



April 20, 2026

Dr. Justin Ramson, Administrator
Food Safety and Inspection Service
United States Department of Agriculture
1400 Independence Ave. SW
Washington, DC 20250

Submitted via regulations.gov

RE: Maximum Line Speed Rates for Young Chicken and Turkey Establishments Operating Under the New Poultry Inspection System (NPIS) (Docket No. FSIS-2025-0012)

Dear Administrator Ransom:

The Center for Biological Diversity (Center), on behalf of itself and its 1.8 million members and supporters, submits these comments in response to the U.S. Department of Agriculture (USDA), Food Safety and Inspection Service's (FSIS) proposed rules entitled *Maximum Line Speed Rates for Young Chicken and Turkey Establishments Operating Under the New Poultry Inspection System* (NPIS) (Docket No. FSIS-2025-0012)¹ and *Maximum Line Speeds Under the New Swine Slaughter Inspection System* (NSIS) (Docket No. FSIS-2025-0009).² The Center is a national 501(c)(3) nonprofit conservation organization dedicated to the protection of endangered species and wild places, human health and wellbeing, environmental health, and a resilient and sustainable food system.

The Center strongly opposes both rules and asks that they be withdrawn.

Slaughterhouses already generate enormous amounts of pollution and cause significant harm to the ecosystems that people and wildlife rely on. Increasing line speed slaughter rates will increase slaughter capacity and industrially farmed animal production and lead to further damage to the environment, wildlife, animal welfare, worker safety, and public health (including food safety).³

¹ Maximum Line Speed Rates for Young Chicken and Turkey Establishments Operating under the New Poultry Inspection System, 91 Fed. Reg. 7926 (February 19, 2026), <https://www.federalregister.gov/documents/2026/02/19/2026-03227/maximum-line-speed-rates-for-young-chicken-and-turkey-establishments-operating-under-the-new-poultry>.

² Maximum Line Speed Under the New Swine Slaughter Inspection System (NSIS), 91 Fed. Reg. 7905 (February 19, 2026), <https://www.federalregister.gov/documents/2026/02/19/2026-03228/maximum-line-speed-under-the-new-swine-slaughter-inspection-system-nsis>.

³ Chapman, J.A., Seggerman, I., & Winders, D.J. (2021). Slaughterhouse deregulation: A view of the effects on animals, workers, consumers, and the environment. *The Brief*, 50(4), 44—55, <https://www.proquest.com/scholarly-journals/slaughterhouse-deregulation-view-effects-on/docview/2585480492/se-2?accountid=6749>.

The rules, if finalized, will also lead to a further consolidation of market power in the nation's largest meat packing companies, including many of the same foreign-owned meat packing "cartels" of concern to the Trump administration such as Smithfield Foods and JBS⁴; this further consolidation is a threat to national security and the public interest and must be rejected.

These comments will focus on the harmful impacts of these rules to the environment and endangered wildlife, including as they relate to USDA's legal requirements under National Environmental Policy Act (NEPA) and the Endangered Species Act. They will also discuss harmful impact of these rules on rural communities, as well as harms to food affordability and national security due to both the spread of disease in large concentrated animal feeding operations (CAFOs) and slaughterhouses and the increased consolidation of the animal agriculture industry that will necessarily result from these rulemakings.

Because these two rulemakings, if finalized, will produced not just individual but also cumulative harms to people, animals, imperiled wildlife, and the environment, and because FSIS has opted to move both of these rulemaking forward in parallel with the implications that they will be finalized and implemented concurrently, the Center is jointly submitting comments on both rulemaking proposals. FSIS's decision to move these rules forward simultaneously will significantly exacerbate and expand each rule's individual harms, especially in states like North Carolina with already significant swine, turkey, and chicken slaughter industrial sectors that geographically overlap in just the eastern, coastal portion of the state.

As detailed in these comments, FSIS's proposed rulemakings, individually and cumulatively, violate NEPA, the Endangered Species Act, and the Administrative Procedure Act (APA), and will harm rural health and national security. The Center, therefore, requests that both rulemakings be withdrawn.

I. FACTUAL BACKGROUND

A. Consolidation, Control, and Vertical Integration of the Animal Agriculture Industry in the U.S.

The animal agricultural industry has shifted over the past several decades towards fewer, larger, and more concentrated production facilities and consolidated sector practices.⁵ In the broiler

⁴ White House, Trump Administration Cracks Down on Foreign-Owned Meat Packing Cartels (Nov. 7, 2025), <https://www.whitehouse.gov/releases/2025/11/trump-administration-cracks-down-on-foreign-owned-meat-packing-cartels/>.

⁵ See generally Pew Charitable Trusts, *The Business of Broilers* (2013), <http://www.pewtrusts.org/~media/legacy/uploadedfiles/peg/publications/report/businessofbroilersreportthepewcharitabletrustspdf.pdf> [hereinafter *The Business of Broilers*]; U.S. Environmental Protection Agency (EPA), Literature Review of Livestock and Poultry Manure, EPA 820-R-13-002, 1 (July 2013) [hereinafter *EPA Literature Review*] ("The shift from the "family farm" is perhaps most pronounced in the production of livestock and poultry. Since the 1950s, the production of livestock and poultry in the United States (U.S.) has more than doubled, however the number of operations has decreased by 80%. Food animal production has evolved from

industry, for example, this shift has corresponded with a concentration of industrial poultry operations in the southern and eastern parts of the United States, with Georgia, Arkansas, and Alabama accounting for nearly 30% of the over 8.5 billion broiler chickens produced in the U.S. every year.⁶ As a result, those three states alone now produce — and consequently must dispose of — an estimated 20.3 million tons of waste from broiler chickens annually.⁷

The commercial hog industry has also increasingly consolidated. In 2014, 93% of annual hog production was on operations with at least 5,000 head, compared to only 27% produced on operations of that size in 1994.⁸ This shift toward more concentrated facilities has resulted in increases in water and air contamination and environmental impairment from these operations.⁹ In Iowa, for example, where 60% of the state's more than 6,300 hog operations raise at least 1,000 hogs, more than 10 billion gallons of liquid manure are applied to fields per year.¹⁰ State records show 800 manure spills between 1996 and 2012 and 750 out of 1,378 tested waterways were found to be impaired.¹¹ In North Carolina, the second largest hog producing state with an estimated 9 million hogs on 2,217 operations, an estimated 10 billion gallons of hog waste is produced each year, creating air and water pollution problems as well as public health concerns.¹²

Meanwhile, the U.S. animal agriculture industry has become increasingly vertically integrated, meaning one corporation controls all steps in the production and supply chain. This is often done through predatory contracts with farmers; in 2020, agricultural contracts accounted for about 46% of all livestock production.¹³ Under a production contract, the agribusiness owns the livestock

largely grazing animals and on-farm feed production to fewer and larger operations and increasingly more to concentrated facilities, often with animals raised in confinement The increase in concentration of livestock and poultry also leads to increased concentration of animal manure that must be managed.”) (citations omitted).

⁶ EPA Literature Review, at 7; USDA, USDA Poultry Production Data: Fact Sheet (May 2015), <https://www.usda.gov/sites/default/files/documents/nass-poultry-stats-factsheet.pdf>.

⁷ *Id.*

⁸ See USDA, Overview of the United States Hog Industry, released October 29, 2015 by the National Agricultural Statistics Service (NASS), Agricultural Statistics Board, <http://usda.mannlib.cornell.edu/usda/current/hogview/hogview-10-29-2015.pdf>.

⁹ See, e.g., Steve Wing and Jill Johnson, “Industrial Hog Operations in North Carolina Disproportionately Impact African-Americans, Hispanics and American Indians,” University of North Carolina at Chapel Hill (Aug. 29, 2014), <http://www.ncpolicywatch.com/wp-content/uploads/2014/09/UNC-Report.pdf>.

¹⁰ Brian Bienkowski, “My number one concern is water,” Environmental Health News (Nov. 14, 2017), <http://www.ehn.org/water-pollution-hog-farming-2504466831.html>.

¹¹ *Id.*

¹² Erica Hellerstein and Ken Fine, “A million tons of feces and an unbearable stench: life near industrial pig farms,” The Guardian (Sept. 20, 2017), <https://www.theguardian.com/us-news/2017/sep/20/north-carolina-hog-industry-pig-farms>.

¹³ USDA ERS. (2022). *America's diverse family farms: 2021 edition*, https://ers.usda.gov/sites/default/files/_laserfiche/publications/102808/EIB-231.pdf?v=37066.

while the farmer often has to take on debt and risk to raise them.¹⁴ Production contracts represented 76% of poultry and egg production and 74% of hog production in 2020.¹⁵ Many contract growers describe an oppressive culture of fear: speaking out about safety concerns or corporate misconduct can lead to contract termination, financial ruin, or blacklisting within the industry.¹⁶ The system creates a power imbalance that consolidates control in the hands of a few vertically integrated corporations while farmers struggle to stay afloat under increasing economic and technical burdens.

The two proposed rules will predominantly benefit the biggest operations while disadvantaging smaller producers, thus exacerbating the pattern of extreme corporate consolidation in the industry. This will in turn also worsen the myriad environmental and public health impacts discussed in the following sections.

B. Environmental Impacts of Slaughter and Rendering Plants Will Increase as Plants Increase their Slaughter Volumes

FSIS's regulation of slaughter line speeds directly affects the number of animals slaughtered, which in turn determines the scale of animal raising, transportation, and water and energy used for processing. The number of animals slaughtered each year determines how many animals will be raised for slaughter; how many animals will need to be transported to slaughter; how much energy will be needed to run the machinery that slaughters and processes animals; how much water will be used during slaughter processes; how much wastewater and other pollutants are produced from that slaughter processing; and the environmental impacts from each of those components of the animal slaughter process.¹⁷

Slaughterhouses generally are responsible for the following activities: “(1) receiving and holding of live animals for slaughter[], (2) stunning prior to slaughter, (3) slaughter (bleeding), and (4) initial processing of animals.”¹⁸ All of these processes require significant resources, water, and

¹⁴ MacDonald, J. M., & Korb, P. (2011). *Agricultural contracting update*. USDA Economic Research Service, https://ers.usda.gov/sites/default/files/_laserfiche/publications/44631/29537_eib9_reportssummary.pdf?v=54133.

¹⁵ Whitt, C. (April 29, 2022). Contracts are common in animal and crop production. USDA Economic Research Service, <https://ers.usda.gov/data-products/charts-of-note/chart-detail?chartId=103803>.

¹⁶ Food Integrity Campaign. (Dec. 14, 2021). *Unchecked corporate power and exploitation: The truth about contract growing*. <https://foodwhistleblower.org/unchecked-corporate-power-and-exploitation-the-truth-about-contract-growing/>.

¹⁷ FSIS, *Quarterly Enforcement Reports: II. Port-of-Entry Reinspection* (last updated Aug. 25, 2023), <https://www.fsis.usda.gov/inspection/regulatory-enforcement/quarterly-enforcement-reports>.

¹⁸ EPA, *Technical Development Document for the Final Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category* (40 C.F.R. 432), EPA-821-R-04-011, 4-2 (2004); see also EPA, *Technical Development Document for Proposed Effluent*

energy, and produce considerable waste, such as blood, fat, wastewater, and fecal matter, that must be disposed of.¹⁹ This waste contributes to water and air pollution, affecting local ecosystems and communities.²⁰

Slaughterhouses use tremendous amounts of water for animal hydration, to generate energy for operation, and in various chemicals for sanitation.²¹ Poultry slaughterhouses use approximately 1.46 million gallons per day, before increases to line speeds.²² All this water must drain somewhere, and as it does it picks up all the pollutants from the slaughter process, like “blood, feathers, viscera, soft tissue, bone, fat, urine, and fecal matter.”²³ Urine and fecal matter often contain additional bacteria that come along for the ride in the wastewater.²⁴ Wastewater also contains disinfectant chemicals, nitrogen, phosphorus, pesticides, and animal drugs.²⁵

A study of 98 large meat processing plants in the United States found that the median slaughterhouse discharged 331 pounds of nitrogen per day, while three-quarters of all plants

Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category, EPA-821-R-23-011 (Dec. 2023).

¹⁹ Senorpe Asem-Hiablie et al., *A Life Cycle Assessment of the Environmental Impacts of a Beef System in the USA*, 24 LIFE CYCLE ASSESS. FOR AGRIC. 441 (May 30, 2018), <https://link.springer.com/article/10.1007/s11367-018-1464-6>; Ciro Fernando Bustillo-Lecompte & Mehrab Mehrvar, *Slaughterhouse Wastewater Characteristics, Treatment, and Management in the Meat Processing Industry: A Review on Trends and Advances*, 161 J. OF ENVI. MGMT. (Sept. 15, 2015) 287,

<https://www.sciencedirect.com/science/article/abs/pii/S0301479715301535?via%3Dihub>; Charles A. Taylor et al., *Livestock Plants and COVID-19 Transmission*, 117 PROCEEDINGS NAT’L ACAD. SCI. U.S. 31706, 31707 (Dec. 15, 2020), <https://www.pnas.org/doi/10.1073/pnas.2010115117> (“To preserve meat after slaughter, processing areas are maintained at 0 to 12° C (44)”).

