

A MARKET-BASED APPROACH TO EFFECTIVE SLAUGHTERHOUSE LINE SPEED REGULATION

Kailey McNeal*

The nature of animal agriculture in the United States is heavily industrialized and profit-centered. Industrial animal agriculture maximizes profits and production by employing low-wage workers to do significant loads of labor. Slaughterhouses' implementation of faster line speeds reflects this tactic. As the industry continues to increase line speeds to boost profits, workers, animals, and the environment continue to face augmented risks to their health and safety. Nonetheless, slaughterhouse line speeds at the federal level remain largely un- and under-regulated. The current federal regulatory scheme is unduly influenced by industry interests, prioritizes profit over safety, and lacks effective enforcement mechanisms. Through exploring the dangers of ever-increasing line speeds and why past attempts at regulation have failed, this article argues for the incorporation of market-based incentives in line speed regulation to encourage industry compliance and self-enforcement.

I.	INTRODUCTION	50
II.	BACKGROUND ON SLAUGHTERHOUSE CONDITIONS . . .	51
	A. <i>PHYSICAL AND EMOTIONAL DANGERS IN THE SLAUGHTERHOUSE</i>	51
	B. <i>MARGINALIZED IDENTITIES OF SLAUGHTERHOUSE WORKERS</i>	53
	C. <i>VULNERABILITY OF ANIMALS IN THE SLAUGHTERHOUSE</i>	54
	D. <i>ENVIRONMENTAL IMPACT</i>	55
III.	CURRENT LINE SPEED REGULATIONS AND WHY THEY ARE INEFFECTIVE	57
	A. <i>THE PATH TO THE CURRENT REGULATIONS</i>	57
	B. <i>INDUSTRY INFLUENCE ON REGULATIONS</i>	60
	C. <i>SHIFTS TOWARD DEREGULATION</i>	61
IV.	CURRENT ATTEMPTS TO REFORM LINE SPEED REGULATIONS AND THE POTENTIAL FOR MARKET-BASED SOLUTIONS	63
	A. <i>CURRENT ATTEMPTS TO REFORM LINE SPEEDS</i> . . .	63

* Kailey McNeal received a Juris Doctor with honors from The George Washington University Law School in May 2024. She would like to thank Professors Ingrid Seggerman and Nancy Perry for their guidance and feedback during the research and writing process, and especially to Ingrid for prompting and inspiring her to seek publication.

B.	MARKET-BASED INCENTIVES IN OTHER REGULATORY SCHEMES	66
C.	CURRENT MARKET-BASED APPROACHES TO THE REGULATION OF WORKER SAFETY AND THE AGRICULTURE INDUSTRY	67
V.	MARKET-BASED SOLUTIONS FOR LINE SPEED REGULATION	69
A.	SUBSIDIES IN THE FORM OF SELECTIVE GOVERNMENT PROCUREMENT	69
B.	TAX INCENTIVES	73
VI.	CONCLUSION	75

I. INTRODUCTION

Animal agriculture in the United States is a heavily industrialized sector of the economy that relies on the exploitation of others.¹ Over twenty-five million animals are slaughtered every day for food products such as beef from cows, breasts and wings from chickens, and pork from pigs.² Animal agriculture is a large contributor to greenhouse gas emissions both in this country and worldwide.³ The industry also poses extreme environmental justice and workers’ rights concerns, as slaughterhouses are located mainly in communities of Black, Indigenous, and People of Color (BIPOC) and the industry relies on employment from those same communities for its dangerous work.⁴ There are many stages of animal agriculture—from raising animals in concentrated animal feeding operations (CAFOs), to slaughtering the animals, to preparing and cutting the carcasses into packaged meat for consumer sale.⁵ This Article focuses on the slaughtering and preparing stages, which the industry calls “animal processing.”⁶ This Article argues that effective line speed regulation must incorporate market-based incentives into a regulatory scheme to protect worker safety and animal welfare. Section II details the conditions in

¹ See generally Caitlin Kelly, *Exploited: The Unexpected Victims of Animal Agriculture*, 30 ANIMAL L. REV. 103 (2024).

² *Everything You Need to Know About Animal Slaughter*, THE HUMANE LEAGUE (June 14, 2021), <https://thehumaneleague.org/article/animal-slaughter> (accessed Aug. 30, 2024).

³ See Dan Blaustein-Rejto & Chris Gambino, *Livestock Don’t Contribute 14.5% of Global Greenhouse Gas Emissions*, THE BREAKTHROUGH INST. (Mar. 20, 2023), <https://thebreakthrough.org/issues/food-agriculture-environment/livestock-dont-contribute-14-5-of-global-greenhouse-gas-emissions> (accessed Nov. 25, 2024) (estimating that animal agriculture accounts for 11 to 20 percent of global anthropogenic GHG emissions).

⁴ Angela Stuesse & Nathan T. Dollar, *Who are America’s Meat and Poultry Workers?*, ECON. POL’Y INST.: WORKING ECON. BLOG (Sept. 24, 2020), <https://www.epi.org/blog/meat-and-poultry-worker-demographics/> (accessed Aug. 30, 2024).

⁵ *When We’re Dead and Buried, Our Bones Will Keep Hurting*, HUMAN RIGHTS WATCH, 1, 15 (Sept. 2019), https://www.hrw.org/sites/default/files/report_pdf/us0919_web.pdf (accessed Aug. 14, 2024); Owen Walsh, *What Is a CAFO (Concentrated Animal Feeding Operation)?*, THE HUMANE LEAGUE (May 23, 2022), <https://thehumaneleague.org/article/what-is-a-cafo> (accessed Aug. 30, 2024).

⁶ HUMAN RIGHTS WATCH, *supra* note 5, at 1–2.

the slaughterhouse for workers and animals, and the particular danger posed by high line speeds. Section III outlines the current regulatory efforts to restrict line speeds and investigate their shortcomings. Section IV describes the current alternatives to traditional regulation of slaughterhouse line speeds and explores how other social movements, such as the environmental protection movement, have used market-based incentives to achieve corporate regulation. Finally, Section V proposes two different market-based solutions to slaughterhouse line speed regulation: setting stricter standards for government contracts with industrial animal agriculture companies and tax incentives.

II. BACKGROUND ON SLAUGHTERHOUSE CONDITIONS

A. PHYSICAL AND EMOTIONAL DANGERS IN THE SLAUGHTERHOUSE

While animal agriculture is a widely known enemy of the animal protection community, animal agriculture is no friend to humans, either, as it depends on cruelty towards workers and disregard for their lives.⁷ Working in a slaughterhouse requires mental and physical exertion beyond what many people can endure.⁸ Slaughterhouse workers must handle animals in preparation for slaughter, often by stunning them, hanging them on a conveyor belt, and then slitting the throat of each animal one-by-one—a highly mechanized process, moving at a constant high speed set by slaughterhouse management.⁹ After the animals are slaughtered, workers must take them off of the conveyor belt and place the dead animals onto a different assembly line to process them into the packaged slices that consumers find at the grocery store.¹⁰

The machinery in the slaughterhouse is sharp, the screams of animals in pain are loud, and the lines move fast.¹¹ Slaughtering large animals with instruments sharp enough to slice a cow's throat in one movement is dangerous enough, even without considering the rapid speeds at which workers must move.¹² For decades, slaughterhouses were legally permitted to require workers to slaughter up to 1,106 pigs per hour and 140 chickens per minute.¹³ However, recent regulations

⁷ Kelly, *supra* note 1, at 104–05.

⁸ HUMAN RIGHTS WATCH, *supra* note 5, at 3, 33–39.

⁹ *Slaughterhouses: What Are They and How Are Animals Killed In Them?*, FARM FORWARD <https://www.farmforward.com/issues/animal-welfare/slaughterhouses-what-are-they-and-how-are-animals-killed-in-them/> (accessed Sept. 15, 2024); HUMAN RIGHTS WATCH, *supra* note 5 at 1, 49–53.

¹⁰ HUMAN RIGHTS WATCH, *supra* note 5, at 15.

¹¹ *Id.* at 27.

¹² *Id.* at 1.

¹³ See *Everything You Need to Know About Animal Slaughter*, *supra* note 2; *Constituent Update: FSIS Announces Study of Effect of Increased Poultry Line Speeds on Worker Safety*, U. S. DEP'T OF AGRIC. FOOD SAFETY & INSPECTION SERV. (July 29, 2022), <https://www.fsis.usda.gov/news-events/news-press-releases/constituent-update-july-29-2022> (accessed Aug. 30, 2024); *Constituent Update: Time-Limited Trial for NSIS Establishments*,

allow facilities to apply for waivers to exceed line speed limits.¹⁴ The repetitive, labor-intensive movements wear on workers' hands and arms causing numerous injuries, including carpal tunnel and other musculoskeletal disorders.¹⁵ According to the U.S. Bureau of Labor Statistics, in 2020, the incidence rate of nonfatal occupational injuries in the animal slaughter and processing industry was 6.7 per every 100 workers.¹⁶ This is especially dangerous when compared to the manufacturing industry as a whole, which has a nonfatal injury rate of 3.1 per every 100 workers.¹⁷ Moreover, injuries in animal slaughter and processing often go unreported or underreported, making the actual number of injuries in the industry likely much higher.¹⁸

Working in a slaughterhouse is inherently dangerous, but increased line speeds further exacerbate the risks of serious injury in meatpacking and poultry processing plants.¹⁹ Faster speeds increase the already existing risks of musculoskeletal disorders and other trauma-related injuries from repetitive motions.²⁰ Higher speeds also increase the number of lacerations suffered by workers, as they attempt to keep up with the line while wielding sharp scissors and knives intended to penetrate the flesh of 400-pound animals.²¹ Additionally, workers report that faster line speeds can cause the large animals to fall from the hooks on the slaughterhouse line and onto workers, and can cause workers to mistakenly hook themselves in the frenzy of meeting high-speed demands.²²

In addition to physical trauma, slaughterhouse workers also suffer emotional trauma from their time on the line.²³ Constant exposure to violence to animals, endurance of physical pain, and oppressive and dehumanizing treatment from management takes a toll on workers'

U.S. DEP'T OF AGRIC. FOOD SAFETY & INSPECTION SERV. (Nov. 12, 2021), <https://www.fsis.usda.gov/news-events/news-press-releases/constituent-update-november-12-2021> (accessed Aug. 30, 2024).

¹⁴ HUMAN RIGHTS WATCH, *supra* note 5, at 4.

¹⁵ Peggy Lowe, *Working 'The Chain,' Slaughterhouse Workers Face Lifelong Injuries*, NAT'L PUB. RADIO (Aug. 11, 2016), <https://www.npr.org/sections/thesalt/2016/08/11/489468205/working-the-chain-slaughterhouse-workers-face-lifelong-injuries> (accessed Aug. 30, 2024); HUMAN RIGHTS WATCH, *supra* note 5, at 33.

