

March 1, 2022

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Deputy Under Secretary, Office of Food Safety
Paul Kiecker
Administrator, Food Safety and Inspection Service
U.S. Department of Agriculture
Jamie Whitten Building
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Washington, DC, 20250
Sent Via Email

Dear Deputy Under Secretary Eskin and Administrator Kiecker:

The undersigned 26 organizations of poultry worker representatives, worker rights advocates, occupational safety experts, animal rights, consumer rights, and public and community health organizations write to share our deep concern with the announcement by the U.S Department of Agriculture's (USDA) Office of Food Safety (OFS) that it is considering a new poultry line speed waiver program that would allow chicken plants to increase slaughter line speeds beyond the limit established in the 2014 regulation, the New Poultry Inspection System (NPIS). Many of the organizations on this letter have written to the agency over the past six years in opposition to the current poultry line speed waiver program announced in 2018 because it would endanger poultry workers' health and safety and violated the Administrative Procedure Act (APA).ⁱ We remain opposed to all poultry line speed waivers that will allow poultry plants to increase line speeds beyond what is permitted in the 2014 rule, but should the USDA be considering moving forward with developing a new waiver system to replace the current program, we write to you with a list of requirements that must be part of any new poultry waiver system to assure that any waiver be time-limited and must consider and address the impact of faster line speeds on worker safety.

The poultry industry is one of the most dangerous industries for workers in the country. According to the most recent data released by the Bureau of Labor Statistics, the poultry industry has a self-reported rate of serious illnesses and injuries to workers that involve lost time or restricted duty that is almost triple the average rate for all private industry. The rate of worker illnesses in the poultry industry runs a stunning six times as high as the average rate for all industries.ⁱⁱ Further, the government has found that these statistics are an undercount—the real rates of injury and illness are much higher.ⁱⁱⁱ

The USDA has already granted waivers to 53 chicken plants to increase line speeds, thus the USDA is now dealing with an illegal and dangerous policy that they have already put into effect. The USDA halted providing new waivers during the spring of 2020 as COVID-19 raced through poultry plants after it was discovered that 15 waivers were given to plants that had COVID-19 outbreaks, severe injuries, and OSHA violations.^{iv} The USDA must not issue any new waivers. Further USDA must not allow any other poultry plant into any waiver system—new or old—and only the facilities that currently operate with waivers can be allowed into any new waiver program. If plants drop out or are removed from the waiver program, there shall be no replacements. Further, the agency must immediately determine how many of the 53 plants already granted waivers are running at least one line at 175 for over a year. **If any of the 53**

plants in the current waiver program have not increased line speeds for a year above 140 bpm—the USDA must withdraw the current waiver immediately. (In 2014 when the USDA promulgated the rule for the NPIS, the USDA closely examined the experience of a pilot group of twenty establishments in the so-called “HIMP” pilot—that had been authorized since 2007 to operate at line speeds of up to 175 bpm, depending on their ability to demonstrate consistent process control. The 2014 Final Rule explained that USDA’s Food Safety and Inspection Service’s (FSIS) “experience from the HIMP pilot has shown that HIMP establishments operate with an average line speed of 131 bpm, and that, although they are authorized to do so, most of the young chicken HIMP establishments do not operate line speeds at 175 bpm.”^v Clearly, most plants could not and did not increase their speeds.)

To enter a new waiver program USDA must require the following from each applicable facility:

1) **Each plant must bring in outside experts** from the National Institute for Occupational Safety and Health (NIOSH) or a university—from a list created by the USDA—that includes ergonomists and occupational medical doctors, **to conduct an evaluation of ergonomic hazards, nerve damage in employees’ hands and wrists (known as carpal tunnel syndrome), and traumatic injuries among production employees throughout the plant.**

This evaluation must be similar to that conducted by the NIOSH between 2012 and 2015 that evaluated musculoskeletal disorders and traumatic injuries in poultry plants.^{vi} These NIOSH evaluations documented an alarmingly high rate of carpal tunnel syndrome in poultry plants. Now this information must be collected from the 53 HIMP plants.

The ergonomists/occupational medical physicians must summarize their findings on hazards and illnesses/injuries and provide recommendations to decrease and mitigate ergonomic risk factors in the plant. This information must be provided to workers upon request, posted in the plant, provided to the USDA and the Occupational Safety and Health Administration (OSHA), and made available to the public. Plants must be required to implement all recommendations.