²⁰ Jaramillo, S.N., Osorio, M.A., Carillo, W.E., Jacome, S.P., & Latorre, J.H. (2024). A systematic review and evaluation of the environmental impacts generated in a slaughter center. *Journal of Medical and Pharmaceutical Chemistry Research*, 7, 1602—1616. <https://www.doi.org/10.48309/JMPCR.2025.478086.1433>.

²¹ Dani Replogle & Delcianna J. Winders, *Accelerating Catastrophe: Slaughter Line Speeds and the Environment*, 51 ENVTL. L. 1277, 1282-83 (2021), <https://ssrn.com/abstract=4777009>; see also Sarah Rehkamp et al., *Tracking the U.S. Domestic Food Supply Chain’s Freshwater Use Over Time*, USDA ECON. RESEARCH SERV. (Jul. 2021), https://www.ers.usda.gov/sites/default/files/_laserfiche/publications/101625/ERR-288.pdf (“In terms of water impacts, animal (except poultry) slaughtering, rendering, and processing was the dominant sector in terms of water withdrawals—contributing 15.4 percent of water withdrawals across the food manufacturing sectors”).

²² Replogle & Winders at 1287.

²³ *Id.* at 1288.

²⁴ *Id.*

²⁵ *Id.*

violated at least one Clean Water Act pollution limit and one-third had 10 or more violations.²⁶ Studies in other countries have found significantly high levels of adverse chemicals in water effluents from slaughterhouses, including build-ups of heavy metal concentrations that exceed permissible limits.^{27 28 29}

Slaughterhouse waste often enters bodies of water, contaminates them, and leads to significant negative impacts on the environment. “Untreated wastewater from meat processing typically contains high levels of oxygen-demanding substances (like blood, fat, urine, and feces), suspended solids, ammonia, nitrogen, phosphorus, oil and grease, fecal bacteria, and pathogens.”³⁰ Such substances “drive excess algae growth, create low oxygen dead zones that suffocate fish and other aquatic life, and turn waterways into bacteria-laden public health hazards.”³¹ These algal blooms can deplete the oxygen in the water, killing fish and other aquatic life.³²

Slaughterhouses are also known to produce a large amount of air pollution and greenhouse gas emissions. Many studies conducted in other countries have found that measured concentrations of air pollutants such as NO₂, CO₂, SO₂, VOC, CH₄, H₂S, NH₃, PM_{2.5}, and PM₁₀ are substantially

²⁶ Burkhart, K., Bernhardt, C., Pelton, T., Scheffer, E., & Phillips, A. (2018). *Water pollution from slaughterhouses*, https://environmentalintegrity.org/wp-content/uploads/2018/10/Slaughterhouse_Report_Final.pdf.

²⁷ Yaakob, M.A., Mohamed, R.M.S.R., Al-Gheethi, A.A.S., & Kassim, A.H.M. (2018). Characteristics of chicken slaughterhouse wastewater. *Chemical Engineering Transactions*, 63, 637—642. <https://www.doi.org/10.3303/CET1863107>.

²⁸ Ogbemor, D., Ugbemor, N.J., Momoh, O.L.Y., & Ndekwu, B.O. (2021). Land pollution assessment from slaughterhouses waste discharge in Port Harcourt. *Journal of Engineering Research and Reports*, 21(6), 10—

28. <https://journaljerr.com/index.php/JERR/article/view/577/1155>.

²⁹ Soliman, E.S., Moawed, S.A., & Ziaan, A.M.G. (2016). Evaluation of groundwater quality against effluent of a slaughterhouse. *International Journal of Veterinary Science*, 5(4), 268—273. https://www.researchgate.net/publication/308779826_Evaluation_of_Groundwater_Quality_against_Effluent_of_a_Slaughterhouse.

³⁰ Replogle & Winders at 8.

³¹ *Id.*

³² *Id.* at 15.

elevated — often above World Health Organization and national air quality standards — in areas around slaughterhouses.^{33 34 35 36}

Beyond the emissions generated at the facilities themselves, trucks that transport animals to slaughter also contribute to poor air quality and emit greenhouse gases.³⁷ These transportation-related emissions are foreseen to increase with faster line speeds as more animals are needed to be brought to the facilities for processing.³⁸ Livestock transportation is also shown to be one of the largest sources of energy consumption during the production process.³⁹

C. Increases in Slaughter Volumes will Drive Increases in Environmental Harm from Factory Farms

FSIS’s line speed regulations have foreseeable impacts on animal production and its environmental impacts. A higher number of animals raised for slaughter will lead to more waste production, ecosystem contamination, greenhouse gas emissions and air pollution, and water usage.

Historically, animal farming was conducted on a smaller, more sustainable scale. However, with the advent of industrialized agriculture, large numbers of animals are now raised in confinement structures such as CAFOs.⁴⁰ These crowded conditions not only raise ethical concerns about animal welfare but also cause considerable environmental and habitat degradation.⁴¹ The paradigm shift in animal agriculture has drastically increased the environmental footprint of meat production.

³³ Maduforoh, C., & Horsfall, E.O. (2024). Evaluation and analysis of the impact of emissions from slaughterhouses. *FNAS Journal of Basic and Environmental Research*, 2(1), 10—18.

³⁴ Odenkale, E.L., Sonibare, O.O., Odejebi, O.J., Fakinle, B.S., & Akeredolu, F.A. (2020). Air emissions and health risk assessment around abattoir facility. *Heliyon*, 6(7), e04365. <https://doi.org/10.1016/j.heliyon.2020.e04365>.

³⁵ Salama, K.F., & Berekaa, M.M. (2015). Assessment of air quality in Dammam slaughter houses, Saudi Arabia. *International Journal of Medical Science and Public Health*, 5(2), 287—291. <http://dx.doi.org/10.5455/ijmsph.2016.10092015121>.

³⁶ Uyo, C.N., Njoku, J.D., Iwuji, M.C., Ihejirika, C.E., & Njoku-Tony, R.F. (2021). Assessment of air quality in livestock farms and abattoirs in selected LGAs of Imo State. *International Journal of Advanced Academic Research*, 7(8), 54—68.

³⁷ *Id.* at 1291.

³⁸ *Id.* 1291-92.

³⁹ Kannan, N., Saleh, A., & Osei, E. (2016). Estimation of energy consumption and greenhouse gas emissions of transportation in beef cattle production. *Energies*, 9(11), 960, <https://doi.org/10.3390/en9110960>.

⁴⁰ *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 978–79 (4th Cir. 2020) (“Once, most hogs were raised on ‘smaller, pasture-based hog farms.’ Now, the paradigm has shifted: ‘large numbers of hogs, often many thousands’ crowd together in each of the many cramped ‘confinement structures’ that comprise the typical hog CAFO.”).

⁴¹ See Lise R. Montefiore, et al., *Reconstructing the Historical Expansion of Industrial Swine Production from Landsat Imagery*, 12 SCI REP. 1736 (Feb. 2, 2022). <https://doi.org/10.1038/s41598-022-05789-5>.

Today, most animals raised to be slaughtered at FSIS inspected facilities are raised in CAFOs or AFOs.⁴² Raising large numbers of animals for slaughter generates enormous amounts of waste and other pollution streams that contaminate the environment and harm communities and wildlife, and their manure emits nitrous oxide and methane.⁴³ Industrially farmed animals in the U.S. produce millions of tons of manure each year — between 3 to 20 times more manure than generated by humans.⁴⁴

Consequently, pollutants from animal waste enter the air, seep into groundwater, and run off into surface waters. The runoff from animal waste and agricultural practices has polluted nearly one-third of rivers in the U.S., carrying pathogens, nutrients, and other contaminants that degrade water quality.⁴⁵ One report found that three quarters of large U.S. meat processing plants that discharge wastewater directly into streams and rivers violated their pollution control permits over the last two years, facing little or no enforcement.⁴⁶ This pollution not only affects aquatic ecosystems but also poses risks to public health and community well-being.

CAFOs also emit various harmful pollutants into the air, including ammonia, hydrogen sulfide, particulate matter, and volatile organic compounds.⁴⁷ The release of these types of chemicals into the air causes respiratory illness, irritation to the eyes, nose, and throat, anxiety, depression,

⁴² Linday Walton & Kristen Jaiven, *Regulating CAFOs for the Well-Being of Farm Animals, Consumers, and the Environment*, 50 *Env'tl. L. Rep.* 10485 (2020) (“Approximately 99% of meat and other animal products in the United States are from factory farms, and the number of concentrated animal feeding operations (CAFOs) continues to grow.”).

⁴³ Uyo, C.N., Njoku, J.D., Iwuji, M.C., Ihejirika, C.E., & Njoku-Tony, R.F. (2021). Assessment of air quality in livestock farms and abattoirs in selected LGAs of Imo State. *International Journal of Advanced Academic Research*, 7(8), 54—68.

⁴⁴ Carrie Hribar, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities 2*, NAT'L ASSOC. OF LOCAL BOARDS OF HEALTH (2010), <https://stacks.cdc.gov/view/cdc/59792>.

⁴⁵ *Water Resources Mission Area, Agric. Contaminants*, U.S. GEOLOGICAL SURV. (Mar. 1, 2019) <https://www.usgs.gov/mission-areas/water-resources/science/agricultural-contaminants> (finding that nearly 94% of all water samples taken were contaminated by at least one pesticide); *see also* George Monbiot, *Think Dairy Farming is Benign? Our Rivers Tell a Different Story*, THE GUARDIAN (Oct. 5, 2015), <https://www.theguardian.com/environment/2015/oct/05/think-dairy-farming-is-benign-our-rivers-tell-a-different-story>.

⁴⁶ Burkhardt, K., Bernhardt, C., Pelton, T., Scheffer, E., & Phillips, A. (2018). *Water pollution from slaughterhouses*, https://environmentalintegrity.org/wp-content/uploads/2018/10/Slaughterhouse_Report_Final.pdf.

⁴⁷ *Ass'n of Irrigated Residents v. EPA*, 494 F.3d 1027, 1029 (D.C. Cir 2007) (considering AFO compliance with the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Clean Air Act (CAA), rather than NEPA, the court nonetheless clearly stated that “[i]n the course of their operations, AFOs emit a number of pollutants regulated by the [CAA, CERCLA, and EPCRA]” and that these pollutants “emanate from animal housing structures and areas used to store and treat manure”).

memory loss, and heart disease.⁴⁸ CAFOs are also notable contributors to greenhouse gas emissions, accounting for approximately 16.5% of global greenhouse gas emissions.⁴⁹ At their current rate, animal agriculture operations are already the leading cause of methane emissions in the U.S., accounting for 34% of total methane emissions in 2022.⁵⁰

The pollution from CAFOs tends to be proportional to their size: “the more animals it houses, the more it pollutes.”⁵¹ Thus, larger operations pose a greater threat to the environment and human health. For example, at one industrial pig operation where around 15,000 pigs were maintained, “153,000 pounds of feces and urine” were generated daily, leading to significant environmental and health concerns for the surrounding community.⁵²

This pollution has a huge impact on the livestock producers themselves, because worsening climate change is increasing the frequency and intensity of droughts, wildfires, and extreme weather, making it harder to farm. Mass flooding from hurricanes threaten poultry and pig production while creating public health hazards.⁵³ ⁵⁴ Animals are suffering heat stress from increased heat waves on the farm and in transport, which leads to increased mortality, poor meat quality, and economic losses for farmers,⁵⁵ as well as instability and vulnerabilities in the food system.⁵⁶ These impacts will only worsen under the increased pressure and GHGs from increasing slaughter volume.

⁴⁸ *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 977–84 (4th Cir. 2020).

⁴⁹ Richard Twine, *Emissions from Animal Agric. -16.5% Is the New Minimum Figure*, MDPI (Jun. 2, 2021), <https://www.mdpi.com/2071-1050/13/11/6276>; see also *Food Emissions*, CGIAR CTRS. AND RSCH. PROGRAMS, <https://ccafs.cgiar.org/bigfacts/>; Silje Kristiansen, et al., *Animal Agric. and Climate Change in the US and UK Elite Media: Volume, Responsibilities, Causes and Sols.* 15 ENV'T COMMUN. 153 (2021); *Livestock's Long Shadow: Env't Issues and Options*, THE LIVESTOCK, ENV'T, AND DEV. INITIATIVE (2006), <https://www.fao.org/3/a0701e/a0701e.pdf>.

⁵⁰ EPA. (2024). *Inventory of U.S. greenhouse gas emissions and sinks, 1990-2022*. <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2022>.

⁵¹ Abha Lakshmi Singh et al., *Environmental and Health Impacts from Slaughter Houses Located on the City Outskirts: A Case Study*, 6 J. OF ENV'T'L PROTECTION 566, 574 (May 2014), <https://www.scirp.org/journal/PaperInformation?PaperID=46296> at 1029.