¹⁶ *Incidence Rates of Nonfatal Occupational Injuries and Illnesses by Industry and Case Types, 2020*, U.S. BUREAU OF LABOR STATS. (updated Nov. 3, 2021), https://www.bls.gov/web/osh/summ1_00.htm#soii_n17_as_t1.f.5 (accessed Aug. 30, 2024).

¹⁷ *Id.*

¹⁸ Lowe, *supra* note 15.

¹⁹ HUMAN RIGHTS WATCH, *supra* note 5, at 49–50.

²⁰ U.S. GOV'T. ACCOUNTABILITY OFF., GAO-18-12, *WORKPLACE SAFETY AND HEALTH: BETTER OUTREACH, COLLABORATION, AND INFORMATION NEEDED TO HELP PROTECT WORKERS AT MEAT AND POULTRY PLANTS* 38 (2017), <https://www.gao.gov/assets/gao-18-12.pdf> (accessed Aug. 14, 2024).

²¹ *United Food & Com. Workers Union, Loc. No. 663 v. U. S. Dep't of Agric.*, 532 F. Supp. 3d 741, 755 (D. Minn. 2021).

²² *Id.*

²³ GAIL EISNITZ, *SLAUGHTERHOUSE: THE SHOCKING STORY OF GREED, NEGLECT, AND INHUMANE TREATMENT INSIDE THE U.S. MEAT INDUSTRY* 87–88, 91 (Prometheus Books, 1997).

emotional health.²⁴ Workers are routinely denied bathroom breaks, proper training, and personal protective equipment for the job.²⁵ One slaughterhouse worker reported to *The Washington Post* that she and other workers had to wear diapers while at work because they were denied access to the bathroom.²⁶ Further, quantitative analyses by Fitzgerald et al. and Jacques show a connection between the presence of slaughterhouses in a community and increased rates of domestic and family violence in that community.²⁷

B. MAGRINALIZED IDENTITIES OF SLAUGHTERHOUSE WORKERS

Most workers in American slaughterhouses are BIPOC, low-income, and especially vulnerable individuals.²⁸ Animal slaughter and processing facilities employ about 65% BIPOC workers as compared to the rest of the U.S. workforce, which is 36% BIPOC.²⁹ Many slaughterhouse workers are incarcerated or are welfare beneficiaries who must work in the slaughterhouse as a condition of their criminal punishment or receipt of their benefits, such as food stamps.³⁰ Moreover, many of the immigrants that slaughterhouses employ are noncitizens.³¹ Employer-employee relationships are already fraught with imbalanced power dynamics, and this is greatly exaggerated when employees are at risk of forcible removal from the country at any time.³² Consequently, companies often treat these workers as disposable, subjecting employees to hazardous work conditions with the confidence that workers will be too afraid to be fired, deported, or denied their welfare benefits to report

²⁴ HUMAN RIGHTS WATCH, *supra* note 5, at 70.

²⁵ Peter S. Goodman, *On the Slaughterhouse Floor, Fear and Anger Remain*, N.Y. TIMES (Dec. 30, 2021), <https://www.nytimes.com/2021/12/29/business/meat-factories-covid.html> (accessed Aug. 14, 2024).

²⁶ Roberto A. Ferdman, *'I Had to Wear Pampers': The Cruel Reality the People Who Bring You Cheap Chicken Allegedly Endure*, WASH. POST (May 11, 2016 at 1:39 PM), <https://www.washingtonpost.com/news/wonk/wp/2016/05/11/i-had-to-wear-pampers-many-poultry-industry-workers-allegedly-cant-even-take-bathroom-breaks/> (accessed Aug. 14, 2024).

²⁷ Amy J. Fitzgerald et al., *Slaughterhouses and Increased Crime Rates: An Empirical Analysis of the Spillover From "The Jungle" Into the Surrounding Community*, 22 ORG. & ENV'T 158, 160 (2009); Jessica Racine Jacques, *The Slaughterhouse, Social Disorganization, and Violent Crime in Rural Communities*, 23 SOC'Y & ANIMALS 594, 597 (2015).

²⁸ See HUMAN RIGHTS WATCH, *supra* note 5, at 2, 15, 21–22 (noting that most workers in the industry are people of color, women, and immigrants); Stuesse & Dollar, *supra* note 4.

²⁹ Stuesse & Dollar, *supra* note 4.

³⁰ CHRISTOPHER D. COOK, DIET FOR A DEAD PLANET 212–13 (2004); Jennifer Dillard, *A Slaughterhouse Nightmare: Psychological Harm Suffered by Slaughterhouse Employees and the Possibility of Redress through Legal Reform*, 15 GEO. J. ON POVERTY L. & POLICY 397 (2008) (accessed Sept. 1, 2024).

³¹ Stuesse & Dollar, *supra* note 4.

³² See Lowe, *supra* note 15 (redacting noncitizen sources' names due to fears of retaliation).

any safety violations.³³ And the government is not ignorant of these practices by slaughterhouses.³⁴ But, instead of tightening regulations on large animal processing companies, the U.S. Immigrations and Customs Enforcement (ICE) has a practice of raiding slaughterhouse facilities in search of individual immigrants.³⁵ The large, corporate-run animal processing facilities merely face occasional fines, while individual immigrants are uprooted from their homes and placed in detention centers or deported.³⁶

Moreover, as exposed by Charlie Leduff in a 2000 piece in *The New York Times*, slaughterhouse management bullies workers and pits them against one another, often along racial lines.³⁷ Generally, white workers are placed in management positions, while the rest of the positions are assigned to workers based on desirability of the job and the race, immigration, or incarceration status of the worker.³⁸ Managers will assign dirtier, more dangerous positions to individuals that they perceive to be less valuable or of lower status.³⁹ Managers exacerbate and capitalize on racial and class divisions among workers by threatening to replace immigrant or incarcerated workers with Black workers and Black workers with Indigenous workers—encouraging workers to see each other as enemies who will take the others' jobs.⁴⁰ This even spills over into social relations generally among workers, as workers tend to socialize exclusively with others who share their identities, further reinforcing these divisions and preventing workers from identifying their common struggles.⁴¹

C. VULNERABILITY OF ANIMALS IN THE SLAUGHTERHOUSE

Fast line speeds also increase the risk and magnitude of harm to animals in the slaughterhouse.⁴² Just as faster line speeds increase the risk of worker accidents on the slaughter line, faster speeds increase

³³ *Id.*

³⁴ Lynn Waltz, *The Price of Cheap Meat? Raided Slaughterhouses and Upended Communities*, WASH. POST (Apr. 11, 2018 6:00 AM), <https://www.washingtonpost.com/news/posteverything/wp/2018/04/11/the-price-of-cheap-meat-raided-slaughterhouses-and-upended-communities/> (accessed Sept. 1, 2024).

³⁵ *Id.*

³⁶ *Id.*

³⁷ Charlie Leduff, *At a Slaughterhouse, Some Things Never Die: Who Kills, Who Cuts, Who Bosses Can Depend on Race*, N.Y. TIMES (June 16, 2000), <https://www.nytimes.com/2000/06/16/us/slaughterhouse-some-things-never-die-who-kills-who-cuts-who-bosses-can-depend.html> (accessed Sept. 4, 2024).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ NANCY NEIMAN, *MARKETS, COMMUNITY, AND JUST INFRASTRUCTURES* 48 (2020), <https://doi.org/10.4324/9781003034438> (accessed Sept. 1, 2024).

⁴² Jessica A. Chapman et al., *Slaughterhouse Deregulation: A View of the Effects on Animals, Workers, Consumers, and the Environment*, AM. BAR ASSOC.: THE BRIEF (Aug. 25, 2021), https://www.americanbar.org/groups/tort_trial_insurance_practice/

the risk that those accidents might harm animals as well.⁴³ Workers moving at high speeds are more likely to ineffectively slaughter animals by failing to fully stun or kill animals.⁴⁴ Animals that are not effectively stunned before slaughter remain conscious while their throats are slit, causing them to flail and injure both themselves and the workers attempting to subdue them.⁴⁵ Frustrated workers kick, beat, and mutilate animals in desperate attempts to gain control of the animals to meet management's speed demands.⁴⁶ Additionally, the faster line speeds facilitate the mass slaughter of even more animals each day.⁴⁷

Currently, the only protection for farmed animals in slaughterhouses is the Humane Methods of Slaughter Act (HMSA), which exempts poultry from its regulations.⁴⁸ And, for the animals that it does cover, the HMSA has minimal, under-enforced regulations.⁴⁹ A 2010 report by the U.S. Government Accountability Office (GAO) uncovered inconsistencies in the government's enforcement of the HMSA, with many instances of cruelty going uncited.⁵⁰ Effective line speed regulation has the potential to transform humane care standards from being merely symbolic to actually protecting farmed animals.

D. ENVIRONMENTAL IMPACT

In addition to its harms to worker and animal welfare, industrial animal agriculture is one of the major contributors to greenhouse gas emissions and climate change globally, and increased line speeds increase the industry's output and environmental impact.⁵¹ Every stage of the animal agriculture industry affects the environment—from the

publications/the_brief/2020-21/summer/slaughterhouse-deregulation-view-effects-animals-workers-consumers-environment/ (Aug. 14, 2024).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See, e.g., Joe Loria, *5 MFA Undercover Investigations That Are Scarier Than a Stephen King Novel*, MERCY FOR ANIMALS (Oct. 27, 2016), <https://mercyforanimals.org/blog/5-mfa-undercover-investigations-that-are/> (accessed Aug. 31, 2024) (describing cows and newborn calves being beaten in the face with metal pipes, repeatedly stabbed with pitchforks, kicked, thrown, and punched by a worker who seems to enjoy torturing animals).

⁴⁶ Delcianna J. Winders & Elan Abrell, *Slaughterhouse Workers, Animals, and the Environment: The Need for a Rights-Centered Regulatory Framework in the United States That Recognizes Interconnected Interests*, 23 HEALTH & HUMAN RIGHTS J. 21, 25–26 (2021).

⁴⁷ Chapman et al., *supra* note 42.

⁴⁸ Humane Methods of Slaughter Act, 7 U.S.C. § 1901; U. S. DEP'T OF AGRIC. FOOD SAFETY & INSPECTION SERV., FSIS DIRECTIVE: CUSTOM EXEMPT REVIEW PROCESS, 8160.1, at 2 (Apr. 2022), https://www.fsis.usda.gov/sites/default/files/media_file/2021-02/8160.1.pdf (accessed Sept. 1, 2024).

⁴⁹ U.S. GOV'T ACCOUNTABILITY OFFICE., GAO-10-487T, HUMANE METHODS OF SLAUGHTER ACT: WEAKNESSES IN USDA ENFORCEMENT 6–7 (2010).

⁵⁰ *Id.* at 1–2.