The USDA cannot rely on the company’s self-recorded injury and illness logs to determine the extent of work related illnesses/injuries in the plants. Multiple agencies, including OSHA, Government Accountability Office (GAO), and NIOSH have documented serious under reporting by the poultry industry on their OSHA 300 logs. Further, in the 2014 Final Rule, FSIS concluded that “poultry processors’ injury and illness logs often do not reflect the full extent of work-related conditions experienced by poultry workers,” and further recognized that “systematic underreporting of work-related injuries and illnesses could make it difficult to accurately assess the extent to which poultry workers suffer from work related injuries and musculoskeletal diseases and disorders.”^{vii}

2) **Plants must provide the USDA with the total/accurate numbers and description of any fatalities, amputations/hospitalizations and loss of an eye they have reported to OSHA since the waivers were granted (over the last four years for some, and almost two years for others). Plants must also provide a list of all OSHA violations received in the last five years.** OSHA violations, a fatality, and more than one report of amputations/hospitalizations/loss of an eye represent a red flag of an already deficient safety effort in these plants and waivers cannot be provided to these establishments.

- 3) **Plants must use an enclosed system when using antimicrobials such as those containing Peracetic Acid (PAA).** As plants increase line speeds, there is clearly an increase in the potential for contamination of the poultry. As a result, plants are using an increasing amount of anti-microbial chemicals on the chicken—through dipping the animal repeatedly in these chemicals in tanks or spraying the chemical on them on conveyor lines. Though the Food and Drug Administration (FDA) certifies that these chemicals are safe for the consumer, the FDA does not evaluate the impact of using these chemicals in poultry plants on the health of workers. However, it is clear that these chemicals are dangerous to workers. Antimicrobials containing Peracetic Acid (or PAA) are widely used in the industry today. Peracetic acid is highly corrosive and an irritant to the skin and eyes. Breathing PAA is associated with irritation to the nose and throat, irritation to the lungs causing coughing and/or shortness of breath, and at higher exposures to pulmonary edema.^{viii} This chemical is so new there is no current OSHA standard. However, plants can protect workers by using an enclosed system to apply the antimicrobial chemicals to the chicken—and this will limit worker exposure. The USDA must implement **a requirement for any plant with a waiver to use an enclosed system to limit worker exposure to PAA or any other antimicrobial chemical—or their waiver will be withdrawn.** Any plant that is exposing workers to PAA with open vats or deep tanks, or spraying on conveyors where workers are exposed, or allowing PAA to collect in the drain water under the plant floors, **must have their waiver revoked.**^{ix}
- 4) **All plants must commit to the USDA to verbally communicate the following** information to all workers in a language they can understand, and post in the plant (and a hot line should be set up for workers to call USDA if they are not complying) that the plant “will comply with all labor laws including that they will not retaliate or discriminate against a worker in any way because: a worker asks to see the medical office in the plant or reports an injury/illness; a worker asks to be referred to a doctor; a worker must take time off because of a work related injury/illness; or a worker raises any concerns about their and/or other workers’ safety.”
- 5) **All plants must commit to follow all OSHA standards,** including allowing workers to use the bathroom when they need to use them.
- 7) **Plants must implement the 30 ergonomic recommendations NIOSH** made to the poultry plants in South Carolina and Maryland if they have similar processes—see page 27 and 28 of this NIOSH report <https://www.cdc.gov/niosh/hhe/reports/pdfs/2012-0125-3204.pdf> and pages 20 and 21 of this NIOSH report <https://www.cdc.gov/niosh/hhe/reports/pdfs/2014-0040-3232.pdf>
- 8) All plants that increased daily production with the line speed increase must be required **to add workers to the lines/jobs where the production increased.**
- 9) **Any waiver must be time limited.**

The overwhelming majority of poultry workers are Black, Latinx, and immigrant workers.^x Poultry plants are located in largely rural areas where they seek to hire the nation’s most vulnerable workers.^{xi} Many of the workers in the industry are refugees and, in most plants, you will find dozens of languages spoken by workers.^{xii} Poultry plants are among the harshest working environments in U.S. manufacturing. In plants across the country, workers stand close together—side-by-side, on both sides of long conveyor belts, in cold, damp, dangerously loud conditions—holding knives and scissors. They make the same forceful cuts

or movements thousands of times a day. A typical poultry worker handles dozens of birds **per minute**. In the holiday months, workers put in eight to ten hour days, six or seven days a week to meet demand.^{xiii} Turnover in these plants can average 60%, but can run as high as 150%.^{xiv}