⁵² *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 947 (4th Cir. 2020).

⁵³ Crist, S., Mori, J. & Smith, R.L. (2020). Flooding on beef and swine farms: A scoping review of effects in the midwestern United States. *Preventive Veterinary Medicine*, 184, 105158. <https://doi.org/10.1016/j.prevetmed.2020.105158>.

⁵⁴ Helmer, J. (2018). *Hurricane-flooded hog farms could bring superbugs to North Carolina communities*. NRDC. <https://www.nrdc.org/stories/hurricane-flooded-hog-farms-could-bring-superbugs-north-carolina-communities>.

⁵⁵ UT Extension Institute of Agriculture Department of Animal Science. (2025, July). *Summer heat stress is detrimental to broiler chickens*. <https://utia.tennessee.edu/publications/wp-content/uploads/sites/269/2025/07/D260.pdf>.

⁵⁶ Tchoukouang, R. D., Dias, J., Fanguero, D., et al. (2024). Assessing the vulnerability of food supply chains to climate change: A scoping review. *Science of the Total Environment*, 935, 214516. <https://doi.org/10.1016/j.scitotenv.2024.11860>.

The resource intensity of large-scale animal agriculture further compounds its environmental impact. The industry is a significant water consumer, with growing crops for animal feed accounting for nearly 60% of water usage in the United States.⁵⁷ The water-intensive nature of cattle feed crops alone constitutes 23% of national water usage. As the industry scales up production to meet the demands of faster slaughter line speeds, as the proposed rules discuss as an anticipated effect at 91 Fed. Reg. 7926 -7941 and 91 Fed. Reg. 7914 – 7925, this water usage and the associated strain on resources are expected to increase. As of the first week of April 2026, 44 states and more than half of the country were experiencing drought conditions, elevating the risk of crop failures, pasture losses, reduced livestock productivity, agricultural pests and disease spread, in addition to stress on public utilities and natural ecosystems.⁵⁸ Under such widespread and persistent drought conditions, increasing the volume of water needed to raise and slaughter more poultry and pigs could have devastating consequences for agriculture, industries, communities, and wildlife.

D. Public Health Harms from Industrial Animal Agriculture, including from Slaughter Plants and Factory Farms, Will Increase as Plants Increase their Slaughter Volume

Slaughterhouses also affect the human environment by posing health risks to humans, which are often disproportionately borne by low wealth communities and communities of color.⁵⁹ These heightened risks lead to greater vulnerabilities in the general population as well as greater potential for environmental violations and the potential spread of infectious zoonotic diseases.⁶⁰

Slaughterhouses, which are poorly regulated in the U.S.,⁶¹ have greater potential to spread disease amongst human beings, affecting workers, nearby communities, and, ultimately, the broader population, which is also put at risk through the distribution of contaminated meat and poultry. Zoonotic infections include rabies, ringworm, salmonella, COVID-19, avian influenza, swine

⁵⁷ Sarah Rehkamp et al., *Tracking the U.S. Domestic Food Supply Chain's Freshwater Use Over Time* 8, USDA ECON. RESEARCH SERV. (Jul. 2021),

https://www.ers.usda.gov/sites/default/files/_laserfiche/publications/101625/ERR-288.pdf.

⁵⁸ NOAA and NIDIS. (2026, April). *National drought status*. <https://www.drought.gov/national>

⁵⁹ See, e.g., EPA, Preliminary Effluent Guidelines Program Plan 15, EPA-821-R-21-003 (Sept. 2021), https://www.epa.gov/system/files/documents/2021-09/ow-prelim-elg-plan-15_508.pdf (“EPA conducted screening analyses of areas with [Meat and Poultry Products Point Source Category (MPP facilities), which includes slaughter and rendering plants] and found 74% of MPP facilities that directly discharge wastewater to surface waters are within one mile of census block groups with demographic or environmental characteristics of concern. This indicates that such facilities may be disproportionately impacting communities of concern.”).

⁶⁰ Zoe Novic, *Too Fast, Too Furious: Slaughterhouse Line Speeds In The Era Of Covid-19*, Yale Univ. School of Public Health (Jan. 2021),

<https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=2077&context=ysphtdl>.

⁶¹ Winders, D.J., & Abrell, E. (2021). Slaughterhouse workers, animals, and the environment. *Health Hum Rights*, 23(2), 21-33. <https://pubmed.ncbi.nlm.nih.gov/34966222/>.

influenza, and tuberculosis.⁶² While humans with greater exposure to animals have increased risk of contracting zoonotic infections, these diseases can spread to people who never go into a slaughterhouse.⁶³ For example, the Centers for Disease Control and Prevention (CDC) explained: “Farm animals can become infected with anthrax when they ingest spores in contaminated soil, plants, or water. People get infected by having contact with sick or dead animals or eating meat contaminated with spores.”⁶⁴

The close confinement of animals in CAFOs facilitates the emergence, mutation, and spread of diseases, some of which can be transmitted to humans.⁶⁵ As CAFOs expand in either size or number to accommodate faster line speeds, the risk of disease transmission increases. Indeed, most new and emerging human diseases come from animal populations.⁶⁶ Among these viruses, influenza viruses are the most dangerous. Outbreaks like the H1N1 swine flu in 2009 have highlighted the risks associated with zoonotic diseases, causing nearly 12,500 deaths and 275,000 hospitalizations in the U.S.⁶⁷

The health risks associated with increased line speeds to slaughterhouse workers were made very apparent during the COVID-19 pandemic.⁶⁸ With workers operating in crowded conditions, the increased pace at which they had to get animals on the slaughter line exacerbated the physical injuries and illness risks they face. One study found that within 150 days after the emergence of COVID-19 in a given U.S. county, the presence of a large pork processing facility increased per-capita infection rates by 160%, and as of 2021, 334,000 COVID-19 infections were attributable to meatpacking plants in the U.S., costing \$11.2 billion.⁶⁹ Another study found that in the first four

⁶² Kevin D. Pelzer & Nancy Currin., *Zoonotic Diseases of Cattle* 4 (2009) https://www.wyandotte.k-state.edu/program_areas/4-h/zoommeetings/documents/ZoonoticDiseases.pdf.

⁶³ CJ McDaniel et al., *Humans and Cattle: A Review of Bovine Zoonoses*, 14 VECTOR BORNE ZOONOTIC DISEASES 1, 4 (2014) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3880910/>.

⁶⁴ *Farm Animals*, CTRS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/healthy-pets/about/farm-animals.html>.

⁶⁵ *McKiver*, 980 F.3d at 980.

⁶⁶ Jenny L. Mace & Andrew Knight, *Influenza Risks Arising from Mixed Intensive Pig and Poultry Farms, with a Spotlight on the United Kingdom*, VET. SCI. (Dec. 21, 2023), <https://doi.org/10.3389/fvets.2023.1310303>.

⁶⁷ *McKiver*, 980 F.3d at 980; see also Sundar S. Shrestha et al., *Estimating the Burden of 2009 Pandemic Influenza A (H1N1) in the United States (April 2009-April 2010)*, 52 CLIN. INF. DIS. S75-82 (2011) (H1N1 is transmissible between pigs and humans, and the 2009 H1N1 pandemic sickened 60.8 million Americans, killing 12,469 people).

⁶⁸ Richardson, S.B. (2021). From slow food to slow meat: Slowing line speeds to improve worker health and animal welfare in Canadian abattoirs. *Alberta Law Review*, 59(1), 99-116. <https://heinonline.org/HOL/P?h=hein.journals/alblr59&i=99>.

⁶⁹ Saitone, T.L., Schaefer, K.A., & Scheitrum, D.P. (2021). COVID-19 and morbidity and mortality in U.S. meatpacking counties. *Food Policy*, 101, 102072. <https://doi.org/10.1016/j.foodpol.2021.102072>.

months of the COVID-19 pandemic alone, proximity to livestock plants was responsible for an excess of as many as 5,200 human deaths.⁷⁰

Moreover, the widespread use of antibiotics in these facilities to promote animal growth and prevent disease in CAFOs leads to the development of antibiotic-resistant bacteria, posing a grave threat to public health beyond the immediate community.⁷¹ Eighty percent of antibiotics sold in the U.S. are used by animal agriculture, and about 70% of those are considered “medically important.”⁷² This is causing new antibiotic-resistant strains to be transmitted to humans through the environment, direct contact, or consumption of contaminated meat, leading to serious illnesses and fatalities.⁷³ But the rise of these bacteria mean that people can also die without ever having come in contact with contaminated meat or farmed animals; in some cases, once easily-treated minor infections are becoming life-threatening.⁷⁴ Annually, about 400,000 people contract antibiotic-resistant infections, causing approximately 23,000 deaths and significant financial losses in the U.S.⁷⁵

Additionally, many meat products exceed USDA’s bacteria allowance levels, contributing to further disease spread and health issues.⁷⁶ As antibiotic resistance grows, it threatens to become a leading cause of death and could make treating even common illnesses increasingly challenging. As it relates to antimicrobial and other pharmaceutical use, “[t]he dosing of livestock animals with ... antimicrobial agents for growth promotion and prophylaxis may promote antimicrobial resistance in pathogens, increasing the severity of disease and limiting treatment options for sickened individuals.”⁷⁷

⁷⁰ Taylor, C.A. (2020). Livestock plants and COVID-19 transmission. *Economic Sciences*, 117(50), 31706—31715. <https://doi.org/10.1073/pnas.2010115117>.

⁷¹ Jessica Williams-Nguyen et al., *Antibiotics and Antibiotic Resistance in Agroecosystems: State of the Sci.*, 45. *J. Env’t. Qual.* 394 (2016).

⁷² Martin, M.J., Thottahil, S.E., & Newman, T.B. (2015). Antibiotics overuse in animal agriculture: A call to action for health care providers. *Am J Public Health*, 105(12), 2409-2410. <https://doi.org/10.2105/AJPH.2015.302870>.

⁷³ Nicholas Skandalis et al., *Env’t Spread of Antibiotic Resistance*, 10 ANTIBIOTICS (BASEL), (May 27, 2021), <https://pubmed.ncbi.nlm.nih.gov/34071771/>.

⁷⁴ Ahmed, S.K., Hussein, S., Qurbani, K., et al. (2024). Antimicrobial resistance: Impacts, challenges, and future prospects. *Journal of Medicine, Surgery, and Public Health*, 2, 100081. <https://doi.org/10.1016/j.glmedi.2024.100081>.

⁷⁵ William D. Cohan, *Antibiotics in Meat Could Be Damaging Our Guts*, N.Y. TIMES (May 25, 2018), <https://www.nytimes.com/2018/05/25/opinion/sunday/meat-antibiotics-organic-farming.html>.

⁷⁶ Susannah Savage & Andrew Wasley, *Superbug-Infected Chicken is Being Sold All Over the U.S.*, VICE (Mar. 16, 2022), <https://www.vice.com/en/article/5dg49z/antibiotic-resistant-salmonella-campylobacter-chicken>.

⁷⁷ EPA, Detecting and Mitigating the Environmental Impacts of Fecal Pathogens Originating from Confined Animal Feeding operations: Review, EPA/600/R-06/021, 1-3 (Sept. 2005).

Exposure to biological contaminants from industrial hog operations, including pathogens and fecal materials, can also present a significant risk to human health.⁷⁸ Food and water borne diseases in humans associated with exposure to industrial farm animal waste include *Campylobacter spp.*, *Salmonella spp.*, *Listeria monocytogenes*, *Escherichia coli (E. coli)*, *Cryptosporidium parvum*, and *Giardia lamblia*, many of which are rapidly transmissible and can cause abdominal discomfort, vomiting, or other acute gastrointestinal distress, and even death.⁷⁹ Exposure to air pollutants such as ammonia and hydrogen sulfide can additionally cause a range of adverse health effects including nasal, throat, and eye irritation; chemical burns of the respiratory tract, skin, and eyes; scarring; hemorrhaging of the gastrointestinal tract; and even lethal airway blockage and respiratory insufficiency.⁸⁰

II. SUMMARY OF PROPOSED RULES

A. New Swine Slaughter Inspection System, as Proposed

FSIS proposes to amend the Federal meat inspection regulations to allow establishments operating under the NSIS to determine their own line speeds based on their ability to maintain process control. FSIS is also proposing to amend the regulations to remove the requirement that NSIS establishments submit an annual attestation to FSIS stating that they maintain a program to monitor and document work-related conditions of establishment workers.

B. New Poultry Inspection System, as Proposed

FSIS proposes to amend the regulations to allow young chicken establishments operating under NPIS to operate at line speeds up to 175 birds per minute (bpm); increase the maximum line speed prescribed for turkey establishments operating under the NPIS from 55 bpm to 60 bpm; define “maximum line speed” as the time it takes for an inspector to effectively perform online carcass inspection procedures; clarify when FSIS may direct establishments to operate at a reduced line speed; and remove requirements for NPIS establishments to submit to FSIS annual attestations on worker safety programs.