⁵¹ Giampiero Grossi et al., *Livestock and Climate Change: Impact of Livestock on Climate Change and Mitigation Strategies*, 9 ANIMAL FRONTIERS 69, 69–71 (Jan. 2019); Chapman et al., *supra* note 42.

production of feed and the land needed to raise the animals, to the emissions from the animals' digestive processes, to the slaughtered animals' blood and waste traveling into airways and waterways surrounding slaughterhouses.⁵² Moreover, some sections of the animal agriculture industry enjoy exemptions from regulation under provisions of the nation's environmental statutes, such as the Clean Water Act.⁵³ The environmental statutes that do apply to the animal agriculture industry do not adequately protect the environment from the harm of the industry.⁵⁴ The standards for effluent emissions from slaughterhouses have not been revised since 2004, and most slaughterhouses are only required to comply with regulations last revised in the 1970s, enabling the industry to remain complacent about improving its emission-reduction technology.⁵⁵ Currently, the Environmental Protection Agency (EPA), the agency responsible for implementing and enforcing the Clean Water Act and many of the other federal environmental statutes, is in the process of revising those effluent standards.⁵⁶ However, this revision process only began after multiple environmental and animal advocacy groups filed a lawsuit against the EPA, challenging the agency's historically poor enforcement of the Clean Water Act in regard to slaughterhouses.⁵⁷ Therefore, effective line speed regulation is a much needed additional safeguard to account for the EPA's difficulty in curbing the industry's effect on the environment.

⁵² Winders & Abrell, *supra* note 46, at 24–25.

⁵³ *Clean Water Act Section 404 and Agriculture*, U.S. ENVTL. PROT. AGENCY, <https://www.epa.gov/cwa-404/clean-water-act-section-404-and-agriculture> (accessed Aug. 31, 2024); Leah Douglas, *Factory Farms No Longer Have to Report Their Air Emissions. That's Dangerous for Their Neighbors*, MOTHER JONES (Dec. 21, 2018), <https://www.motherjones.com/food/2018/12/factory-farms-no-longer-have-to-report-their-air-emissions-that-could-be-dangerous-for-their-neighbors/> (accessed Aug. 31, 2024); U.S. GOV'T ACCOUNTABILITY OFF., GAO-08-944 CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA NEEDS MORE INFORMATION AND A CLEARLY DEFINED STRATEGY TO PROTECT AIR AND WATER QUALITY FROM POLLUTANTS OF CONCERN (Sep. 4, 2008).

⁵⁴ See Tom Pelton, *Investigation Finds 75 Percent of Large Slaughterhouses Violate Water Pollution Limits*, WE'RE YOUR PUBLIC RADIO (Oct. 16, 2018, 3:25 PM), <https://www.wypr.org/show/the-environment-in-focus/2018-10-16/investigation-finds-75-percent-of-large-slaughterhouses-violate-water-pollution-limits> (accessed Aug. 31, 2024) (describing how 75% of the ninety-eight largest slaughterhouses in the U.S. exceeded water pollution limits set by the Clean Water Act).

⁵⁵ *Meat and Poultry Products Effluent Guidelines*, ENV'T PROT. AGENCY, <https://www.epa.gov/eg/meat-and-poultry-products-effluent-guidelines> (accessed Aug. 31, 2024); *Holding Slaughterhouses Accountable for Water Pollution*, ANIMAL LEGAL DEF. FUND (Apr. 30, 2020), <https://aldf.org/case/holding-slaughterhouses-accountable-for-water-pollution/> (accessed Aug. 31, 2024).

⁵⁶ *Meat and Poultry Products Effluent Guidelines*, *supra* note 55.

⁵⁷ ANIMAL LEGAL DEF. FUND, *supra* note 55; *Enforcement at Federal Facilities*, ENV'T PROT. AGENCY, <https://www.epa.gov/enforcement/enforcement-federal-facilities> (accessed Sept. 15, 2024).

III. CURRENT LINE SPEED REGULATIONS AND WHY THEY ARE INEFFECTIVE

A. THE PATH TO THE CURRENT REGULATIONS

The Food Safety and Inspection Service (FSIS) within the United States Department of Agriculture (USDA) is the agency in charge of regulating line speeds.⁵⁸ FSIS's stated mission is to protect "food safety."⁵⁹ FSIS inspects animal processing facilities across the country for compliance with the Federal Meat Inspection Act (FMIA), Poultry Products Inspection Act (PPIA), and the Humane Methods of Slaughter Act (HMSA).⁶⁰ In addition to conducting inspections, FSIS also creates regulations to enforce these statutes and protect food safety.⁶¹ Among the many regulations that FSIS promulgates are those mandating maximum line speeds that cannot be exceeded by animal processing facilities.⁶²

The FMIA and PPIA are the federal statutes that empower the USDA to create regulations to limit line speeds.⁶³ The FMIA dictates that the USDA inspect farmed animals at slaughterhouses before and after they are slaughtered to ensure food safety and humane slaughter.⁶⁴ Similarly, the PPIA states that the USDA must inspect farmed chickens before and after slaughter to ensure that the meat is fit for human consumption.⁶⁵ FSIS relies on these statutes as its authority to create regulations limiting line speeds as part of carrying out the agency's responsibility to inspect slaughtered animals.⁶⁶

FSIS's line speed regulations are included in 9 C.F.R. § 381.69 for chickens and turkeys and 9 C.F.R. § 310.1 for pigs and cattle.⁶⁷ Because FSIS's primary role in slaughterhouses is inspection, line speed limits are integrated into the inspection procedures and are determined based on the number of inspectors in a facility and the speed at which they

⁵⁸ Dani Replogle & Delcianna J. Winders, *Accelerating Catastrophe: Slaughter Line Speeds and the Environment*, 51 ENV'T L. 1277, 1279 (2021); *Humane Methods of Slaughter Act*, U.S. DEP'T. OF AGRIC. U.S. DEP'T. OF AGRIC., FSIS DIRECTIVE 6120.1 FINISHED PRODUCT STANDARDS PROGRAM FOR THE NEW LINE SPEED INSPECTION SYSTEM AND THE STREAMLINED INSPECTION SYSTEM (1987).

⁵⁹ *About FSIS*, U.S. DEP'T OF AGRIC. <https://www.fsis.usda.gov/about-fsis> <https://www.fsis.usda.gov/about-fsis> (accessed Sept. 15, 2024).

⁶⁰ Administrator, Food Safety and Inspection Service, 7 C.F.R. § 2.53 (2022).

⁶¹ *About FSIS*, *supra* note 59.

⁶² *See* Extent and time of post-mortem inspection; post-mortem staffing standards, 9 C.F.R. § 310.1 (1970) (describing additional regulations regarding post-mortem inspection promulgated by FSIS); Maximum line speed rates under the New Poultry Inspection System, 9 C.F.R. § 381.69 (2014).

⁶³ Federal Meat Inspection Act, 21 U.S.C. §§ 601–683(1978); Poultry Products Inspection Act, 21 U.S.C. §§ 451–472 (1968); Replogle & Winders, *supra* note 58.

⁶⁴ 21 U.S.C. §§ 603–604.

⁶⁵ 21 U.S.C. § 455.

⁶⁶ 9 C.F.R. §§ 310.1, 381.69.

⁶⁷ 9 C.F.R. §§ 381.69, 310.1.

can inspect the carcasses.⁶⁸ For chickens and turkeys, the line speed regulations require slaughterhouse facilities to follow the standards set by the New Poultry Inspection System (NPIS).⁶⁹ NPIS limits line speeds to 140 birds per minute for chicken slaughter and to fifty-five birds per minute for turkey slaughter, based on the number of inspectors in a facility.⁷⁰

For pigs, FSIS has two different inspection standards: the New Swine Slaughter Inspection System (NSIS) and the traditional inspection system.⁷¹ The NSIS program is a result of the agency's Hazard Analysis and Critical Control Point-Based-Inspection Models Project (HIMP).⁷² HIMP is a pilot project that began in 1997 as a way to "produce a flexible, more efficient, fully integrated meat and poultry inspection system."⁷³ Notice of the HIMP pilot was posted in the Federal Register in June 1997 and included details of the program, a request for volunteers to participate in the pilot project, and FSIS's intention to produce a report at the end of the pilot that would inform the creation of a final rule implementing a new inspection system.⁷⁴ The HIMP system attempted to streamline the inspection process by shifting the responsibility of "slaughter process control" from FSIS to the already overworked and underpaid slaughterhouse workers and allowed participating facilities to operate at even higher line speeds than they already were.⁷⁵ HIMP would reduce the number of FSIS inspectors at each slaughterhouse, require slaughterhouses to develop their own inspection processes to identify abnormal carcasses, and leave the few remaining FSIS inspectors to perform solely oversight and verification roles.⁷⁶

In 2000, the D.C. Circuit held that HIMP violated the FMIA and PPIA by improperly abdicating the responsibility to inspect carcasses that the statute delegated to FSIS.⁷⁷ In response, FSIS amended the HIMP procedures to include FSIS inspectors at more stages in the carcass inspection process.⁷⁸ In 2002, the D.C. Circuit upheld the amended HIMP procedures, concluding that the additional inspectors satisfied the FMIA's and PPIA's inspection responsibilities for the agency.⁷⁹

⁶⁸ 9 C.F.R. §§ 381.69, 310.1.

⁶⁹ 9 C.F.R. § 381.69.

⁷⁰ 9 C.F.R. § 381.69.

⁷¹ 9 C.F.R. § 310.1 (2024).

⁷² See *HAACP-Based-Inspection Models Project: History*, FOOD SAFETY & INSPECTION SERV. (updated Jan. 24, 2024), <https://www.fsis.usda.gov/inspection/compliance-guidance/haacp/haccp-based-inspection-models-project> (accessed Aug. 30, 2024).

⁷³ *Id.*

⁷⁴ HACCP-Based Meat and Poultry Inspection Concepts, 62 Fed. Reg. 31553 (proposed June 10, 1997).

⁷⁵ HUMAN RIGHTS WATCH, *supra* note 5, at 2–4, 27, 63.

⁷⁶ HACCP-Based Meat and Poultry Inspection Concepts, *supra* note 74, at 31559–60.

⁷⁷ *Am. Fed'n of Gov't Emps. v. Glickman*, 215 F.3d 7, 9–11 (D.C. Cir. 2000).

⁷⁸ *Am. Fed'n of Gov't Emps. v. Veneman*, 284 F.3d 125, 128 (D.C. Cir. 2002).

⁷⁹ *Id.* at 130.