Poultry companies report more severe injuries, such as amputations and injuries or illnesses that result in the overnight stay at a hospital, to OSHA than industries that are popularly recognized as hazardous, including sawmills, industrial building construction, and oil and gas well drilling.^{xv} Among the tens of thousands of companies that reported severe injuries to OSHA, several poultry companies ranked among the highest reporters—Tyson Foods is among the top five, Pilgrim’s Pride/JBS is sixth, Cargill Meat Solutions and Koch Foods are all in the top thirty.^{xvi}

Poultry processing employment involves factors that increase the risk of workers developing work related injuries and illnesses. Of key concern, the fast pace, highly repetitive and forceful movements required of workers throughout the plant greatly increases their risk of developing musculoskeletal disorders, such as carpal tunnel syndrome. Just a few years ago, NIOSH documented alarmingly high rates of carpal tunnel syndrome among workers in chicken processing plants—rates from 34% to 42%. Despite repeated studies in this industry in the past 20 years that found a high prevalence of carpal tunnel syndrome, poultry processing jobs continue to be hazardous. Overwhelming evidence shows that allowing chicken processing plants to operate at faster line speeds will dramatically worsen the already unsafe working conditions in poultry plants.^{xvii}

NIOSH made recommendations to decrease the high rates of carpal tunnel syndrome in the plants mentioned above—but the plants did not implement key recommendations. NIOSH wrote a letter to the head of FSIS as a follow up to their recommendations and explained to FSIS that processing line speeds are a key cause of these and other musculoskeletal disorders: “Line speed affects the periodicity of repetitive and forceful movements, which are key causes of musculoskeletal disorders.”^{xviii} In other words, the faster the line speed, the greater the risk of harm.

As noted above, there are key issues with trusting any analysis done by the chicken industry of their own injury rates. The NIOSH studies, referred to above, stunningly found rampant underreporting in chicken plants of musculoskeletal disorders. In one plant for example, where over a hundred workers had a confirmed diagnosis of carpal tunnel syndrome, the company self-reported only a handful on their OSHA 300 logs. OSHA has also cited the poultry industry for underreporting cases on their OSHA 300 logs.

In the 2014 Final Rule, FSIS concluded that “poultry processors’ injury and illness logs often do not reflect the full extent of work-related conditions experienced by poultry workers,” and further recognized that “systematic underreporting of work-related injuries and illnesses could make it difficult to accurately assess the extent to which poultry workers suffer from work related injuries and musculoskeletal diseases and disorders.”

These conclusions are bolstered by continued OSHA citations of poultry processing plants for failure to record injuries and illnesses requiring more than first aid, and by OSHA findings that some poultry processors are actively discouraging workers from reporting injuries by delaying medical treatment at first aid stations.^{xix} These practices are not isolated incidents, but instead persist at poultry processing plants around the country. In 2016, OSHA cited a Pilgrim’s Pride poultry plant in Florida for practices

that resulted in severe underreporting of work-related injuries, finding after inspection that the employer “delayed evaluation, care, and/or treatment from a medical provider” and “failed to make timely appropriate medical referrals for employees with injuries related to chronic and acute exposures and incidents.”^{xx,xxi} This was only the second citation of this kind for delaying necessary medical care in OSHA’s fifty-year history.

The House Select Subcommittee on the Coronavirus further found that the poultry industry flagrantly underreported the number of their workers sick with COVID-19 by two thirds.^{xxii}

In addition to the serious worker safety concerns outlined above, it is also worth noting that increased slaughter line speeds and decreased federal oversight pose serious animal welfare, food safety and quality, and environmental concerns.

When line speeds are increased, and oversight is decreased, more poultry miss the stunning mechanisms and move through the slaughter line fully conscious and aware, often facing agonizing deaths when they drown in tanks of scalding water or are dismembered alive.^{xxiii} Higher-speed slaughter systems also put consumers at risk because they pressure workers and inspectors to slaughter and process animals more quickly, which can jeopardize food safety. With more animals moving through the slaughter line while conscious, the opportunity for contamination and foodborne illness, such as *E. coli* and *Salmonella*, increases.^{xxiv} Finally, slaughterhouse operations rely heavily on scarce fresh water, using billions of gallons annually.^{xxv} Water use increases with line speeds.