⁷⁸ See USDA NRCS “Nutrient Management Technical Note 9: Introduction to Waterborne Pathogens in Agricultural Watersheds” (September 2012); U.S. EPA National Risk Management Laboratory, Risk Assessment Evaluation for Concentrated Animal Feeding Operations at 24 (2004).

⁷⁹ See Centers for Disease Control and Prevention, “Attribution of Foodborne Illnesses, Hospitalizations, and Deaths to Food Commodities by using Outbreak Data, United States, 1998-2008. Emerging Infectious Diseases. Vol. 19 No. 3 (March 2013).

⁸⁰ ATSDR, Toxicological Profile for Ammonia, 15, 25 (2004).

III. ARGUMENTS

A. Consolidation in the Animal Agriculture Industry is a Public Health, Food System, and National Security Risk

These two proposed rules will overwhelmingly favor big agribusinesses by letting them cut corners in slaughter lines and helping them become even more consolidated and monopolistic than they already are. Corporate consolidation, especially in the animal agriculture industry, is responsible for rising food prices and a less competitive national economy.^{81 82} Meanwhile, small farmers and everyday Americans bear the brunt of these problems, being at the mercy of the large animal agribusinesses that control most of the food system.

Corporate consolidation also poses real concern to the stability of the food system, because if only a few companies control the entire livestock supply, the whole system becomes more vulnerable to one company's failure. This is especially true given the risk of zoonotic disease spread, which will cause bigger supply chain issues and more rampant pandemics the more consolidated the industry becomes. This was evident recently, when the H5N1 avian influenza ravaged the egg industry and caused egg prices to skyrocket higher than they had in four decades.⁸³ Further, during the COVID-19 pandemic, rapid disease spread among workers in slaughterhouses across the country caused many to shutter, including the world's largest pork processor, Smithfield Foods' Sioux Falls, S.D. plant⁸⁴ — which is one of the plants slated to increase line speeds and reduce federal oversight under the proposed rules.

Moreover, foreign ownership of large food and agriculture companies, including some of the largest animal agribusinesses, poses a risk to U.S. national security. Two of the “Big Four” meat companies, JBS and National Beef, are based in Brazil or majority-owned by a Brazilian company, while Smithfield Foods, the world's largest pork producer, is owned by a Chinese company. A 2022 national security memorandum listed the potential risks to domestic food security caused by foreign ownership, control, and influence: “chemical, biological, radiological, and nuclear (CBRN) threats; intentional introduction of hazardous contaminants; natural or genetically engineered pathogens and pests; and cybersecurity breaches leading to disruption of networked

⁸¹ Held, L. (2026). *Democrats tie high food prices to corporate consolidation*. Civil Eats. <https://civileats.com/2026/03/10/democrats-tie-high-food-prices-to-corporate-consolidation/>.

⁸² MacDonald, J.M. (2024). *Concentration in U.S. meatpacking industry and how it affects competition and cattle prices*. Amber Waves, USDA Economic Research Service. <https://www.ers.usda.gov/amber-waves/2024/january/concentration-in-u-s-meatpacking-industry-and-how-it-affects-competition-and-cattle-prices>.

⁸³ Akpan, N. (March 12, 2025). *U.S. egg prices see largest jump since 1980 as bird flu outbreaks continue*. Think Global Health. <https://www.thinkglobalhealth.org/article/us-egg-prices-see-largest-jump-1980-bird-flu-outbreaks-continue>.

⁸⁴ Reuters. (April 12, 2020). *World's largest pork processor shuts down plant, warns of meat shortages during pandemic*. California Post. <https://nypost.com/2020/04/12/smithfield-closes-sd-pork-plant-indefinitely-warns-of-meat-shortages/>.

systems or IP theft.”⁸⁵ Likewise, President Trump’s National Farm Security Action Plan claims that foreign adversaries have “transform[ed] our nation’s growing reliance on key foreign food and agricultural inputs into an urgent strategic vulnerability.”⁸⁶

A 2024 congressional report on national security risks in the food and agriculture sector noted that foreign control of meat and poultry providers led to those companies prioritizing exporting meat products to their home country instead of supplying domestic needs when shortages occurred during the COVID-19 pandemic.⁸⁷ It also found that foreign-controlled food companies have been targeted by transnational criminal organizations for exploitation, or have themselves engaged in criminal practices; for example, in 2021, JBS’s meat production was disrupted by a Russian ransomware attack.⁸⁸

In November 2025, President Trump directed the Department of Justice to investigate the nation’s largest, foreign-dominated meatpacking “cartels” due to concerns about collusion and price fixing and manipulation.⁸⁹ Preventing increased foreign control and consolidation aligns with President Trump’s National Farm Security Action Plan, which highlights the need to protect the food and agriculture system from threats from “both state and transnational criminal actors.”⁹⁰ However, the proposed line speed rules will further entrench these foreign-controlled agribusinesses, not only exacerbating security vulnerabilities, but also potentially increasing their power over domestic producers and harming American farmers.

President Trump’s administration has also pledged to stop anti-competitive behavior in the food industry at large, acknowledging its contribution to high prices, instability, and security risks,⁹¹ but these proposed rules will accomplish the opposite. They may even go against the Make America Healthy Again movement’s priorities, because increased meat processing will flood the market with ultra-processed meat products such as chicken nuggets, and counter MAHA’s regenerative agriculture commitments by increasing pesticide usage and harming soil and water health.

⁸⁵ Humphreys, B.E. (2024). *Foreign ownership, control, and influence (FOCI) risks in the food and agriculture sector*. Congressional Research Service. <https://www.congress.gov/crs-product/R48094#fn39>.

⁸⁶ USDA. (2025). *National farm security action plan*. <https://www.usda.gov/sites/default/files/documents/farm-security-nat-sec.pdf>.

⁸⁷ Humphreys, B.E. (2024). *Foreign ownership, control, and influence (FOCI) risks in the food and agriculture sector*. Congressional Research Service. <https://www.congress.gov/crs-product/R48094#fn39>.

⁸⁸ *Id.*

⁸⁹ The White House. (2025). *Trump administration cracks down on foreign-owned meat packing cartels*. <https://www.whitehouse.gov/releases/2025/11/trump-administration-cracks-down-on-foreign-owned-meat-packing-cartels/>.

⁹⁰ USDA. (2025). *National farm security action plan*. <https://www.usda.gov/sites/default/files/documents/farm-security-nat-sec.pdf>.

⁹¹ The White House. (2025). *President Donald J. Trump addressed security risks from price fixing and anti-competitive behavior in the food supply chain*. <https://www.whitehouse.gov/fact-sheets/2025/12/fact-sheet-president-donald-j-trump-addresses-security-risks-from-price-fixing-and-anti-competitive-behavior-in-the-food-supply-chain/>.

B. FSIS must comply with the National Environmental Policy Act

USDA and FSIS go to great lengths, through both these rulemakings and USDA's 2026 final rulemaking to revise the Department's NEPA regulations, to distance FSIS's actions here from requiring NEPA review. Those efforts would have been better spent ensuring that FSIS complies with its obligations under NEPA, as required by Congress. As described by the Center in its prior comments to related line-speed rulemakings,⁹² its lawsuit challenging a prior iteration of the swine modernization rules for failure to comply with NEPA (a claim that the Court in that case never resolved and that remains outstanding as a legal question),⁹³ and through a rulemaking petition to USDA and FSIS to remove its agency-wide categorical exclusion from NEPA compliance,⁹⁴ because these rulemakings are designed to speed up the rate at which animals are slaughtered, thus leading to more animals being slaughtered, raised for slaughter, and transported for slaughter as a result of these rulemakings, these rules will cause significant environmental effects that require the preparation of environmental impact statements (EISs) under NEPA.⁹⁵ Rather than replicating those same arguments, the Center incorporates by reference all of its prior materials submitted on this point and submits them again to these rulemaking dockets.

Taken in sum, by design these rulemakings will lead to a significant net increase in the number of animals slaughtered in hog, turkey, and young chicken establishments, along with parallel increases in the numbers of animals raised and transported to meet those increased slaughter needs. These effects will be experienced most acutely in areas like North Carolina, Arkansas, and South Carolina where all three of these industrial sectors are already operating extensively in the same overlapping geographic areas. Those increases will lead to significant environmental impacts individually and cumulatively that are required to be analyzed and considered under NEPA.

Specifically, pursuant to the NSIS proposed rulemaking: "FSIS assumed this proposed rule would benefit . . . **27 market hog establishments**" because "they exclusively slaughter a sufficient number of market hogs at a sufficient rate to justify the likely costs associated with operating increased line speeds or converting to NSIS;" those 27 plants were, therefore, relied on by FSIS to formulate the cost-benefit of this rulemaking and to support the conclusions reached in this rulemaking. 91 Fed. Reg. 7914. Of those 27 establishments, **six** are already operating with a line-

⁹² See, e.g., Center, Comments on Modernization of Swine Slaughter Inspection, Docket ID No. FSIS-2016-0017 (May 2, 2018); Center, Comments to the National Chicken Council Petition to Permit Waivers of the Maximum Line Speed Rates for Young Chicken Slaughter Establishments under the New Poultry Inspection System, Petition No. 17-05, Docket ID No. FSIS-2017-0045 (Dec. 13, 2017).

⁹³ See Complaint, *Farm Sanctuary, et al. v. U.S. Dep't of Agric.*, Case No. 6:19-cv-06910 (W.D. NY filed Dec. 18, 2019).

⁹⁴ See Center, Petition to USDA to Rescind the Categorical Exclusion for FSIS under NEPA (June 20, 2024), <https://www.fsis.usda.gov/policy/petitions/petition-submitted-center-biological-diversity-humane-society-united-states-and>.

⁹⁵ NEPA mandates that agencies prepare an EIS for any "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C).

speed waiver (ie — above the current cap of 1,106 head per hour),⁹⁶ while **eleven** other NSIS establishments are operating without a waiver (ie — establishments that opted into the prior NSIS rule, 84 Fed. Reg. 52,300, before it was vacated by court order in 2021,⁹⁷ but are not exempt from complying with the 1,106 head per hour slaughter cap) and **ten** additional “traditional establishments” are expected by FSIS to convert and “operate above the current maximum line speed limit.” 91 Fed. Reg. 7918. Even further, “[i]n 2024, the 11 NSIS establishments operating without a waiver accounted for 45.6 percent of total slaughtered headcount, while the 10 traditional establishments accounted for 27.8 percent, for a combined 73.4 percent of total slaughtered headcount (Table 8). FSIS estimated a range of line speed increases based on the reported line speeds at waiver establishments during the TLT, which ranged from about 6 to 24 percent faster, with a mid-point average increase of 15 percent. For this analysis, the increase in production efficiency is calculated by multiplying the share of impacted swine slaughtered headcount by an estimated increase in line speed.” *Id.* The proposed rule also details the increased employment needs (as a cost) to NSIS slaughterhouses because of the increased number of employees needed to process additional animals across the slaughter line. 91 Fed. Reg. 7915. FSIS further estimates that this rulemaking will result in the generation of 500 million pounds of additional pork products. 91 Fed. Reg. 7925. Therefore, FSIS had a foreseeable universe of operations that are reasonably likely to experience a significant processing (and employment) change as a result of this rulemaking, and, in fact, that this rulemaking was designed to assist and lead to greater slaughter activities.

Pursuant to the preamble for the NPIS proposed rulemaking: for young chicken slaughter “the Agency assumed additional NPIS young chicken slaughter establishments that do not currently have a line speed waiver, and had slaughter volumes similar to NPIS waiver establishments, may choose to operate at faster line speeds For the lower bound, FSIS included **23 establishments** with an annual slaughtered headcount of at least 70 million birds in 2024. For the mid-point estimate, FSIS included **58 establishments** with an average annual slaughtered headcount of over 13.3 million head per line per shift. FSIS included an upper estimate of **85 establishments** with an average annual slaughtered headcount of at least 10 million head per line per shift. Because of

⁹⁶ Those establishments are listed on FSIS’s website at <https://www.fsis.usda.gov/inspection/inspection-programs/inspection-meat-products/modernization-swine-slaughter-inspection> (last visited Apr. 19, 2026).

Establishment Number	Company	Location	Date Granted
M791	Clemens Food Group, LLC	Hatfield, PA	3/4/2022
M1620	Quality Pork Processors	Austin, MN	3/7/2022
M46491	Wholestone Farms Cooperative, Inc.	Fremont, NE	3/7/2022
M791C	Clemens Food Group, LLC	Coldwater, MI	4/22/2022
M244M	Tyson Fresh Meats, Inc.	Madison, NE	6/29/2022
M85B	Swift Pork Company	Beardstown, IL	8/17/2022

⁹⁷ *United Food & Com. Workers Union, Loc. No. 663 v. United States Dep’t of Agric.*, 532 F. Supp. 3d 741 (D. Minn. 2021).

their volume, these establishments likely operate near the current regulatory maximum line speed of 140 bpm and are the most likely to increase their line speeds if the proposed rule is finalized.” 91 Fed. Reg. 7936.