Additionally, the court upheld the increased line speeds provision in HIMP and accepted FSIS's argument that it was appropriate to increase line speeds because slaughterhouse workers would sort and inspect carcasses before federal inspection.⁸⁰ Therefore, because the workers' inspection would theoretically mean fewer adulterated carcasses for federal inspectors to handle, the court believed that the federal inspectors could work at faster speeds.⁸¹

The HIMP pilot project continued for over a decade, until FSIS published a final report on the project in 2014.⁸² The report concluded that the HIMP pilot was successful and that, in pig slaughterhouses, the pilot resulted in more food safety verification checks than in the traditional inspection system.⁸³ Moreover, FSIS stated that it anticipated that this HACCP-based inspection system would produce a safer product based on the assumption that an increased number of inspections would produce fewer food safety defects.⁸⁴ As a result of the HIMP final report, in 2019 FSIS published a final rule for pig slaughter, "Modernization of Swine Slaughter Inspection," that detailed a new inspection system, New Swine Slaughter Inspection System (NSIS).⁸⁵ Under this new rule, pig slaughterhouses could choose to participate in NSIS.⁸⁶ Just as in HIMP facilities, in NSIS facilities slaughterhouse workers would conduct initial post-slaughter inspections of the carcasses to both identify and trim any defects on the animals.⁸⁷ Now, FSIS inspectors could quickly inspect carcasses and devote more time and resources to other concerns such as sanitation and HMSA compliance.⁸⁸ Even more significant, NSIS removed any federal limits on line speeds, and instead allowed facilities "to determine their own line speeds based on their ability to maintain process control for preventing fecal contamination and meeting microbial performance measures for carcasses during the slaughter operation."⁸⁹

After a challenge by workers' rights organizations to these two provisions of the NSIS, a court severed the elimination of line speed limits from the NSIS, explained in more detail in the following section.⁹⁰ As pig line speeds currently stand, the traditional inspection system limits line speeds to 1,106 pigs per hour and the NSIS functions as an opt-in

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Evaluation of HACCP Inspection Models Project (HIMP) for Market Hogs*, U. S. DEP'T OF AGRIC. FOOD SAFETY & INSPECTION SERV., 5, 8 (2014).

⁸³ *Id.* at 5.

⁸⁴ *Id.* at 5, 34.

⁸⁵ Modernization of Swine Slaughter Inspection, 84 Fed. Reg., 52300 (Oct. 1, 2019) (to be codified at 9 C.F.R. pts. 301, 309, 310).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *United Food & Com. Workers Union, Loc. No. 663 v. U. S. Dep't of Agric.*, 532 F. Supp. 3d 741, 782 (D. Minn. 2021).

pilot program, allowing pig slaughterhouses to apply for a temporary waiver to operate without line speed limits while FSIS conducts research to identify the effects of the program on worker safety.⁹¹

B. INDUSTRY INFLUENCE ON REGULATIONS

Four animal processing companies control an overwhelming majority of the beef, poultry, and pork industries.⁹² Despite FSIS's stated priority of food safety, the animal processing industry's interests are clearly also major priorities for the regulatory agency, as evidenced by the largest animal processing facilities in the country having frequent access to agency decision makers.⁹³ From 2017 to 2019, industry lobbyists met with the agency specifically to discuss line speed regulations at least ten times.⁹⁴ The lobbyists represented the largest companies in the animal agriculture industry, accounting for at least 95% of poultry and meat produced in the United States.⁹⁵ Frequent and coordinated meetings between industry leaders and regulators inevitably lead to regulations that heavily reflect the interests of the industry.⁹⁶

A May 2022 staff report by the Select Subcommittee on the Coronavirus Crisis highlighted the animal agriculture industry's influence on regulators.⁹⁷ The report documented the Trump administration's collaboration with animal processing companies to protect the companies' profits at the expense of workers' health and safety during the COVID-19 pandemic.⁹⁸ The report detailed how representatives from the meatpacking industry heavily relied on the fact that they knew agency officials were "representing [the] industry's interests in every important interagency conversation."⁹⁹ For example, in April 2020, at the beginning of the pandemic, executives from major animal processing companies, JBS, Smithfield, and Tyson, successfully lobbied Sonny Perdue, the Secretary of Agriculture, to discourage workers from missing work due to COVID-19 concerns.¹⁰⁰ Shortly after, during a press conference, then-Vice President Pence directly admonished meatpacking workers

⁹¹ *Constituent Update: Time-Limited Trial for NSIS Establishments*, *supra* note 13.

⁹² *Fact Sheet: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain*, THE WHITE HOUSE (Jan. 3, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/fact-sheet-the-biden-harris-action-plan-for-a-fairer-more-competitive-and-more-resilient-meat-and-poultry-supply-chain/> (accessed Aug. 30, 2024).

⁹³ HUMAN RIGHTS WATCH, *supra* note 5, at 24.

⁹⁴ *Id.* at 25

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *How the Trump Administration Helped the Meatpacking Industry Block Pandemic Worker Protections, Staff Report*, SELECT SUBCOMM. ON THE CORONAVIRUS CRISIS, 2 (May 12, 2022).

⁹⁸ *Id.* at 1.

⁹⁹ *Id.* at 2.

¹⁰⁰ *Id.*

for missing work due to COVID-19.¹⁰¹ Moreover, the report exposed the industry's direct, personal pathways to communication with the executive branch. Under Secretary of Food Safety, Mindy Brashears, gave industry leaders her personal cell phone number and email to discuss COVID-19 plant safety.¹⁰² Then-President Trump's Executive Order, which invoked the Defense Production Act to keep meatpacking plants operating during the pandemic, clearly echoed the draft Executive Order that Tyson's legal department sent to USDA officials less than a week earlier.¹⁰³ Within that week, industry representatives met with executive officials, such as Chief of Staff, Mark Meadows.¹⁰⁴ After the issuance of the Executive Order, the Trump administration sent emails to industry leaders asking them to "issue positive statements and social media about the President's action on behalf of the industry."¹⁰⁵

C. SHIFTS TOWARD DEREGULATION

While current line speed regulations appear to heavily reflect the interests of the animal agriculture industry, the current regulations are directly contrary to the interests of workers and animals within the slaughterhouse.¹⁰⁶ In 2019, after FSIS published the final rule with the NSIS, a group of workers' advocacy organizations sued the USDA for violating the Administrative Procedure Act (APA) by failing to consider workers' safety in the promulgation of its line speed rule, and a federal court in Minnesota ruled against the agency.¹⁰⁷ The agency promulgated this rule despite numerous objections during the public comment period about the way the rule would harm worker safety.¹⁰⁸ Many of these comments cited statistics by the Occupational Health and Safety Administration (OSHA), arguing that "establishments should reduce line speeds and production rates to decrease injury rates."¹⁰⁹ In response, FSIS explained that it did not have "the authority nor the expertise to regulate issues related to establishment worker safety."¹¹⁰ Moreover, the agency explained that, despite FSIS's authority to regulate line speeds,

¹⁰¹ *Id.*

¹⁰² *Id.* at 11.

¹⁰³ *Id.* at 4

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See HUMAN RIGHTS WATCH, *supra* note 5, at 54, 69 (reporting how meat processing companies incentivize working at rapid speeds to meet production goals at the expense of workers' exhaustion and pain).

¹⁰⁷ *USDA Pilot Program to Allow Faster Line Seeds at Some Pork-processing Facilities*, SAFETY + HEALTH (Jan. 5, 2022), <https://www.safetyandhealthmagazine.com/articles/22093-usda-trial-to-allow-pork-processing-facilities-to-operate-at-faster-line-speeds> (accessed Sept. 14, 2024).

¹⁰⁸ *United Food & Commercial Workers Union, Loc. No. 663 v. U. S. Dep't of Agric.*, 532 F. Supp. 3d 741, 751 (D. Minn. 2021).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

OSHA is responsible for worker safety issues in the slaughterhouse and FSIS is only responsible for food safety.¹¹¹ However, the agency's insistence that its only responsibility is food safety contradicts its statutory responsibility to enforce the HMSA and one of the agency's own empowering statutes, the FMIA, which specifically requires FSIS to enforce the humane slaughter of animals.¹¹² Additionally, the federal court in Minnesota found that FSIS had, in fact, previously considered worker safety in the formulation of its regulations and that its refusal to do so in this instance constituted a change in the agency's position that warranted an explanation under the APA's rulemaking procedures.¹¹³ Therefore, the agency's failure to acknowledge or provide an explanation for this change violated the APA, and the court severed and vacated the provision of the NSIS that removed line speed limitations.¹¹⁴

Despite a successful ruling for workers' advocates in that case, FSIS subsequently announced a temporary pilot program, as part of an amended NSIS, that allowed facilities to operate with accelerated line speeds for a "time-limited trial" as part of participation in a study on the speed's effect on worker safety.¹¹⁵ As part of the program, facilities must institute worker safety measures as agreed upon with a worker representative group.¹¹⁶

Line speed waivers are also persistent in the regulation of poultry processing facilities. In 2017, lobbyists from poultry slaughterhouses petitioned FSIS to eliminate line speed limits in poultry processing.¹¹⁷ FSIS received extreme pushback from animal, worker, and environmental advocates, and eventually the agency decided not to adopt the rule proposed by the industry.¹¹⁸ Instead, in 2018, FSIS announced that it would allow poultry slaughterhouses to apply for waivers to operate at line speeds higher than the NPIS limits.¹¹⁹ FSIS adopted this policy without opportunity for public comment and without additional evidence to counter the conclusion the agency reached in 2017 that increased line speeds would be inappropriate.¹²⁰ In the beginning of the COVID-19 pandemic, FSIS provided these line speed waivers to several

¹¹¹ *Id.*

¹¹² 21 U.S.C. § 603.

¹¹³ *United Food & Commercial Workers Union, Loc. No. 663*, 532 F. Supp. 3d at 770.

¹¹⁴ *Id.* at 776–78, 782.

¹¹⁵ *Constituent Update: Time-Limited Trial for NSIS Establishments*, *supra* note 13.

¹¹⁶ *Id.*

¹¹⁷ Shayla Thompson & Deborah Berkowitz, *USDA Allows Poultry Plants to Raise Line Speeds, Exacerbating Risk of COVID-19 Outbreaks and Injury*, NAT'L EMP'T LAW PROJECT (Jun. 17, 2020), <https://s27147.pcdn.co/app/uploads/2020/06/Policy-Brief-USDA-Poultry-Line-Speed-Increases-Exacerbate-COVID-19-Risk.pdf> (accessed Nov. 3, 2024).

¹¹⁸ *Id.*

¹¹⁹ *Petition To Permit Waivers of Maximum Line Speeds for Young Chicken Establishments Operating Under the New Poultry Inspection System; Criteria for Considerations of Waiver Requests for Young Chicken Establishments to Operate at Line Speeds of Up to 175 Birds per Minute*, 83 Fed. Reg. 49048, 49050 (Sept. 28, 2018).

