poultry Products Inspection Act and must be rejected. Gerber is not asking for a time limited waiver; there is no public health emergency; the request contains no mention of a new procedure, equipment or processing technique; and there is no data or other mention of ‘definite improvements.’

Further, there is absolutely no mention of the impact on the safety and health of workers in the plant due to the line speed up and the increase work load demands this will place on workers who already suffer very high injury and illness rates. Overwhelming evidence supports the conclusion that allowing poultry processing establishments to operate with faster line speed limitations would dramatically worsen the already unsafe worker conditions in poultry plants.³

In 2014, following two years of public comments, the Department finalized a rule establishing a new inspection system for young chicken slaughter establishments and maintained the maximum line speed of 140 bpm. The FSIS reached these conclusions and promulgated the 2014 Final Rule after a painstaking, multi-year rulemaking effort. The Department considered extensive comments from worker advocates, consumer safety experts, the poultry industry and other affected stakeholders, and concluded that a 140 bpm maximum rate was best supported by the rulemaking record.⁴ Any decision to reject the approach in the 2014 Final Rule in favor of an approach that conflicts with FSIS’s own prior conclusions would be subject to judicial review, and would likely be arbitrary and capricious.⁵

Because the Gerber Poultry, Inc. waiver request meets none of the requirements under FSIS’s waiver regulations, and because granting the request would likely be arbitrary and capricious in violation of the Administrative Procedure Act, we urge FSIS to reject the request.

Sincerely,

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³ See U.S. Dep’t of Labor, Bureau of Labor Statistics, *2016 Employer-Reported Workplace Injuries and Illnesses (Annual)*, at Summary Tbl. 1 (incidence rates – detailed industry level), Supplemental News Release Tbl. 12 (highest rates for total illness cases), available at <https://www.bls.gov/web/osh.supp.toc.htm>.) ; See Nat’l Inst. for Occupational Safety & Health, *Evaluation of Carpal Tunnel Syndrome and Other Musculoskeletal Disorders among Employees at a Poultry Processing Plant* 17 (June 2015), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2014-0040-3232.pdf>. See, *Evaluation of Musculoskeletal Disorders and Traumatic Injuries among Employees at a Poultry Processing Plant* 11 (Mar. 2014), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2012-0125-3204.pdf>

⁴See 2014 Final Rule, 79 Fed. Reg. at 49,590-49,592, 49,596-49,600.

⁵See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).

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