Range of NPIS young chicken establishments for PRIA (total annual slaughter headcount)	Number of establishments	Slaughtered headcount(millions)	Portion of young chickenslaughteredin 2024(%)
Lower (>70 million heads)	23	2,142	23
Mid (>13.3 million heads line/shift)	58	3,641	39
Upper (>10 million heads line/shift)	85	4,960	53

For turkey establishments, “[t]here were 22 turkey establishments operating under NPIS in 2024, including one establishment with a line speed waiver,” with more operations expected to enter into the program if this rule is finalized. 91 Fed. Reg. 7937. These 22 establishments represent approximately 80% of turkey production in the U.S.

Turkey establishments	Number of establishments	Slaughtered headcount(millions)	Share of turkey slaughtered in 2024(%)
All NPIS Turkey	22	158	79
All Other	88	41	21
Total	110	199	100

Similar to the NSIS rulemaking, FSIS anticipates “[t]he NPIS young chicken establishments without waivers that are likely to choose to increase their line speeds may choose to hire up to 2 sorters, 1 to 32 other production employees, and up to 2 managers, per line per shift, when operating at line speeds faster than 140 bpm and up to 175 bpm.” 91 Fed. Reg. 7937. FSIS does not appear to have made any comparable estimates for turkey establishments, but the same can be presumed to be true. However, FSIS does estimate that this rule will lead to an increase of 1.4 billion pounds of poultry products. 91 Fed. Reg. 7926, 7941. Therefore, FSIS had a foreseeable universe of operations that are reasonably likely to experience a significant processing (and employment) change as a result of this rulemaking, and, in fact, that this rulemaking was designed to assist and lead to greater slaughter activities.

Building from that foundation, more recently USDA and FSIS have expressed various rationales to explain FSIS’s decision not to engage in any meaningful NEPA review in relation to either of these rulemakings (while also reiterating that FSIS, in fact, did not conduct any NEPA review as a result of their interpretations). None of those rationales, however, hold any water against the plain statutory obligations of NEPA, and often also rely on a misreading of Supreme Court precedent.

First, FSIS claims its activities through these rulemakings are categorically exempt (CE) from NEPA compliance under 7 CFR 1b.3, 1b.4. *See* 91 Fed. Reg. 7925, 91 Fed Reg. 7935. Since this is the same argument made previously by FSIS, the Center incorporates by reference all of its prior materials submitted on this point and submits them again to these rulemaking dockets. The Center also emphasizes the Supreme Court’s ruling in *Loper Bright Enterprises v. Raimondo*, which

stands for the principle that courts will, and must, “use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity,” including by resolving statutory ambiguities as to which courts previously extended deference to agency constructions.⁹⁸ As *Loper* confirms, FSIS is not empowered to administratively effect changes to existing law to suit its preferences, as it is attempting to do in side-stepping NEPA to promulgate these proposed rulemakings.

USDA additionally addressed its continued preservation of and reliance on this CE for FSIS in its recent agency-wide NEPA rulemaking. 91 Fed. Reg. 17,062 (Apr. 3, 2026). There it said: “Some commenters on the IFR suggested that the programs and activities of the Food Safety and Inspection Service (FSIS) should not be excluded from the preparation of an EA or EIS. FSIS programs and activities are currently excluded from the preparation of an EA or EIS in 7 CFR 1b.4(a)(5) of the IFR. This CE was carried over from the prior version of 7 CFR 1b.4. Several commenters on the IFR assert that FSIS’ actions constitute major Federal actions with significant environmental effects and that the CE is inconsistent with NEPA. One group of commenters, the Center for Biological Diversity (CBD), Humane World for Animals (formerly, Humane Society of the United States), and Humane World Action (formerly, Humane Society Legislative Fund) previously submitted a petition requesting promulgation of a rule rescinding the CE for FSIS programs and activities in 7 CFR 1b.4(a)(5). In their comments on the IFR, these organizations include some of the same arguments made in their petition for rulemaking and reference the petition for rulemaking” *Id.* at 17,072. USDA then went on to support its preservation of the CE for FSIS by claiming that it is not the agency that is exempted from NEPA but merely the agency’s programs and activities. *Id.* This is a distinction without a difference. Categorically exempting a whole agency *or everything that an agency does* from having to comply with NEPA’s requirements achieves the same result and is unlawful for the reasons detailed in the Center’s petition requesting that USDA initiate a rulemaking to rescind FSIS’ CE at 7 CFR 1b.4(b)(6).⁹⁹

But even so, as FSIS acknowledges and as its updated regulations reflect, those actions can only be categorically excluded from the preparation of an EA or EIS if the action may not “have a significant environmental effect.” 7 CFR 1b.4(a) (2026); 42 U.S.C. 4336(b)(2). Thus, *second*, FSIS claims that no extraordinary circumstances exist to require further NEPA review beyond a CE because “[u]nder the proposed rule, expected sales of pork products derived from market hogs, rather than maximum line speed, would determine production levels in establishments Moreover, all establishments, regardless of line speed, are required to meet all local, state, and Federal environmental requirements.” 91 Fed. Reg. 7925; *see also* 91 Fed. Reg. 7935 (same but for poultry products). FSIS, therefore, “does not anticipate that increasing the line speed may have a significant environmental effect” and can be categorically exempt from NEPA.

⁹⁸ 603 U.S. 369, 373 (2024); *see also Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 134–35 (1990) (determining that federal agencies “do[] not have the power to adopt a policy that directly conflicts with [the] governing statute”); *Heckler v. Chaney*, 470 U.S. 821, 833 (1985) (“Congress did not set agencies free to disregard legislative direction in the statutory scheme that the agency administers.”).

⁹⁹ <https://www.fsis.usda.gov/policy/petitions/petition-submitted-center-biological-diversity-humane-society-united-states-and>.

Again, since this is the same argument made by FSIS in prior related rulemakings, the Center incorporates by reference all of its prior materials submitted on this point and submits them again to these rulemaking dockets. In sum, as explained further there, FSIS’s activities, individually and cumulatively, in exercising its rulemaking authority to speed up the slaughter lines in turkey, young chicken, and pork slaughterhouses (which FSIS estimates will result in line speed and slaughter capacity increases at approximately 166 identifiable poultry slaughter plants, 91 Fed. Reg. 7936, and 27 identifiable market hog slaughter plants, 91 Fed. Reg. 7914) will result in increased numbers of animals being slaughtered (which FSIS estimates as an increase in 1.4 billion pounds of poultry products, 91 Fed. Reg. 7926, 7941, and 500 million pounds of additional pork products, 91 Fed. Reg. 7925) and complementary reasonably foreseeable environmental effects as a result. For example, as recently detailed by the U.S. Environmental Protection Agency in reviewing its Clean Water Act regulations for slaughter and rendering plants, “production is directly correlated with the volume of process wastewater generated [with] higher production result[ing] in higher wastewater generation.”¹⁰⁰ The same is true for other pollution pathways, including air pollution and solid waste generation, as well as water consumption. Increased line speeds also increase zoonotic disease exposure risks, which could lead to a bird flu outbreak in slaughterhouses comparable to what was previously seen with COVID-19, and requires increased transportation of animals to slaughterhouses to meet increased slaughter speeds, which causes increased greenhouse gas pollution and other infrastructural demands. These are, therefore, actions that “may have a significant environmental impact” and require additional NEPA review in the form of an EIS. NEPA demands that FSIS analyze and consider these reasonably foreseeable environmental impacts before making any final decision on these rulemakings.

Next, USDA argues that “FSIS’ line speed rulemakings address a narrow, inspection-administration question: what maximum rate, if any, is compatible with FSIS’ ability to carry out required post-mortem inspection and with establishments’ ability to maintain process control so that adulterated products do not enter commerce. The statutes do not give FSIS authority or discretion to make rulemaking decisions for line speed based on potential environmental impacts These actions therefore do not constitute major Federal actions and are therefore not subject to NEPA as a threshold matter.” 91 Fed. Reg. 17,073; *see also* 91 Fed. Reg. 7912. Neither of these arguments related to authority or discretion are correct or defensible. FSIS clearly has both authority and discretion to dictate the course of these rulemakings, as it is doing and has been attempting to do across two Trump administrations but not during the Biden administration sandwiched in the middle. FSIS has not claimed, nor can it, that the laws it is relying on to promulgate these rulemakings demand a specific line speed, that any of the effects of this rulemaking are in some way related to a future project to which it has no authority (*Seven County Infrastructure Coalition. v. Eagle County, Colorado*, 145 S. Ct. 1497, 1515-16 (2025) (“If the project at issue might lead to the construction or increased use of a separate project—for example, a housing development that might someday be built near a highway—the agency need not consider the environmental effects of that separate project.”), or that it is merely publishing the decision of another party or federal entity (*Department of Transportation v. Public Citizen*, 541 U.S. 752, 769 (2004) (“It would not, therefore, satisfy NEPA’s ‘rule of reason’ to require an

¹⁰⁰ EPA, Technical Development Document for Proposed Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category, EPA-821-R-23-011 (Dec. 2023).

agency to prepare a full EIS due to the environmental impact of an action it could not refuse to perform. Put another way, the legally relevant cause of the entry of the Mexican trucks is *not* FMCSA's action, but instead the actions of the President in lifting the moratorium and those of Congress in granting the President this authority while simultaneously limiting FMCSA's discretion.”). Indeed, if FSIS genuinely thought its authority was so constrained, it is hard to understand why the APA would even require FSIS to engage in a notice and commenting rulemaking process. Indeed, if taken as true, FSIS’s defense would effectively mean that no agency would ever need to comply with NEPA under the mistaken assumption that the law being implemented would need to specifically reflect the language of NEPA in it to provide an agency with authority to fulfill NEPA’s mandates in taking that action. That is certainly not the outcome of the Supreme Court’s decisions or Congress’ express demands under the law, and will not withstand legal scrutiny.

Fourth, after characterizing the Center’s comments on USDA’s NEPA Interim Final Rule as “contend[ing] that FSIS actions, particularly those related to slaughter line speeds, have reasonably foreseeable downstream effects on animal production, transportation, pollution, and waste management that must be analyzed under NEPA,” USDA then again tries to use *Seven County Infrastructure Coalition v. Eagle County*, 145 S. Ct. 1497 (2025), to claim that the environmental effects of these rulemakings are somehow not reasonably foreseeable. 91 Fed. Reg. 17,073; *see also* 91 Fed. Reg. 7912; 91 Fed. Reg. 7933. As detailed above, that is not correct. And, even further, USDA misreads *Seven County* to reach its preferred position. Indeed, the environmental effects of these rulemakings on “transportation, pollution, and waste management” are a direct result of the proposed action, not some “future or geographically separate projects” that “invoke but-for causation or mere foreseeability to order agency analysis of the effects of every project that might somehow or someday follow from the current project.” *Seven County*, 145 S.Ct. at 1515. Specifically, NEPA demands that FSIS consider: (1) the reasonably foreseeable environmental impacts of the proposed action; (2) the reasonably foreseeable adverse environmental impacts that cannot be avoided; (3) a reasonable range of alternatives to the proposed agency action. . . ; (4) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action (or action alternatives). 42 U.S.C. § 4332(C). Because FSIS must consider “the environmental effects of the project itself,” *Seven County*, 145 S.Ct. at 1515, FSIS cannot achieve its desired result of side-stepping NEPA compliance here by ignoring the “project itself,” which are the two rulemakings in question. In reality, these types of rulemaking activities are paradigmatic actions that require NEPA compliance based on their significant and reasonably foreseeable environmental effects.

Finally, USDA cited back to the Center’s comments on its prior rulemaking, saying that its response to comments there foreclose any effects resulting from these rulemakings because “[f]aster line speed may allow for more efficient processing but has no direct effect on consumer demand that determines the total number of animals slaughtered. Accordingly, FSIS determined these rulemakings would not have significant effects and sustained the application of the categorical exclusion.” 91 Fed. Reg. 17,073. As FSIS is well aware, the Center sued USDA for its failure to comply with NEPA in that prior Modernization of Poultry Slaughter Inspection, 79 Fed. Reg. 49566, 49610–11 (Aug. 21, 2014), rulemaking. *Farm Sanctuary, et al. v. United States Dep’t of Agric.*, Case No. 6:19-cv-06910 (W.D. New York). The Center thereafter voluntarily

dismissed its NEPA claim in that case following vacatur of the rule’s line-speed provisions in *United Food & Com. Workers Union, Loc. No. 663 v. United States Dep’t of Agric.*, 532 F. Supp. 3d 741 (D. Minn. 2021). USDA’s rationale, therefore, has not yet been stress tested by a Court and certainly does not support the lawful nature of its activities here.