¹²⁰ *Id.* at 49049.

poultry slaughterhouses, allowing the facilities to operate at 175 birds per minute.¹²¹ After FSIS granted these waivers, the National Employment Law Project published a report detailing worker safety violations, including severe bodily injuries and COVID-19 outbreaks at some of the slaughterhouses who received line speed waivers.¹²²

Deregulation in the slaughterhouse is not limited to line speed waivers. These new policies by FSIS transfer authority to inspect facilities from the agency to the meatpacking companies themselves, in addition to allowing facilities to increase line speeds.¹²³ There are a limited number of FSIS employees who can regularly inspect the approximately 800 federally-inspected slaughterhouses in the United States.¹²⁴ To address this issue, the agency authorizes management and employees within the slaughterhouses to inspect meat themselves, evaluating it for food safety and compliance with applicable regulations.¹²⁵ Though FSIS is limited in its ability to delegate inspection authority, as established by the D.C. Circuit in cases challenging the HIMP pilot, FSIS can still require slaughterhouse workers to take over much of the inspection processes.¹²⁶ This greatly jeopardizes the ability of the agency to monitor facilities and hold the industry accountable for its practices, and jeopardizes the safety of workers who already have overwhelming workloads.¹²⁷

IV. CURRENT ATTEMPTS TO REFORM LINE SPEED REGULATIONS AND THE POTENTIAL FOR MARKET-BASED SOLUTIONS

A. CURRENT ATTEMPTS TO REFORM LINE SPEEDS

As demonstrated by the several lawsuits challenging the HIMP program and NSIS, labor unions, workers' advocacy organizations, animal protection nonprofits, and environmental groups play a large role in the reform of line speed regulations.¹²⁸ Technically, FSIS is not

¹²¹ *Ignoring CDC Guidance, USDA Allows 15 Poultry Plants to Raise Line Speeds, Putting Workers at Greater Risk of COVID and Injury*, NAT'L EMP'T LAW PROJECT (June 17, 2020), <https://www.nelp.org/news-releases/ignoring-cdc-guidance-usda-allows-15-poultry-plants-raise-line-speeds-putting-workers-greater-risk-covid-injury/> (accessed Sept. 1, 2024).

¹²² *Id.*

¹²³ CHAPMAN ET AL., *supra* note 42.

¹²⁴ Michael Corkery & David Yaffe-Bellany, *The Food Chain's Weakest Link: Slaughterhouses*, N.Y. TIMES (Apr. 18, 2020), <https://www.nytimes.com/2020/04/18/business/coronavirus-meat-slaughterhouses.html> (accessed Sept. 14, 2023).

¹²⁵ CHAPMAN ET AL., *supra* note 42.

¹²⁶ *Am. Fed'n of Gov't Emps., AFL-CIO v. Veneman*, 284 F.3d 125, 128–29 (D.C. Cir. 2002); *Am. Fed'n of Gov't Emps., AFL-CIO v. Glickman*, 215 F.3d 7, 10–11 (D.C. Cir. 2000).

¹²⁷ HUMAN RIGHTS WATCH, *supra* note 5, at 55.

¹²⁸ *See, Am. Fed'n of Gov't Emps., AFL-CIO v. Veneman*, 284 F.3d at 125; *Am. Fed'n of Gov't Emps., AFL-CIO v. Glickman*, 215 F.3d at 10; *United Food & Commercial Workers*

responsible for worker safety.¹²⁹ Therefore, line speed limits set by FSIS are not specifically intended to protect worker safety.¹³⁰ However, the speed at which facilities operate slaughter lines inherently affects the safety of the workers who must wield sharp tools at large animals on those lines.¹³¹ FSIS has historically recognized these effects and, in 1994, FSIS and OSHA adopted a Memorandum of Understanding (MOU) between the two agencies.¹³² The MOU established an agreement between the two agencies that they would share with each other the information that they gather from their respective duties within slaughterhouses with the goal of protecting workers.¹³³ The agencies updated the MOU in August 2022, after a GAO report in 2017 identified gaps in the implementation of the MOU.¹³⁴ GAO's report specifically identified the creation of line speed regulations as an area of concern for worker safety and interpreted the MOU requiring coordination between OSHA and FSIS on issues that affect worker safety to require FSIS to consult OSHA before adopting line speed limits.¹³⁵ GAO reported that the agencies failed to successfully coordinate on line speeds and recommended that they do so in the future.¹³⁶ Furthermore, the 2017 GAO report stated that interviews with slaughterhouse workers and OSHA officials indicated that higher line speeds exacerbate the risk of musculoskeletal disorders in workers, as well as general pain and other injuries, due to increased repetition of movements and lack of time to properly sharpen their knives.¹³⁷

In late 2021 Senator Cory Booker and Representative Ro Khanna introduced "The Protecting America's Meatpacking Workers Act," a bill targeted toward the health and safety of workers in animal processing

Union, Loc. No. 663, 532 F. Supp. 3d. at 749 (demonstrating that labor unions and public interest groups are often plaintiffs in lawsuits against the USDA).

¹²⁹ *Memorandum of Understanding Between the U.S. Dep't of Labor Occupational Safety and Health Admin. and the U.S. Dep't of Agric. Food Safety and Inspection Serv.* OSHA (1994), <https://www.osha.gov/laws-regs/mou/1994-02-04> (accessed Sept. 14, 2024); *About FSIS*, *supra* note 59.

¹³⁰ *Memorandum of Understanding Between the U.S. Department of Labor Occupational Safety and Health and Administration and the U.S. Department of Agriculture Food Safety and Inspection Service*, *supra* note 129.

¹³¹ HUMAN RIGHTS WATCH, *supra* note 5, at 49–50, 54.

¹³² *Memorandum of Understanding Between the U.S. Department of Labor Occupational Safety and Health Administration and the U.S. Department of Agriculture Food Safety and Inspection Service*, *supra* note 129.

¹³³ *Id.*

¹³⁴ FSIS, *Constituent Update: USDA Announces Action to Declare Salmonella an Adulterant in Breaded Stuffed Raw Chicken Products*, USDA (Aug. 5, 2022), <https://www.fsis.usda.gov/news-events/news-press-releases/constituent-update-august-5-2022-0> (accessed Sep. 1, 2024); U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 20, at 34.

¹³⁵ U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 20, at 37–38.

¹³⁶ *Id.* at 37, 50.

¹³⁷ *Id.* at 38.

facilities.¹³⁸ In February 2023, Senator Booker and Representative Khanna re-introduced versions of this bill in both the Senate and the House.¹³⁹ This bill is largely a product of the increased publicity surrounding the working conditions in these facilities during the COVID-19 pandemic.¹⁴⁰ During the pandemic, major meat companies publicized concerns of a meat shortage in the United States, urging government leaders and the public to view meatpacking as an essential industry, similar to healthcare.¹⁴¹ Slaughterhouse workers continued to work in close proximity to one another for long hours without the sufficient personal protective equipment to protect them from the rapidly spreading, deadly virus.¹⁴² Over 44% of meatpacking workers reported testing positive for COVID-19, with researchers estimating that the meatpacking industry is responsible for at least 5,000 COVID-19 related deaths.¹⁴³ “The Protecting America’s Meatpacking Workers Act” would, among other things, prohibit FSIS from granting waivers to companies to exceed line speed limits, except in limited circumstances.¹⁴⁴

Attempts to effectively regulate line speeds in slaughterhouses continue to face the major obstacle of the strength of the industry and its priorities, as well as its tight-knit relationship with regulatory agencies.¹⁴⁵ The overarching theme throughout all the practices of the animal processing industry is enlarging profit margins.¹⁴⁶ From employing workers from particularly vulnerable communities, to continuously increasing line speeds, to denying bathroom breaks, slaughtering as many animals as possible to make as much meat as possible to make as much money as possible is the goal.¹⁴⁷ And, even throughout the pandemic, the industry has successfully prioritized profit at the expense of workers, animals, public health, and the environment.¹⁴⁸ Throughout the

¹³⁸ Errol Schweizer, *How Meat Processing Workers Are Fighting for Safer Working Conditions*, FORBES (May 4, 2022, 4:45 AM), <https://www.forbes.com/sites/errolschweizer/2022/05/03/how-meat-processing-workers-are-fighting-back/?sh=52f39a9d6d64> (accessed Aug. 31, 2024).

¹³⁹ Protecting America’s Meatpacking Workers Act, H.R.798, 118th Cong. (2023); Protecting America’s Meatpacking Workers Act, S. 270, 118th Cong. (2023).

¹⁴⁰ See Seven Mattes, *Becoming killable—meatpacking and kinship among covid-19*, SOC. WORK IN MENTAL HEALTH, Aug. 5, 2024, at 10.

¹⁴¹ *Id.* at 1; Eric Schlosser, *The Essential: How We’re Killing the People Who Feed Us*, ATLANTIC (May 12, 2020), <https://www.theatlantic.com/ideas/archive/2020/05/essentials-meatpacking-coronavirus/611437/> (accessed Aug. 23, 2024).

¹⁴² Mattes, *supra* note 140, at 2.

¹⁴³ Schweizer, *supra* note 138.

¹⁴⁴ See *id.* (The companies have to show that there will be no adverse impacts on worker safety).

¹⁴⁵ HUMAN RIGHTS WATCH, *supra* note 5, at 25, 54.

¹⁴⁶ *Id.* at 3.

¹⁴⁷ *Id.* at 3, 5, 22, 72.

¹⁴⁸ Sen. Booker Introduces Federal Bill to Protect Farm Animals and Hold Industrial Agribusinesses Accountable for System Failure, ACSPCA (Nov. 22, 2022), <https://www.aspc.org/about-us/press-releases/sen-booker-introduces-federal-bill-protect-farm-animals-and-hold-industrial> (accessed Sep. 10, 2024).

COVID-19 pandemic, quarterly net income for the four largest meat-packing companies increased by 500% from \$500 million to \$3 billion, and profit margins for these companies increased by over 300%.¹⁴⁹ The animal processing industry has little incentive to reduce line speeds, a tool by which they can increase production and, most importantly, sales.¹⁵⁰ This unrelenting focus on financial gain necessitates a line speed regulatory scheme rooted in economic benefits and consequences.

B. MARKET-BASED INCENTIVES IN OTHER REGULATORY SCHEMES

Advocates for more effective slaughterhouse line speed regulations ought to look to the environmental movement and its use of market-based incentives in regulation. Environmental regulations face similar hurdles as line speed regulations.¹⁵¹ Industries that rely on their ability to pollute the country's air and waters often stand in the way of effective regulation, lobbying agency decision makers to create superficial regulations or include substantial exemptions for the activities the industry wants to continue.¹⁵² Just as companies engaged in animal agriculture influence FSIS to allow them to increase slaughterhouse line speeds, polluting industries influence agencies like the EPA to allow them to pollute as they want.¹⁵³ Accordingly, the EPA utilizes different regulatory tools to incentivize companies to prioritize environmental protection along with their profits.¹⁵⁴ One tool is a "cap and trade" policy, where the EPA allots each polluter a set amount of "pollution credits" that limits the pollution each can generate.¹⁵⁵ Polluters can then buy credits from other polluters to increase their ability to pollute or sell credits to other polluters when they do not need to pollute as much.¹⁵⁶ Another tool is a subsidy program.¹⁵⁷ The EPA gives polluters subsidies for decreasing emissions, ranging from low-inter-

¹⁴⁹ Brian Deese et al., *Recent Data Show Dominant Meat Processing Companies Are Taking Advantage of Market Power to Raise Prices and Grow Profit Margins*, WHITE HOUSE (Dec. 10, 2021), <https://www.whitehouse.gov/briefing-room/blog/2021/12/10/recent-data-show-dominant-meat-processing-companies-are-taking-advantage-of-market-power-to-raise-prices-and-grow-profit-margins/> (accessed Aug. 31, 2024).

¹⁵⁰ HUMAN RIGHTS WATCH, *supra* note 5, at 16, 54.

¹⁵¹ Erin Kelly, *CERCLA and the Exemption of the Oil and Gas Industry*, KLEINMAN CTR. FOR ENERGY POL'Y (July 6, 2021), <https://kleinmanenergy.upenn.edu/news-insights/cercla-and-the-exemption-of-the-oil-and-gas-industry/> (accessed Aug. 31, 2024).

¹⁵² *Id.*

¹⁵³ Kenny Torrella, *The Myths We Tell Ourselves About American Farming*, VOX (Aug. 31, 2023, 5:00 AM) <https://www.vox.com/future-perfect/2023/8/31/23852325/farming-myths-agricultural-exceptionalism-pollution-labor-animal-welfare-laws> (accessed Sep. 10, 2024).

¹⁵⁴ *Economic Incentives*, U. S. ENV'T PROT. AGENCY, <https://www.epa.gov/environmental-economics/economic-incentives> (accessed Aug. 31, 2024).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

est loans to favorable tax treatment to grants.¹⁵⁸ The EPA categorizes these regulatory programs rooted in economic incentives as “market-based approaches.”¹⁵⁹ Market-based approaches compel industries to internalize externalities from their activities that they would typically ignore.¹⁶⁰ In the context of line speed regulation, market-based approaches could push animal agriculture businesses to internalize the costs of injured workers and cruelly and sloppily slaughtered animals for which they currently face few consequences. Incorporating economic incentives into line speed regulation could greatly reduce the hurdles preventing the efficacy of regulation. Currently, agribusiness has little to no incentive to reduce line speeds.¹⁶¹ Concern for a vulnerable workforce, exploitable and disposable to these large companies, and commodified animals, whose value exists solely in their dead flesh, fails to outweigh the economic benefit that companies reap from increasing line speeds to their highest capacity.¹⁶² Monetizing lower line speeds achieves the goal of protecting animals and workers without the need to convince the industry of their independent or inherent value.

C. CURRENT MARKET-BASED APPROACHES TO THE REGULATION OF WORKER SAFETY AND THE AGRICULTURE INDUSTRY

OSHA currently encourages employers to use workplace safety incentive programs to promote worker safety.¹⁶³ These programs give employees economic incentives for avoiding injury and engaging in safety practices at work.¹⁶⁴ However, these programs likely discourage workers from reporting workplace injuries when they do occur.¹⁶⁵ Moreover, these safety programs focus on the behavior of individual workers, as opposed to the companies for which they work.¹⁶⁶ Especially in the animal

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See HUMAN RIGHTS WATCH, *supra* note 5, at 54 (“Cargill [Meat Solutions] confirmed that they do provide ‘incentives that focus[] on factors such as safety performance, food safety and quality, employee engagement and process efficiencies and productivity.’”).

¹⁶² See *id.* at 16, 64, 68 (discussing the net profits of the nation’s largest poultry producer, the additional revenue generated from line speed increases, and the industry’s responses to claims related to economic interests).

¹⁶³ See Memorandum for Regional Administrators & State Designees from Kim Stille, Acting Dir. Enforcement Programs to Occupational Safety & Health Admin. (Oct. 11, 2018) (on file with Occupational Safety and Health Admin.) (clarifying OSHA’s position on Workplace Safety Incentive Programs) (available at <https://www.osha.gov/laws-regs/standardinterpretations/2018-10-11>).

¹⁶⁴ *Id.*

¹⁶⁵ U.S. GOV’T ACCOUNTABILITY OFF., GAO-12-329, WORKPLACE SAFETY AND HEALTH: BETTER OSHA GUIDANCE NEEDED ON SAFETY INCENTIVE PROGRAMS 1 (2012).

¹⁶⁶ See Memorandum for Regional Administrators & State Designees, *supra* note 163 (discussing how incentive programs reward or penalize employees based on their reporting of injuries, near-misses, or hazards, emphasizing how these programs impact

processing industry, the threat to safety is not necessarily a result of individual workers and their unsafe behavior but of the large companies' exploitation of workers and the unsafe work environments.¹⁶⁷

The USDA also uses economic incentives to manage its regulated entities.¹⁶⁸ The agency's Environmental Quality Incentives Program (EQIP) allows farmers, ranchers, and forest landowners to participate in opt-in subsidy programs that provide them with government benefits for using conservation practices on their land.¹⁶⁹ The Transition Incentives Program (TIP) encourages landowners to sell their land to new farmers or farmers from socially disadvantaged groups by giving the landowners additional payments for rent on their land.¹⁷⁰ The Higher Blends Infrastructure Incentive Program (HBIP) provides grants to private entities and allows participation in a federal cost-sharing system for fuel and transportation entities who use renewable blends of fuel.¹⁷¹ All of these USDA programs use financial incentives to guide industries towards more sustainable and socially responsible practices.¹⁷² Each program requires private entities to apply for the benefits by demonstrating their eligibility for the program and helps to shield companies from the financial risks that could result from changing their practices.¹⁷³ However, none of the programs apply to slaughterhouse regulation, leaving this area of regulation deprived of the benefits of market-based regulatory schemes.¹⁷⁴

employees' actions and decisions rather than directly addressing the employer's role in creating a safe workplace environment).

¹⁶⁷ See generally U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-12, *supra* note 20 (discussing how OSHA has increased inspections in the meat and poultry industry but faces challenges in identifying worker safety concerns due to employees' fear of retaliation, while gaps in collaboration and information sharing between OSHA and FSIS hinder effective protection against workplace hazards); See HUMAN RIGHTS WATCH, *supra* note 5, at 1–3 (explaining how the meat and poultry industry exploits workers by maintaining hazardous working conditions, resulting in severe injuries and chronic illnesses, while relying on marginalized communities and paying wages below the national average for manufacturing, all amid weakened government oversight).

¹⁶⁸ *Transition Incentives Program*, U.S. DEP'T OF AGRIC., <https://www.fsa.usda.gov/programs-and-services/conservation-programs/transition-incentives/index> (accessed Aug. 29, 2024); *Environmental Quality Incentives Program*, U.S. DEP'T OF AGRIC., <https://www.nrcs.usda.gov/programs-initiatives/eqip-environmental-quality-incentives> (accessed Sept. 23, 2024); *Higher Blends Infrastructure Incentive Program*, U.S. DEP'T OF AGRIC., <https://www.rd.usda.gov/programs-services/energy-programs/higher-blends-infrastructure-incentive-program> (accessed Aug. 29, 2024).

¹⁶⁹ *Environmental Quality Incentives Program*, *supra* note 168.

¹⁷⁰ *Transition Incentives Program*, *supra* note 168.

¹⁷¹ *Higher Blends Infrastructure Incentive Program*, *supra* note 168.

¹⁷² *Id.*; See *Environmental Quality Incentives Program*, *supra* note 168 (EQIP provides financial assistance for some conservation practices); *Transition Incentives Program*, *supra* note 168.

¹⁷³ *Environment Quality Incentives Program*, *supra* note 168; *Transition Incentives Program*, *supra* note 168; *Higher Blends Infrastructure Incentive Program*, *supra* note 168.

¹⁷⁴ Cf. *Environment Quality Incentives Program*, *supra* note 168; *Transition Incentives Program*, *supra* note 168; *Higher Blends Infrastructure Incentive Program*, *supra* note

V. MARKET-BASED SOLUTIONS FOR LINE SPEED REGULATION

Market-based programs such as “subsidies, deposit-refund systems, and information disclosure shift the burden of proof to demonstrate compliance from government to regulated entities.”¹⁷⁵ These benefits are already recognized and utilized by the environmental movement and could be integrated into existing regulatory schemes in the meat and poultry processing industry.¹⁷⁶ For these programs, the burden would be on slaughterhouse companies to demonstrate their compliance with line speed regulations to receive benefits. This would eliminate the need for FSIS to use their limited resources to send inspectors to each slaughterhouse, instead requiring slaughterhouses to provide the necessary documentation to receive the government benefits they seek.¹⁷⁷

A. SUBSIDIES IN THE FORM OF SELECTIVE GOVERNMENT PROCUREMENT

Government subsidies are already highly integrated into the U.S. agricultural industries.¹⁷⁸ The USDA’s National School Lunch Program (NSLP) is one example of this.¹⁷⁹ The USDA, under its “authority to support agricultural markets,” purchases food from agricultural companies to serve to students through the NSLP to subsidize the companies’ surplus products when production exceeds consumer demand.¹⁸⁰ Consequently, the program safeguards the profitability of these businesses and helps enable their success through government aid.¹⁸¹ The food that the USDA purchases from these companies constitutes about 15% to 20% of the food served in the NSLP.¹⁸² The rest of the food is purchased by schools themselves from commercial food providers.¹⁸³

The NSLP is just one part of the USDA’s Commodity Procurement program (CP).¹⁸⁴ Through CP, the USDA purchases

168 (EQIP and TIP apply to prospective farmers and ranchers and the Higher Blends Infrastructure Incentive Program applies to certain fueling facilities).

¹⁷⁵ *Economic Incentives*, *supra* note 154.

¹⁷⁶ *Id.*

¹⁷⁷ HUMAN RIGHTS WATCH, *supra* note 5, at 56–57.

¹⁷⁸ See, e.g., U. S. DEP’T OF AGRIC., USDA FOODS IN THE NATIONAL SCHOOL LUNCH PROGRAM 3, 5 (2016) (USDA provides cash reimbursement and USDA foods in support for school meals); *Commodity Procurement*, U.S. DEP’T OF AGRIC., <https://www.ams.usda.gov/about-ams/programs-offices/commodity-procurement> (accessed Aug. 29, 2024) (describing USDA’s Agricultural Marketing Service).

¹⁷⁹ USDA FOODS IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 178, at 3.

¹⁸⁰ *Id.* at 5, 7.

¹⁸¹ *Commodity Procurement*, *supra* note 178.

¹⁸² USDA FOODS IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 178, at 4.