C. FSIS is Legally Required to Consult under the Endangered Species Act on Both of the Proposed Rules

Section 7 of the Endangered Species Act requires federal agencies like FSIS to consult with the Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) (collectively, the Services) to “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the adverse modification of habitat of such species . . . determined . . . to be critical.”¹⁰¹ Because, as detailed above, the proposed rules *will* result in physical, chemical, biological, and other harms to the environment and listed wildlife, they unquestionably — as the following terms are interpreted under the law — “may effect,” and, in fact, are “likely to adversely effect” listed species or designated critical habitats such that the continued existence of many of those species may be “jeopardized.” FSIS is, therefore, legally required to consult under the Endangered Species Act on the proposed rules. If FSIS moves forward without consulting on the proposed rules, it will be in violation of Section 7 of the Endangered Species Act.

With the passage of the Endangered Species Act, “Congress intended endangered species to be afforded the highest of priorities.”¹⁰² Congress spoke clearly in its directive that “all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities” to do so.¹⁰³ To achieve these goals, Section 7 of the Endangered Species Act prohibits federal agencies from taking actions that would be likely to “jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.”¹⁰⁴

Congress did not leave it up to the agency proposing to take an action (the action agency) to decide how to comply with the Endangered Species Act. Instead, Congress directed action agencies to “insure” compliance by consulting with the Services.¹⁰⁵ Congress further dictated a specific consultation process that is triggered based on a determination as to whether any listed species or designated critical habitat in the action area “may” be affected by the action.¹⁰⁶ Both

¹⁰¹ 16 U.S.C. § 1536(a)(2).

¹⁰² *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 174 (1978).

¹⁰³ 16 U.S.C. § 1531(c)(1); *see also Tenn. Valley Auth.*, 437 U.S. at 184.

¹⁰⁴ 16 U.S.C. § 1536(a)(2).

¹⁰⁵ *Id.*; 50 C.F.R. § 402.01(b).

¹⁰⁶ 16 U.S.C. § 1536(b)(3)–(4), (c); *see also* 50 C.F.R. §§ 402.02, 402.14(a) and (b); *Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007).

“agency action”¹⁰⁷ and “may affect”¹⁰⁸ are defined broadly to ensure compliance with the Endangered Species Act’s substantive protections and Congressional command.¹⁰⁹

The Services’ regulations further clearly articulate the importance of consultations on federal, nationwide rulemakings that impact listed species, such as the proposed rules. Under the joint regulations implementing the Endangered Species Act, if any impact on a listed species is predicted to occur, then the federal agency must complete consultations with the Services.¹¹⁰ If the agency elects to first complete an informal consultation, it must determine whether its action is “not likely to adversely affect” (NLAA) a listed species or is “likely to adversely affect” (LAA) a listed species.¹¹¹ The Services define “NLAA” determination to encompass those situations where effects on listed species are expected to be discountable, insignificant, or completely beneficial.¹¹² Discountable effects are very rare, and limited to situations where it is not possible to “meaningfully measure, detect, or evaluate” harmful impacts.¹¹³

During the formal consultation process, the Services assess the environmental baseline — “the past and present impacts of all Federal, State, or private actions and other human activities in an action area, the anticipated impacts of all proposed Federal projects in an action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions that are contemporaneous with the consultation in process” — as well as the cumulative effects to the species and determine if the agency action jeopardizes the continued existence of each species impacted by the agency action.¹¹⁴

FSIS must comply with the consultation provisions of the Endangered Species Act “at the earliest possible time,” and certainly before finalizing the proposed rules.¹¹⁵ Lawful consultation under the Endangered Species Act functions “as an integral check on federal agency action,

¹⁰⁷ “Agency action” includes “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies.” 50 C.F.R. § 402.02. “Examples include but are not limited to . . . actions directly or indirectly causing modifications to the land, water, or air.” *Id.* § 402.02(d).

¹⁰⁸ “May affect” determinations are based on “all consequences to listed species or critical habitat” that are caused by the action, “including the consequences of other activities that are caused by the proposed action” and effects that “may occur later in time.” *Id.* § 402.02. If an agency action “may affect” *even just one individual member* of an endangered or threatened species, Section 7 consultation is required. *See id.* §§ 402.13–402.14.

¹⁰⁹ *Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1021, 1027 (9th Cir. 2012).

¹¹⁰ U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act* (hereafter CONSULTATION HANDBOOK).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Ctr. for Biological Diversity v. EPA*, 861 F.3d 174, 188 (D.C. Cir. 2017) (citing 50 C.F.R. § 402.14(a)).

ensuring that such action does not go forward without full consideration of its effects on listed species.”¹¹⁶

An action agency may avoid consultation only if (1) its action is non-discretionary or (2) the agency meets its burden to show the absence of effects on listed species and their critical habitats as a result of the action.¹¹⁷ Neither of those exemptions are available in this circumstance.

As further described below, FSIS’s proposed rules are “affirmative action[s]” that are “discretionary” and “may affect” listed species, including the federally-endangered Black Warrior waterdog, federally-threatened Gulf sturgeon and federally-endangered Atlantic sturgeon, and the federally-threatened pearl darter, among many other threatened and endangered species and their designated critical habitats. FSIS is, therefore, required to engage in Endangered Species Act Section 7 consultation on these rules.¹¹⁸ The administrative record published on the docket with these rulemakings shows that FSIS has not yet engaged in consultation or made a valid “no effect” determinations for any species. Accordingly, the FSIS must comply with its obligations under the Endangered Species Act or be in violation of the law.

i. These Rulemaking Actions are Affirmative Actions

The proposed rulemakings, which are for the promulgation of regulations, are affirmative actions that require Section 7 consultation.

Agency “action” under the Endangered Species Act is broadly defined to include “(a) actions intended to conserve listed species or their habitat; (b) *the promulgation of regulations*; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air.”¹¹⁹ The proposed rules firmly fall into this definition.

Courts have reiterated that Endangered Species Act consultations are required at this stage of an agency action.¹²⁰ The Endangered Species Act and its implementing regulations further underscore this command by reiterating that consultation must begin “at the earliest possible time.”¹²¹ Indeed, as “[t]he Ninth Circuit has unequivocally held,” and as is the case here, “biological opinions under the [Endangered Species Act] must be ‘coextensive’ with” and

¹¹⁶ *Ctr. for Biological Diversity*, 861 F.3d at 178 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992) (internal quotation marks omitted)).

¹¹⁷ *See Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644 (2007) (non-discretionary action); *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 141 F.4th 976, 1011 (9th Cir. 2025); 50 C.F.R. §§ 402.03, 402.14(b)(1); *see also* Interagency Cooperation—Endangered Species Act of 1973, as Amended, 51 Fed. Reg. 19,926, 19,949 (June 3, 1986) (noting the burden of showing no effect is on the action agency).

¹¹⁸ *Karuk Tribe*, 681 F.3d at 1020–21.

¹¹⁹ 50 C.F.R. § 402.02 (emphasis added).

¹²⁰ *Conner v. Burford*, 848 F. 2d 1441, 1454 (9th Cir. 1988); *Citizens for Better Forestry v. U. S. Dep’t of Agric.*, 481 F. Supp. 2d 1059, 1095 (N.D. Cal. 2007); *Pacific Rivers Council v. Thomas*, 30 F.3d 1050, 1053-6 (9th Cir. 1994).

¹²¹ 50 C.F.R. §§ 402.14 (requirement for formal consultation).

“analyze the effect of the entire agency action.”¹²² To do otherwise, and delay or avoid altogether consultation under the Act, “would eviscerate Congress’ intent to ‘give the benefit of the doubt to the species.’”¹²³

ii. These Rulemaking Actions are Discretionary Actions

As described in the Center’s earlier NEPA comments, FSIS’s proposed rules are discretionary actions. They, therefore, require Section 7 consultation.¹²⁴

iii. These Rulemaking Actions Cross Both the “May Affect” and “Likely to Adversely Affect” Thresholds

The proposed rules clearly crosses the Endangered Species Act’s “may affect” and “likely to adversely affect” threshold because they will, as further described above, individually and cumulatively increase the number of animals raised for, transported to, and slaughtered in almost 200 turkey, young chicken, and pork slaughterhouses (FSIS identifies **166 poultry slaughter plants**, 91 Fed. Reg. 7936, that will lead to an **increase of 1.4 billion pounds of poultry products**, 91 Fed. Reg. 7926, 7941, and **27 market hog slaughter plants**, 91 Fed. Reg. 7914, with an **increase of 500 million pounds of additional pork products**, 91 Fed. Reg. 7925), which will harm wildlife and designated critical habitats through increased air and water pollution, increased greenhouse gas pollution, the removal of fresh water from ecosystems species need to survive, increased risk of exposure to and spread of zoonotic diseases such as avian influenza in wild populations, and increased vehicular traffic, among other effects. For example, as recently detailed by the U.S. Environmental Protection Agency in reviewing its Clean Water Act regulations for slaughter and rendering plants, “production is directly correlated with the volume of process wastewater generated [with] higher production result[ing] in higher wastewater generation.”¹²⁵ These harmful effects would not occur but for this rule.

“‘May affect’ purposefully sets a low bar: ‘Any possible effect, whether beneficial, benign, adverse or of an undetermined character, triggers the formal consultation requirement.’”¹²⁶ As discussed previously, any harm or take of an individual member of a listed species crosses the

¹²² *Greenpeace v. NMFS*, 80 F. Supp. 2d 1137, 1143-44 (W.D. Wash. 2000) (quoting *Conner v. Burford*, 848 F.2d 1441, 1453, 1458).

¹²³ *Conner v. Burford*, 848 F. 2d 1441, 1454 (9th Cir. 1988) (holding it “critical that ESA review occur early in the process to avoid piecemeal chipping away of habitat”).

¹²⁴ See, e.g., *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472 (9th Cir. 2010); *Nat’l Parks Conservation Ass’n v. Jewell*, 62 F.Supp.3d 7 (D.D.C. 2014); *Citizens for Better Forestry v. U.S. Dep’t of Agriculture*, 481 F.Supp.2d 1059 (N.D. Cal 2007); *Washington Toxics Coal. v. U.S. Dep’t of Interior*, 457 F.Supp.2d 1158 (W.D. Was. 2006); *Karuk Tribe v. US Forest Service*, 681 F. 3d 1006 (9th Cir. 2021).

¹²⁵ EPA, Technical Development Document for Proposed Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category 40 (Dec. 2023).

¹²⁶ *Growth Energy v. EPA*, 5 F.4th 1, 30 (D.C. Cir. 2021), (citing 51 Fed. Reg. at 19,949; see also *Karuk Tribe of Cal.*, 681 F.3d at 1027; *N. Plains Res. Council v. U.S. Army Corps of Eng’rs*, 454 F. Supp. 3d 985, 991 (D. Mont. 2020).

LAA threshold and requires formal consultation with the Services.¹²⁷ In carrying out the consultation process, the Endangered Species Act requires agencies to use the “best scientific and commercial data available” to analyze impacts to species and critical habitats under this section.¹²⁸

Here, based on the information provided in the proposed rules and other record documents on NPIS and NSIS establishments, the Center has identified a significant number of federally threatened and endangered species that may be affected, and are likely to be adversely affected, as a result of these rules. That non-comprehensive list, which includes species with designated critical habitat units that are also likely to be adversely modified by these rules, is based on conservative estimates, and thus includes many, but not necessarily all, species that may be affected by the proposed action.

Based on that analysis, the Center was able to determine that the proposed rules “may affect” at least the following species and/or their designated critical habitats:

Common Name	Scientific Name
Alabama moccasinshell	Medionidus acutissimus
Black warrior (=Sipsey Fork) Waterdog	Necturus alabamensis
Cape Fear shiner	Notropis mekistocholas
Choctaw bean	Obovaria choctawensis
Dark pigtoe	Pleurobema furvum
Fat threeridge (mussel)	Amblema neislerii
Fluted kidneyshell	Ptychobranchus subtentus
Frecklebelly madtom	Noturus munitus
Fuzzy pigtoe	Pleurobema strodeanum
Green floater	Lasmigona subviridis
Gulf moccasinshell	Medionidus penicillatus
Gulf sturgeon	Acipenser oxyrinchus (=oxyrhynchus) desotoi
Indiana bat	Myotis sodalis
Kentucky creekshell	Villosa ortmanni
Longsolid	Fusconaia subrotunda
Louisiana Pigtoe	Pleurobema riddellii
Neosho Mucket	Lampsilis rafinesqueana
Orangenacre mucket	Hamiota perovalis
Oval pigtoe	Pleurobema pyriforme
Ovate clubshell	Pleurobema perovatum
Pearl darter	Percina aurora
Rabbitsfoot	Quadrula cylindrica cylindrica

¹²⁷ *Id.*; see also *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 495 (9th Cir. 2011) (Section 7 requires formal consultation if the agency determines that any action on its part “may affect” any listed species or critical habitat.).

¹²⁸ 16 U.S.C. § 1536(a)(2).

Rayed Bean	<i>Villosa fabalis</i>
Round hickorynut	<i>Obovaria subrotunda</i>
rufa red knot	<i>Calidris canutus rufa</i>
Salamander mussel	<i>Simpsonaias ambigua</i>
Sheepnose Mussel	<i>Plethobasus cyphus</i>
Shinyrayed pocketbook	<i>Hamiota subangulata</i>
Slabside Pearlymussel	<i>Pleuroaia dolabelloides</i>
Snuffbox mussel	<i>Epioblasma triquetra</i>
Southern elktoe	<i>Alasmidonta triangulata</i>
Southern kidneyshell	<i>Ptychobranthus jonesi</i>
Southern Sandshell	<i>Hamiota australis</i>
Spectaclecase (mussel)	<i>Cumberlandia monodonta</i>
Sturgeon, Atlantic	<i>Acipenser oxyrinchus oxyrinchus</i>
Suwannee moccasinshell	<i>Medionidus walkeri</i>
Tapered pigtoe	<i>Fusconaia burkei</i>
Texas heelsplitter	<i>Potamilus amphichaenus</i>
Topeka shiner	<i>Notropis topeka (=tristis)</i>
Triangular Kidneyshell	<i>Ptychobranthus greenii</i>
Western fanshell	<i>Cyprogenia aberti</i>

Because the proposed rules “may effect” numerous threatened and endangered species and their designated critical habitats, including federally-endangered Black Warrior waterdogs, federally-threatened Gulf sturgeon and federally-endangered Atlantic sturgeon, and federally-threatened pearl darters, FSIS is required to engage in Endangered Species Act Section 7 consultation on these rules.¹²⁹ The administrative record published on the docket with these rulemakings shows that FSIS has not yet engaged in consultation or made a valid “no effect” determination for any species. Accordingly, the FSIS must comply with its obligations under the Endangered Species Act or be in violation of the law

D. Faster Line Speeds Threaten Workers, Animals, and Food Safety

Any increase in line speeds at slaughter plants, including swine, turkey, and young chicken plants, will further jeopardize worker safety in an already dangerous industry. Over three decades of studies point to faster line speeds in meatpacking plants as being the root cause of the already high

¹²⁹ *Karuk Tribe*, 681 F.3d at 1020–21.

numbers of serious worker injuries and illnesses.^{130 131 132} According to the Bureau of Labor Statistics, the meatpacking industry reports that workers are currently injured at rates 2.4 times higher than the national average for all industries, with the rate being nearly 3 times as high for those injuries that are so serious they require time off of work or restrict an employee’s duties.¹³³

Meatpacking workers also experience an illness rate—such as for disorders like carpal tunnel syndrome—that is almost a staggering 17 times as high as the average for all other industries.¹³⁴ A work-related injury can cause serious physical suffering and have enormous economic consequences for a worker and his/her family, further exacerbating economic inequality for the nation’s working families.

The Occupational Safety and Health Administration (OSHA) has been aware for decades years that the increased rate of workplace injuries in meatpacking plants is due to faster line speeds. In a publication from 1993, *Ergonomics Program Management Guideline for Meatpacking Plants*, OSHA clearly established that musculoskeletal injuries and disorders are particularly prevalent in the meatpacking industry and linked the high rates of illness and injury with the high number of repetitive force requirements of the jobs in these plants.¹³⁵ Recognizing that increasing the line speeds in meatpacking plants correlated with an increase in worker injury and illness rates, OSHA recommended that the best way to decrease the injury and illness rates would be for plants to “adjust line speeds” and implement solutions such as “reducing the total number of repetitions per employee by such means as decreasing production rates.”¹³⁶ Likewise, the U.S. Government Accountability Office has repeatedly called for better protections and safety precautions for meat and poultry workers over the past decade.^{137 138}

¹³⁰ See, e.g., Meatpacking Hazards and Solutions, U.S. Department of Labor Occupational Safety and Health Administration (OSHA), available at https://www.osha.gov/SLTC/meatpacking/hazards_solutions.html.

¹³¹ Crawford, K., & Anderson, P.T. (2025). Policy and practice brief on the 2019 new swine inspection system, line speeds, and workers [Policy brief]. *Journal of Agriculture, Food Systems, and Community Development*, 14(2). <https://doi.org/10.5304/jafscd.2025.142.003>.

¹³² Harmse, J.L., Engelbrecht, J.C., & Bekker, J.L. (2016). The impact of physical and ergonomic hazards on poultry abattoir processing workers: A review. *International Journal of Environmental Research and Public Health*, 13(2), 197. <https://doi.org/10.3390/ijerph13020197>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ OSHA, Ergonomics Program Management Guideline for Meatpacking Plants, reprinted 1993, <https://www.osha.gov/Publications/OSHA3123/3123.html>.

¹³⁶ *Id.*

¹³⁷ U.S. Government Accountability Office. (2016). *Workplace safety and health: Additional data needed to address continued hazards in the meat and poultry industry (GAO-16-337)*. <https://www.gao.gov/assets/gao-16-337.pdf>.

¹³⁸ U.S. Government Accountability Office. (2017). *Workplace safety and health: Better outreach, collaboration, and information needed to help protect workers at meat and poultry plants (GAO-18-12)*. <https://www.gao.gov/products/gao-18-12>.

Faster lines and fewer inspectors will not only have a disastrous impact on workers and food safety, but also on the animals they are tasked with processing. The removal of line speed caps has been shown to increase the chances for rough animal handling as employees feel the pressure to move pigs quickly through the slaughter process. Increased speeds can also result in improper stunning that leads to animals being slaughtered while conscious. Importantly, fast line speeds may also leave plant workers unable to detect signs of consciousness or unable to stop the line in time to intervene.

Unsafe working conditions often go hand-in-hand with both food safety and humane handling concerns because, in large part, there are objective limits to the speed at which humans and equipment can function to ensure the animal being slaughtered is treated with care, and to prevent the contamination of carcasses. Faster line speeds make it more likely that dangerous foreign material, such as bacteria, pathogens, fecal matter, hair, nails, and pieces of objects enter the food supply.¹³⁹ Inspectors will have less time to examine each carcass, making it more likely that they will miss instances of contamination; in 2019, inspectors blew the whistle, warning that increased line speeds and reduced numbers of inspectors were making the pork supply “unsafe.”¹⁴⁰ FSIS has further identified that “poultry products are more likely to be adulterated¹⁴¹ if, among other circumstances, they are produced by birds who have not been treated humanely because such birds are more likely to be bruised or die other than by slaughter.”¹⁴² Countries that have increased their slaughter line speeds are found to have more food safety issues: Germany, for instance, which allows faster poultry line speeds, was found to have poultry meat with higher levels of Salmonella and Campylobacter contamination.¹⁴³

E. Both Rulemaking Dockets Provided Inadequate Public Review of Documents Relied on by USDA to Support These Rulemakings

FSIS has failed to provide meaningful opportunity to review and comment on the rulemaking record it relied on in generating these rulemakings.

As with all administrative processes, the reasonability of FSIS’s rulemakings will be reviewed by Courts, as well as commenters, based on the underlying “full administrative record” in front of FSIS at the time it promulgated these rulemakings. Courts have extended this legal obligation to

¹³⁹ Nebeker, R. (2025). *What do faster line speeds in slaughterhouses mean for animals, workers and food safety?* FoodPrint. <https://foodprint.org/blog/line-speeds/>.

¹⁴⁰ Radford, M., & Franco, A. (2019). *Inspectors warn unsafe pork could make its way to consumers under Trump rule change*. NBS News. <https://www.nbcnews.com/politics/2020-election/inspectors-warn-unsafe-pork-could-make-its-way-consumers-under-n1097676>.

¹⁴¹ The Poultry Products Inspection Act establishes that carcasses of poultry showing evidence of having died from causes other than slaughter are considered adulterated and condemned. 21 U.S.C. § 453(g)(5); *see also* 9 C.F.R. § 381.90.

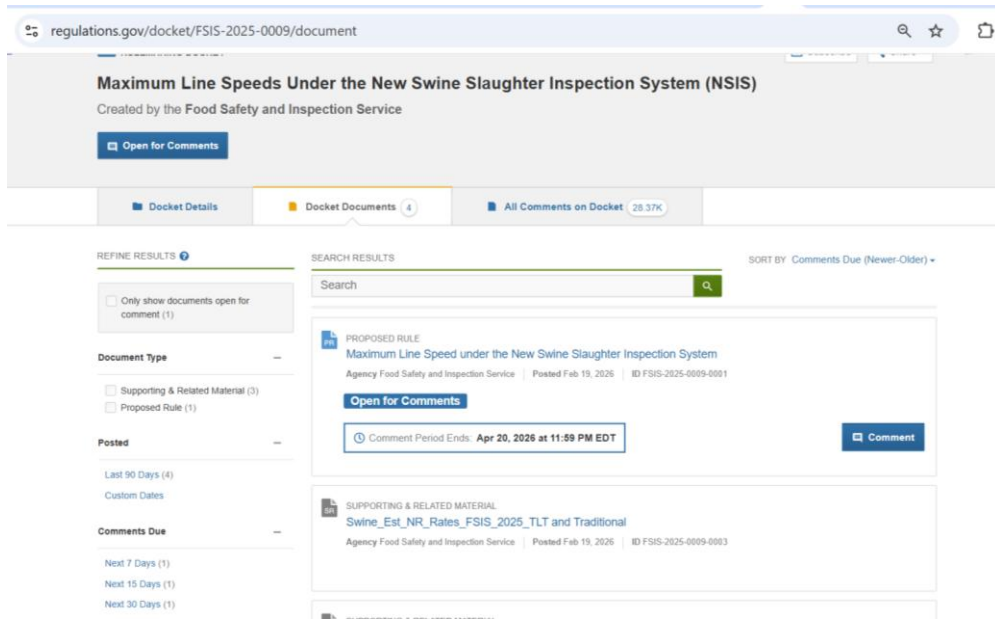
¹⁴² 79 Fed. Reg. at 49609.

¹⁴³ UCFW. (2017/2020). *Three things you should know about poultry line speeds*.

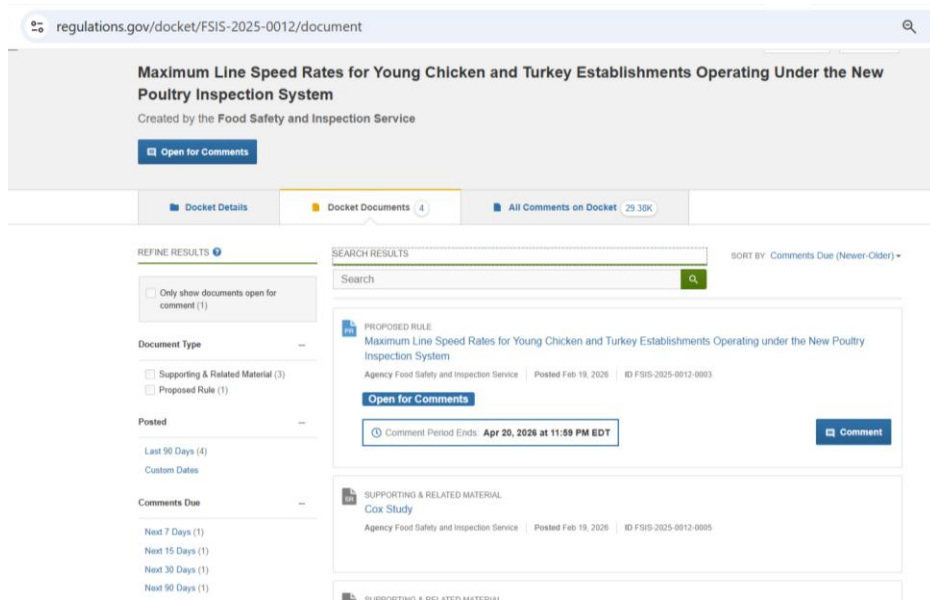
<https://www.ucfw.org/three-things-you-should-know-about-poultry-line-speeds/#:~:text=If%20current%20line%20speeds%20are,get%20stunned%2C%E2%80%9D%20she%20says>.

require federal agencies to make the records they are relying upon to propose, and thereafter promulgate, rulemakings to make the documents that they rely on for a rulemaking available during the public notice and comment process to allow public engagement with the underlying support materials an agency is relying on for its decisionmaking.

Here, that has not happened. Each of the dockets made available through regulations.gov for these rulemakings includes no more than four documents, including the proposed rule notice document itself. As a result, none of the substantive documents that FSIS is allegedly relying on to promulgate these rulemakings were made available for public review through the agency's rulemaking dockets. That failure constitutes arbitrary and capricious rulemaking under the APA.



Screen capture taken at <https://www.regulations.gov/docket/FSIS-2025-0009/document> on April 17, 2026.



Screen capture taken at <https://www.regulations.gov/docket/FSIS-2025-0012/document> on April 17, 2026.