¹⁸³ *Id.*

¹⁸⁴ See *Commodity Procurement*, *supra* note 178 (the CP purchases domestically produced food products through a competitive process using the Web-Based Supply Chain

domestically-produced agricultural commodities to “support American agriculture by encouraging the consumption of domestic foods.”¹⁸⁵ The USDA uses these products in NSLP, food banks, and low-income households through federal food assistance programs.¹⁸⁶ Overall, USDA subsidies to the meat and poultry industry totaled almost \$50 billion between 1995 and 2021.¹⁸⁷ In fiscal year 2024, the USDA spent nearly \$1.7 billion purchasing meat and poultry products from the U.S. animal agriculture industry.¹⁸⁸

The government aid from CP requires little action from agricultural industries to receive the benefits.¹⁸⁹ To qualify as an “approved vendor” from which the USDA will purchase products, companies must apply and meet a list of basic qualifications, such as compliance with inspections and animal welfare standards, and provide reference letters from satisfied customers.¹⁹⁰ However, as demonstrated earlier in this Article, these are extremely weak standards to satisfy because the current inspection system and animal welfare guidelines are largely ineffective, lacking substantive rules and protections. Moreover, companies must only provide reference letters from three customers.¹⁹¹ The major slaughterhouse companies controlling the overwhelming majority of the meat and poultry processing industry, including Tyson, JBS, and Cargill, were all included as approved vendors from whom the USDA purchased meat and poultry.¹⁹² These companies qualified to be approved vendors and to participate in CP, despite multiple reports of egregious animal welfare, worker safety, and food safety violations in slaughterhouses run by these industry giants.¹⁹³

Management system, supporting American agriculture and providing food aid to vulnerable populations).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Jared Hayes, *USDA Livestock Subsidies Near \$50 Billion, EWG Analysis Finds*, ENV’T WORKING GRP. (Feb. 28, 2022), <https://www.ewg.org/news-insights/news/2022/02/usda-livestock-subsidies-near-50-billion-ewg-analysis-finds> (accessed Sept. 8, 2024).

¹⁸⁸ See U.S. DEP’T OF AGRIC., FY24 PURCHASES BY COMMODITY FOR THROUGH 09-30-24 (2024) (in its 2024 fiscal year, USDA allocated over \$686 million for poultry products and nearly \$1 billion for livestock products).

¹⁸⁹ See, e.g., U.S. DEP’T OF AGRIC., VENDOR QUALIFICATION REQUIREMENTS FOR PROSPECTIVE CONTRACTORS SELLING COMMODITIES TO USDA’S AGRICULTURAL MARKETING SERVICE (AMS) 1–5 (2022) (listing only five Qualification Requirements).

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 3; Winders & Abrell, *supra* note 46, at 22–23.

¹⁹² *Fiscal Year AMS Purchases by Vendor*, U.S. DEP’T OF AGRIC., <https://www.ams.usda.gov/reports/fiscal-year-ams-purchase-summaries> (accessed Aug. 29, 2024).

¹⁹³ See, e.g., Tom Polansek, *U.S. Meat Plants Relaxed COVID-19 Safety Protocols After Outbreaks: Unions*, REUTERS (Dec. 21, 2021, 4:22 AM), <https://www.reuters.com/markets/commodities/us-meat-plants-relaxed-some-covid-19-safety-protocols-after-outbreaks-unions-2021-12-21/> (accessed Aug. 29, 2024); *More Slaughterhouses Cited for Abuse*, CBS NEWS (Apr. 30, 2008, 8:27 AM), <https://www.cbsnews.com/news/more-slaughterhouses-cited-for-abuse/> (accessed Aug. 29, 2024); *U.S. Department of Labor Cites JBS Foods Inc. for Repeated Safety Failures After Worker’s Death at Swift Beef’s Colorado Facility*, U.S.

The U.S. government justifiably recognizes an inherent value in supporting the local people and companies who feed us throughout United States.¹⁹⁴ However, these subsidies, if used judiciously, could be leveraged to incentivize those companies to feed the country without jeopardizing the health and safety of animals, workers, consumers, or the environment. Modifying CP's process for entering into contracts with vendors to include substantive line speed standards that slaughterhouses must meet to win a contract could help the USDA shape the behavior of these companies.

Instead of blanket subsidies from the government that require almost nothing of the agriculture industry, an effective regulatory scheme would condition the receipt of these subsidies on compliance with slaughterhouse line speed limits. Once a company is an approved vendor, it is eligible to submit bids to the USDA for a contract to sell the agency a certain commodity.¹⁹⁵ The USDA then decides which bid to accept based on "offer prices and other factors (including past performance)."¹⁹⁶ The USDA could create a policy that one of the "other factors" they consider in the contracting process is the company's demonstration of low line speeds. Not only would this incentivize slaughterhouses to meet government-set limits, but it would lessen the incentive to increase line speeds because the benefit of receiving the government contract could help to offset the lost profit from the slower, reduced production.

The USDA uses two types of processes for selecting contractors for its CP: competitive negotiation and sealed bidding.¹⁹⁷ For either process, the USDA first posts a solicitation either requesting proposals (in the case of competitive negotiation) or bids (in the case of sealed bidding).¹⁹⁸ Approved vendors can then submit their proposals or bids to the agency for review and selection.¹⁹⁹

The field of government contracts law provides two major categories of criteria to guide government agencies in the process of selecting

DEP'T OF LABOR OCCUPATIONAL SAFETY & HEALTH ADMIN., (Sept. 28, 2021), <https://www.osha.gov/news/newsreleases/region8/09282021> (accessed Aug. 29, 2024); *Tyson Foods Pleads Guilty and Agrees to Pay Fine for OSHA Violation That Led to Worker Death*, U.S. DEP'T OF JUST. OFFICE OF PUB. AFF., (Jan. 6, 2009), <https://www.justice.gov/opa/pr/tyson-foods-pleads-guilty-and-agrees-pay-fine-osha-violation-led-worker-death> (accessed Aug. 29, 2024); *JBS Takedown*, MERCY FOR ANIMALS, <https://mercyforanimals.org/cl30-jbs/> (accessed Aug. 29, 2024); *Report: JBS, Smithfield Worst Slaughter Plants in US*, ANIMAL WELFARE INST. (Apr. 29, 2020), <https://awionline.org/press-releases/report-jbs-smithfield-worst-slaughter-plants-us> (accessed Aug. 29, 2024) (discussing various violations committed by major slaughterhouse companies).

¹⁹⁴ *Selling Food to USDA*, U.S. DEP'T OF AGRIC., <https://www.ams.usda.gov/selling-food> (accessed Aug. 29, 2024).

¹⁹⁵ *How the Process Works*, U.S. DEP'T OF AGRIC., <https://www.ams.usda.gov/selling-food/how-process-works> (accessed Aug. 29, 2024).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*; 7 C.F.R. §277.14 (1980).

¹⁹⁹ *How the Process Works*, *supra* note 195; 7 C.F.R. §277.14 (1980).

a bid or proposal.²⁰⁰ A government agency can consider whether a vendor is responsive and/or responsible.²⁰¹ A responsive bid or proposal directly responds to the needs of the government as described in its solicitation.²⁰² A responsible bid or proposal is from a vendor that is actually capable of performing the contract.²⁰³ In a sealed bidding process, the USDA will consider the price of the offer and price-related factors to select a vendor for the contract.²⁰⁴ The USDA must select a vendor that is both responsive to the original solicitation and a vendor that is responsible, as the selection must be made without discussion with bidders.²⁰⁵ In a competitive negotiation process, the USDA can consider numerous factors, including price, and can engage in negotiations with vendors to attain the contract that “represents the best value.”²⁰⁶ A vendor need not be responsive to the original solicitation because the government can engage in negotiations with the vendor to attain a contract for services that “achieves the best value for the government.”²⁰⁷ However, the vendor must be responsible to perform the contract.²⁰⁸

In the evaluation of proposals, the USDA could consider line speeds in determining whether the proposal was responsive to the solicitation by meeting the specified line speed needs of the agency. Additionally, because the goal of competitive negotiation is “to achieve the best value to the government,” the USDA could determine that “best value” is largely based on the line speed at which the product is made.²⁰⁹ Courts are likely to defer to agency interpretation of “best value,” only overturning it if it is not grounded in reason.²¹⁰ Agencies have “substantial discretion” in their determination of best value.²¹¹ Consequently, the USDA could consider line speeds in its selection of a vendor, by selecting a vendor who is not the least expensive, but who is able to perform the contract at a lower line speed and therefore the best value to the government.²¹² As long as there is not an outrageous increase in cost or other negative factors associated with the lower line speed, the court would likely conclude that the agency’s best value judgment is grounded in reason.

²⁰⁰ See 48 C.F.R. § 14.404-1 (1983).

²⁰¹ 48 C.F.R. § 14.301 (2016); 48 C.F.R. § 9.104-1 (2019).

²⁰² 48 C.F.R. § 14.301 (2016).

²⁰³ 48 C.F.R. § 9.104-1 (2019).

²⁰⁴ U.S. DEP’T OF AGRIC., AMS MASTER SOLICITATION FOR COMMODITY PROCUREMENT – DOMESTIC PROGRAMS (MSCP-D) FOR DOMESTIC FOOD DISTRIBUTION PROGRAM PURCHASES COMMERCIAL ITEM, SEALED BIDDING 58 (2024).

²⁰⁵ 48 C.F.R. § 14.101 (1985).

²⁰⁶ 48 C.F.R. § 15.304 (1997); 48 C.F.R. § 15.302 (1997).

²⁰⁷ *How the Process Works*, *supra* note 195.

²⁰⁸ 48 C.F.R. § 9.104-1 (2019).

²⁰⁹ *How the Process Works*, *supra* note 195.

²¹⁰ STEVEN W. FELDMAN, GOVERNMENT CONTRACT GUIDEBOOK § 6:25 (4th ed. 2023); *Info. Scis. Corp. v. United States*, 80 Fed. Cl. 759, 789 (2008).

²¹¹ *Am. Relocation Connections, LLC v. United States*, 147 Fed. Cl. 608, 618 (2020).

²¹² 48 C.F.R. § 15.305 (1987).

Another avenue is for the USDA to include a specification in their solicitations that requires contracting slaughterhouses to comply with a particular line speed in the performance of the contract. In a sealed bidding process, this would require the USDA to select a line speed to specify in its initial solicitation. Then, the USDA would look to the vendor whose bid had the lowest cost to the government out of the vendors that could provide the solicited service, including operating at the specified line speed. In a competitive negotiation process, the USDA would specify a line speed at which it needs its meat or poultry products to be produced in its initial solicitation. The USDA could then indicate in the solicitation that it will heavily consider the line speed at which vendors operate in the evaluation of proposals, inducing slaughterhouses to offer the use of even lower line speeds in their proposals to the agency to win the contract.²¹³

The combination of these two approaches, integration of a line speed limit into the terms of all solicitations for USDA CP contracts for meat and poultry products and heavy consideration of line speed as a factor in the proposal selection process of competitive negotiation processes, would be even more powerful at incentivizing companies to establish a just and humane workplace environment. And though these line speed specifications would only apply to the operation of the slaughterhouses in the course of performance of the USDA contract, slaughterhouses who want to contract with the USDA would either have to change the speed at which their lines operate in all circumstances or use two different line speeds—one for when they slaughter meat and poultry for the government and one for the rest of their operations. The latter option likely would be both inefficient and impractical to execute, potentially pushing slaughterhouses to change to a single, slower line speed.