The APA’s inherently democratic rulemaking procedures encourage public participation in the regulatory process and “help ensure that government agencies are accountable and their decisions are reasoned.”¹⁴⁴ They reflect a “judgment by Congress that the public interest is served by a careful and open review of proposed administrative rules and regulations.”¹⁴⁵ Public review thus “ensure[s] that agency regulations are tested via exposure to diverse public comment” and “ensure[s] fairness to affected parties.”¹⁴⁶

FSIS’s failure to provide support for its rulemaking proposals through the administrative record is the definition of arbitrary and capricious decisionmaking in violation of the APA and its public notice and comment requirements.¹⁴⁷

¹⁴⁴ *Sequoia Orange Co. v. Yeutter*, 973 F.2d 752, 758 (9th Cir. 1992); *see also Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1027-28 (D.C. Cir. 1978).

¹⁴⁵ *Alcaraz v. Block*, 746 F.2d 593, 610 (9th Cir. 1984).

¹⁴⁶ *Int’l Union. UMW v. MSHA*, 407 F.3d 1250, 1259 (D.C. Cir. 2005).

¹⁴⁷ *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) (“If the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation.”); *see also Citizens to Preserve Overton Park*, 401 U.S. at 419-20; *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015).

F. To the Extent FSIS has Relied on, or Intends to Rely on, Artificial Intelligence Tools in this Rulemaking, Those Uses Must be Clearly Disclosed

Reliance on artificial intelligence and machine learning (AI) tools has been prioritized by the Trump administration as a technology to speed up the administration’s deregulatory goals.¹⁴⁸ This developing technology, however, is plagued by inaccuracies and algorithmic biases that can significantly affect agencies final work product. In relation to FSIS’s regulatory efforts to “modernize” slaughter line-speeds by, for example, allowing regulated entities to “determine their own line speeds based” entirely on their own discretion, 91 Fed. Reg. at 7905, if FSIS utilizes AI without proper performance and oversight controls, their models will be vulnerable to algorithmic biases if they train on data developed and/or submitted by the regulated industry; such biases, combined with analytical mistakes, can significantly alter the outcome of the agency’s regulatory decisionmaking process and lead to conclusions that are not otherwise supported by the administrative record for the rulemaking.¹⁴⁹

Given the legal guardrails placed on FSIS’s regulatory process through the APA, to the extent the agency relied on—or intends to rely on—AI tools in undertaking the proposed actions, it must clearly disclose the extent of that use.¹⁵⁰ Such disclosure should include, but not be limited to: the AI tools employed and the underlying data utilized through that model use, as well as an explanation as to how FSIS used those tools, including specifically identifying the AI tool’s outputs.¹⁵¹

¹⁴⁸ See, e.g., Andrew Coutts, A DOGE AI Tool Called SweetREX Is Coming to Slash US Government Regulation, *Wired* (Aug. 14, 2025), <https://www.wired.com/story/sweetrex-deregulation-ai-us-government-regulation-doge/> (“Efforts to gut regulation across the US government using AI are well underway.”); James Broughel, DOGE Built an AI to Delete Half of Federal Regulations. Will it Work?, *Forbes* (July 28, 2025), <https://www.forbes.com/sites/jamesbroughel/2025/07/28/doge-built-an-ai-to-delete-half-of-federal-regulations-will-it-work/>; White House, White House Unveils America’s AI Action Plan (July 23, 2025), <https://www.whitehouse.gov/articles/2025/07/white-house-unveils-americas-ai-action-plan/>; Fed. Food and Drug Admin., FDA Launches Agency-Wide AI Tool to Optimize Performance for the American People (June 2, 2025), <https://www.fda.gov/news-events/press-announcements/fda-launches-agency-wide-ai-tool-optimize-performance-american-people> (“The U.S. Food and Drug Administration today launched Elsa, a generative Artificial Intelligence (AI) tool designed to help employees—from scientific reviewers to investigators—work more efficiently.”).

¹⁴⁹ As reflected in an earlier argument, there does not presently appear to be an administrative record for either of these rulemakings, given the limited number of documents on FSIS’s public dockets at regulations.gov. Nevertheless, even if FSIS is basing these rulemakings on even just one substantive document in the record, the agency cannot rely on AI to interpret the meaning of that document and thereafter apply that interpretation verbatim if it wishes to achieve reasoned decisionmaking in finalizing these rulemakings.

¹⁵⁰ This includes all materials on which the Federal Agencies base their final decision.

¹⁵¹ For a more fulsome list of questions FSIS should answer in disclosing its AI use, see *AI in Agency Rulemaking: Legal Guardrails Issue Brief*, *Governing for Impact* (July 2025) at 16, https://governingforimpact.org/wp-content/uploads/2025/07/AI-in-Agency-Rulemaking_Legal-

Indeed, to comply with its APA rulemaking obligations, when an agency like FSIS uses computer models to formulate a proposed rule, it “*must* ‘explain the assumptions and methodology used in preparing the model.’”¹⁵² These explanations ensure that the ultimate responsibility for the policy decision remains with the agency rather than the computer.¹⁵³ They also ensure that the agency is able to explain and clearly justify its regulatory decision, ensuring against the type of undisclosed (and, as may be the case with AI, undisclosed) “black box” analysis and outcome prohibited by the APA.

Failure to make the requested disclosures will subject FSIS to significant legal vulnerability. This is because under the APA, agencies are required to establish that they engaged in “reasoned decisionmaking grounded in actual evidence.”¹⁵⁴ To establish that this standard is met, the agency must “clearly disclose[]” “the grounds upon which ... [it] acted.”¹⁵⁵ As it relates to the underlying data relied upon, Courts have been clear that they are “hesitant to rubber-stamp [an agency’s] invocation of statistics without some explanation of the underlying principles or reasons . . . particularly when the facts found . . . demonstrate flaws.”¹⁵⁶ Accordingly, as courts have found time and again, “[w]hile we acknowledge our deference to the agency’s expertise in most cases, we cannot defer when the agency simply has not exercised its expertise.”¹⁵⁷

As the Supreme Court recently reiterated in *Department of Commerce v. New York*, when reviewing an agency’s exercise of discretion the Court must determine whether the agency properly examined “the relevant data” and articulated “a satisfactory explanation” for [its] decision, “including a rational connection between the facts found and the choice made.”¹⁵⁸ To satisfy that the requirements of the APA have been met, the Court must further “ensur[e] that

Guardrails.pdf, and Cary Coglianese and David Lehr, *Regulating by Robot: Administrative Decision Making in the Machine-Learning Era*, 105 GEO. L. J. 1147, 1208 (2017).

¹⁵² *U.S. Air Tour Ass’n v. FAA*, 298 F.3d 997, 1008 (D.C. Cir. 2002) (quoting *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 535 (D.C. Cir.1983)) (emphasis added).

¹⁵³ *See Tex. Oil & Gas Ass’n v. EPA*, 161 F.3d 923, 935 (5th Cir. 1998) (finding action arbitrary and capricious where it had a “flawed, inaccurate, or misapplied” basis); *New Orleans v. SEC*, 969 F.2d 1163, 1167 (D.C. Cir. 1992) (“[A]n agency’s reliance on a report or study without ascertaining the accuracy of the data ... is arbitrary.”); *Humana of Aurora, Inc. v. Heckler*, 753 F.2d 1579, 1583 (10th Cir. 1985) (finding that flaws in a study “render reliance by the agency on this ‘evidence’” arbitrary and capricious); *Almay, Inc. v. Califano*, 569 F.2d 674, 682 (D.C. Cir. 1977) (finding decision arbitrary and capricious where agency acted “on the basis of a flawed survey”).

¹⁵⁴ *Flyers Rights Educ. Fund, Inc. v. Federal Aviation Admin.*, 864 F.3d 738, 741 (D.C. Cir. 2017); *see also K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 2000) (“It most emphatically remains the duty of [the] court to ensure that an agency . . . conduct a process of *reasoned* decisionmaking.”).

¹⁵⁵ *T-Mobile S., LLC v. City of Roswell*, 574 U.S. 293, 301 (2015).

¹⁵⁶ *Nat’l Ass’n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1145 (2013).

¹⁵⁷ *Pub. Citizen Health Rsch. Grp. v. Tyson*, 796 F.2d 1479, 1505 (D.C. Cir. 1986).

¹⁵⁸ *Dep’t of Com. v. New York*, 588 U.S. 752, 773 (2019) (internal citations omitted).

[the agency] remained within the bounds of reasoned decisionmaking,”¹⁵⁹ This “reasoned explanation requirement of administrative law . . . is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public.”¹⁶⁰ To do otherwise and “[a]ccept[] contrived reasons . . . would defeat the purpose of the enterprise. If judicial review is to be more than an empty ritual, it must demand something better than the explanation offered for the action taken in this case.”¹⁶¹

In addition to FSIS’s requirements under the APA,¹⁶² recent executive branch directives require AI-use disclosure. The executive actions reflect the administration’s understanding that agency AI disclosure is necessary for correcting agency errors and shortcomings, in addition to building public trust. For example, OMB requires in OMB Memo M-25-21 that when an agency uses AI, the agency must “publicly release a summary describing” whether its use is “high-impact.”¹⁶³ And if FSIS’s proposed actions rely on potentially high-impact AI, it must follow several additional requirements outlined in OMB Memo M-25-21, Appendix 4. These requirements include, but are not limited to, ensuring that “individuals affected by AI-enabled decisions have access to a timely human review and a chance to appeal any negative impacts, when appropriate.”¹⁶⁴ Further, even in circumstances in which FSIS might use AI but not “high-impact AI,” the memorandum recommends that the agency maintains a “transparent process that seeks public input, comments, or feedback from the affected groups in a meaningful, accessible, and effective manner” regarding AI use.¹⁶⁵

These OMB guidelines are consistent with key executive action from the first Trump administration. For example, in his December 2020 Executive Order, “Promoting the Use of

¹⁵⁹ *Id.* (internal citations omitted).

¹⁶⁰ *Id.* at 785.

¹⁶¹ *Id.*

¹⁶² The Center notes that FSIS also maintains a complementary, ongoing obligation to comply with the Paperwork Reduction Act, 44 U.S.C. §§ 3501–3521, Information Quality Act, Pub. L. No. 106–554, § 515(a) (2000), 44 U.S.C. § 3516, and Freedom of Information Act, 5 U.S.C. § 552 — obligations that might additionally be imperiled by any uses of AI in a federal rulemaking process such as this one.

¹⁶³ Office of Mgmt. & Budget, Exec. Office of the President, Memorandum M-25-21, Accelerating Federal Use of AI through Innovation, Governance, and Public Trust (2025). This document defines “high-impact” as follows: “AI is considered high-impact when its output serves as a principal basis for decisions or actions that have a legal, material, binding, or significant effect on rights or safety.”

¹⁶⁴ *Id.* at 17.

¹⁶⁵ *Id.* at 24. These OMB guidelines for federal agencies also reflect country-wide efforts to increase AI oversight and disclosure in government. In 2024 alone, 12 laws regulating public sector uses of AI were passed by state legislatures and over 40 bills were introduced. Quinn Anex-Ries, Regulating Public Sector AI: Emerging Trends in State Legislation, CTR. FOR DEMOCRACY & TECH. (Jan. 10, 2025), <https://cdt.org/insights/regulating-public-sector-ai-emerging-trends-in-state-legislation/>. See also Office of Mgmt. and Budget, Circular No. A-4, at 17 (Sept. 17, 2003), (asking for transparency in regulatory analysis, “[agencies] should clearly set out the basic assumptions, methods, and data underlying the analysis”), <https://www.whitehouse.gov/wp-content/uploads/2025/08/CircularA-4.pdf>.

Trustworthy Artificial Intelligence in the Federal Government,” President Trump acknowledged that “the ongoing adoption and acceptance of AI will depend significantly on public trust,” and required agencies to “design, develop, acquire, and use AI in a manner that fosters public trust.”¹⁶⁶ To promote public trust and reasoned decisionmaking, the Order further specified that “the design, development, acquisition, and use of AI, as well as relevant inputs and outputs of particular AI applications, should be well documented and traceable.”¹⁶⁷ Thus, like the APA, this Order compels disclosure in the interest of avoiding hidden errors and biases in agency decisionmaking, as well as providing the public a meaningful opportunity to comment on agency practice.

For all of these reasons, to the extent FSIS used or plans to use AI tools in these proposed rulemakings, it must disclose its use and any relevant inputs and outputs. For purposes of ensuring the integrity of the rulemaking process, FSIS’s response to comments should restate the following sentence if, and only if, the response is drafted without reliance on automated or generative text systems: “This response reflects the independent reasoning of the FSIS without the use of artificial intelligence or other automated generative systems.”

IV. CONCLUSION

For these reasons, and upon consideration of the full rulemaking records for each of these proposed rulemakings, the Center strongly urges FSIS to withdraw its proposed “modernization” rules. However, if FSIS opts instead to continue rashly moving forward with the proposed rules, it cannot do so without first complying with NEPA, the Endangered Species Act, and the APA.

Sincerely,

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¹⁶⁶ Exec. Order No. 13960, 85 Fed. Reg. 78,939 (Dec. 8, 2020).

¹⁶⁷ *Id.*