These market-based regulations would also create an incentive for meat and poultry processing companies to hold each other accountable for compliance with these standards. If Company A receives government contracts and benefits based on its demonstration of low line speeds, its competitors will be at a disadvantage if Company A is lying about its speed. Consequently, companies will have an interest in ensuring honest reporting by each other, relieving some of the burden on the USDA to use its resources to monitor the truthfulness of entities' reports.

B. TAX INCENTIVES

Another market-based approach for line speed regulation is a tax incentive for industries. In the environmental sphere, the EPA uses tax credit and depreciation programs in multiple regulatory schemes, including in the implementation of its Superfund Redevelopment program.²¹⁴

²¹³ See 48 C.F.R. § 15.304 (2022) (Describing evaluation factors and significant subfactors to consider).

²¹⁴ *Tax Incentive Programs for Superfund Redevelopment*, ENV'T PROT. AGENCY (June 12, 2024), <https://www.epa.gov/superfund-redevelopment/tax-incentive-programs-superfund-redevelopment> (accessed Aug. 28, 2024).

Through the Superfund Redevelopment program, the EPA works to encourage investment in previously contaminated, “Superfund,” sites to convert them to useable, developed land.²¹⁵

In 2021, Senator Roger Marshall introduced a bill, S.2558 “FAIR Meat Packing Act,” that would create investment tax credits and refundable income tax credits to incentivize the startup of slaughterhouse facilities employing an average of 500 employees.²¹⁶ Representative Jason Smith concurrently introduced an identical bill, H.R. 4854 “FAIR Meat Packing Act,” in the U.S. House of Representatives.²¹⁷ Neither bill successfully passed the House or Senate.²¹⁸ However, these bills represent a regulatory scheme that gives tax incentives to slaughterhouses to encourage them to act in line with the government’s policy goals.²¹⁹ The U.S. government repeatedly expresses desire to support small animal agriculture companies and even recently implemented programs to financially support small facilities with President Biden and Vice President Harris’s “Biden-Harris Administration’s Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain.”²²⁰ Moreover, the U.S. Congress, with the HMSA, FMIA, and PPIA, has expressed a policy interest in protecting, or at least considering, the welfare of animals, workers, and the environment in the context of the slaughterhouse.²²¹ As part of those policy goals, Congress could mirror these recently proposed tax incentive bills to create a piece of legislation that provides tax credits to slaughterhouses that choose to operate at lower line speeds.

One potential disadvantage to a tax incentive program is the lack of accountability. While a government procurement-based subsidy program, as described in the previous section, has the potential to encourage industry leaders to hold each other accountable, a tax incentive program does not have the same potential, due to the privacy of tax records.²²² As evidenced by the current system, FSIS is incapable and/or unwilling to effectively inspect every single slaughterhouse and ensure compliance with statutes and regulations.²²³ Inevitably, there

²¹⁵ *Id.*

²¹⁶ S. 2558, 117th Cong. (2021); *Senator Roger Marshall*, LIBRARY OF CONGRESS, <https://www.congress.gov/member/roger-marshall/M001198> (accessed Sept. 23, 2024).

²¹⁷ H.R. 4854, 117th Cong. (2021).

²¹⁸ *S.2558 – FAIR Meat Packing Act*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/senate-bill/2558?q=%7B%22search%22%3A%22S.+2558%22%7D&s=5&r=3> (accessed Aug. 29, 2024); *H.R.4854 – FAIR Meat Packing Act*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/4854?q=%7B%22search%22%3A%22H.R.+4854%22%7D&s=2&r=4> (accessed Aug. 29, 2024).

²¹⁹ S. 2558, 117th Cong. (2021); H.R. 4854, 117th Cong. (2021).

²²⁰ THE WHITE HOUSE, *supra* note 92.

²²¹ 7 U.S.C. § 1901; 21 U.S.C. § 451; 21 U.S.C. § 602.

²²² 26 U.S.C. § 6103.

²²³ *See, e.g.,* CHAPMAN ET AL., *supra* note 42 (concluding that FSIS neglected to provide to the pilot program resulting in high numbers of noncompliance records).

will be companies that attempt to deceive and defraud the government by misrepresenting their practices to receive the financial rewards. If Company A lies about its line speeds and receives a government contract based on that lie, Company B will know that Company A received the contract and can alert USDA of any inaccuracies. However, if Company A lies about its line speeds and receives a tax credit based on that lie, Company B will likely never even know about the lie or the credit and therefore companies will have an incentive to lie and will be shielded from accountability outside of FSIS. Still, a tax incentive program is even further-reaching than a government procurement strategy; while not every company is a government contractor, every company must pay taxes and is eager to lower their payments.

VI. CONCLUSION

In a perfect and just world, the slaughterhouse industry, with all its violence and oppression, would be obsolete. In a less perfect world, FSIS would create and consistently enforce line speed limits with animal welfare and worker safety at the center of the agency's considerations. With the current state of a powerful animal agriculture industry that has intimate access to regulators, legislators, and executive officials, line speed reform advocates must be creative and devise ways to regulate an industry that absolutely does not want to be regulated.

Instead of increasing the number of rules or strengthening the existing rules in an attempt to control the behavior of noncompliant slaughterhouses, a market-based approach can induce slaughterhouses to engage in just behavior willingly. None of these proposed programs would restrict slaughterhouses in their practices, they would only expand the benefits that many of these companies are already receiving from the government and condition the receipt of those benefits on slaughterhouses' line speeds. These programs would harness the control that money has over animal agriculture companies and channel it into achieving a more just food system. None of these proposed programs ensure that animals and workers will have protection from the dangers of the slaughterhouse. Though faster line speeds compound the already present dangers inherent to working in a slaughterhouse, slowing down the speed of slaughter will not eliminate all the possibilities for life-long injuries to workers.²²⁴ Resolving this issue would require first having an accurate account of the number of and nature of worker injuries.²²⁵ Then, workers would need to be empowered to report their injuries without fear of deportation or financial or employment

²²⁴ See generally HUMAN RIGHTS WATCH, *supra* note 5, at 27, 33–34, 40 (describing injuries to slaughterhouse workers from repetitive motions, sharp machinery, and toxic chemicals, in addition to increasing line speeds).

²²⁵ See *id.* at 45–46 (describing how workers, especially immigrant workers, are unlikely to report injuries for fear of retaliation).

retaliation.²²⁶ Moreover, HMSA must actually be enforced and its standards for animal care strengthened to substantively provide for more painless deaths with as little suffering as possible.

This Article does not address potential state-level regulation or legislation to limit line speeds. State governments, as well as the federal government, participate in the inspection and regulation of line speed limits.²²⁷ While this Article focuses only on federal government actions, a truly effective approach will incorporate all available avenues for regulation including actions at the state level. As is modeled by the EPA in its implementation of the Clean Air Act, regulation at the state-level can allow certain states the freedom to experiment with more rigorous regulatory schemes, while also ensuring that no state deregulates beyond the federal standards.²²⁸ As part of the EPA's Clean Air Act implementation, all states must have emissions standards for automobiles.²²⁹ The EPA allows California, an especially environmentally-friendly state, to adopt more stringent standards for emissions.²³⁰ All other states must choose to adopt the national emissions standard, set by the EPA, or the more stringent California standard.²³¹ Consequently, the EPA ensures a minimum standard is adopted by each state, while also encouraging the development of more progressive reforms in a limited capacity so as not to jeopardize uniformity. In the context of line speeds, FSIS could explore a state-based regulatory scheme that allows a state to create more stringent line speed limits and then leave it to the other states to adopt or not adopt.

Finally, all of these proposals require the U.S. government to actively prioritize the wellbeing of animals, workers, and the environment. Government leaders, especially those in the highest seats of power, are politically accountable and consequently highly influenced by wealthy, powerful lobbying interests who offer to finance campaigns and garner public support from their members and followers.²³² Choosing to spend time and resources to develop these proposed regulations and legislation requires an affirmative decision by leaders in the government

²²⁶ *Id.*

²²⁷ *State Inspection Programs*, U.S. DEP'T OF AGRIC. (Nov. 14, 2023), <https://www.fsis.usda.gov/inspection/state-inspection-programs> (accessed Sept. 9, 2024).

²²⁸ *Vehicle Emissions California Waivers and Authorizations*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations> (accessed Sept. 9, 2024).

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² Sigal Samuel, *It's Not Just Big Oil. Big Meat Also Spends Millions to Crush Good Climate Policy*, VOX (Apr. 13, 2021, 12:01 PM), <https://www.vox.com/future-perfect/22379909/big-meat-companies-spend-millions-lobbying-climate> (accessed Sept. 9, 2024); See also Markham Heid, *Experts Say Lobbying Skewed the U.S. Dietary Guidelines*, TIME (Jan. 8, 2016, 5:00 AM), <https://time.com/4130043/lobbying-politics-dietary-guidelines/> (accessed Sept. 9, 2024) (stating that the current political system is open to "lobbying and manipulation of data").

to place an inherent value on the lives of animals and workers. While there are demonstrated leaders in the federal legislative and executive branches who clearly care about these issues, a concrete display of this care in the form of legislation or regulation could have financial and political consequences for these leaders.²³³ Though these programs would not restrict the actions of meat and poultry processing companies or impose a new burden on them, the government's choice to support workers and animals could jeopardize these leaders' relationships with and support from the animal agriculture industry.²³⁴ However, these choices also have the potential to garner support from the groups that represent slaughterhouse workers, communities affected by slaughterhouse pollution, or individuals who deeply care about nonhuman animals. While activist groups and nonprofit organizations tend not to have the financial resources or political power that large industry lobbies have, the government is capable of making decisions based on social value even at the expense of political clout.

Ultimately, there is no guarantee that these incentives will be sufficient to change the behavior of these major companies. There is likely no single solution to an issue that has plagued worker, animal, and environmental advocates for decades. Realistically, it will take multiple different regulatory schemes and legislative actions to substantively reform the practices of an industry that long has prioritized profit at the expense of human and nonhuman animal lives. But each new approach helps to erode the stronghold that the animal agriculture industry has on government leaders and to evolve the industry's practices so that eventually it must focus less on profit and more on providing our country with the nourishment and sustenance for which the industry was created.

²³³ HUMAN RIGHTS WATCH, *supra* note 5, at 26.

²³⁴ *Id.*