In its 2014 final New Poultry Inspection System Rule, the Department prohibited chicken plants from increasing line speeds beyond the 140 bpm. That final rule was the result of a two-and-a-half year rulemaking process during which the USDA received and considered more than 250,000 public comments.^{xxvi} The question of the maximum allowable line speed—and in particular the detrimental effects of increased line speed on worker safety and health—was the single most commented-upon aspect of the USDA’s rulemaking.^{xxvii} In making the decision to prohibit line speed increases, the USDA considered an extensive rulemaking record demonstrating the harms that faster line speeds can cause poultry workers.

Then, just three years later, with no notice and comment rulemaking, behind closed doors—and over serious objections from workers and their representatives, animal rights organizations and consumer organizations, USDA allowed 53 plants to increase line speeds during the previous Administration. None of these waivers considered nor addressed the impact of faster line speeds on workers.

As we stated above, we clearly consider the current waiver program to be illegal.

We look forward to discussing these requirements further, and will contact your office to set up a meeting.

Sincerely,

American Federation of Government Employees
ACLU of Nebraska

Farm Sanctuary
Food and Water Watch
Human Rights Watch
Immigrant Alliance for Justice and Equity
International Brotherhood of Teamsters
Maryland Pesticide Education Network
MD Campaign for Environmental Human Rights
Mercy for Animals
Migrant Clinicians Network
National Black Worker Center
National Council for Occupational Safety and Health
National Employment Law Project
Nebraska Appleseed
NC Justice Center
Public Citizen
Public Justice
Rebirth, Inc
Retail, Wholesale, Department Store Union
Rural Community Workers Alliance
Southern Poverty Law Center
Student Action with Farmworkers
Sur Legal Collaborative
Virginia Interfaith Center for Public Policy
Western North Carolina Workers' Center

ⁱ *USDA Urged to Reject Line-Speed-Increase Requests from Poultry Plants*, Nat'l Employment Law Project (July 21, 2018), <https://www.nelp.org/news-releases/usda-urged-reject-line-speed-increase-requests-poultry-plants/> (last visited Feb. 28, 2022).

ⁱⁱ *Survey of Occupational Injuries and Illnesses Data*, U.S. Bureau of Labor Statistics (2020), <https://www.bls.gov/iif/soii-data.htm> (last visited Feb. 28, 2022).

- ⁱⁱⁱ *Workplace Safety and Health: Additional Data Needed to Address Continued Hazards in the Meat and Poultry Industry*, GAO (May 25, 2016), <https://www.gao.gov/products/gao-16-337> (last visited Feb. 28, 2022).
- ^{iv} Shayla Thompson & Debbie Berkowitz, *USDA Allows Poultry Plants to Raise Line Speeds, Exacerbating Risk of COVID-19 Outbreaks & Injury*, Nat'l Employment Law Project (June 17, 2020), <https://www.nelp.org/publication/usda-allows-poultry-plants-raise-line-speeds-exacerbating-risk-covid-19-outbreaks-injury/> (last visited Feb. 28, 2022).
- ^v 2014 Final Rule, 79 Fed. Reg. at 49,590-91.
- ^{vi} Evaluation of Musculoskeletal Disorders and Traumatic Injuries Among Employees at a Poultry Processing Plant, Health Hazard Evaluation Program (Mar. 2014), <https://www.cdc.gov/niosh/hhe/reports/pdfs/2012-0125-3204.pdf> (last visited Feb. 28, 2022); *Health Hazard Evaluations (HHEs)*, Center for Disease Control and Prevention, <https://www.cdc.gov/niosh/hhe/> (last visited Feb. 28, 2022).
- ^{vii} *Comments Opposing the Nat'l Chicken Council Petition for Line Speed Waivers*, Nat'l Employment Law Project (Dec. 11, 2017), <https://www.nelp.org/publication/comments-opposing-the-national-chicken-council-petition-for-line-speed-waivers/> (last visited Feb. 28, 2022).
- ^{viii} *Exposure Assessment and Control Strategies for PAA: A Beginning*, North American Meat Institute, <https://www.meatinstitute.org/index.php?ht=a/GetDocumentAction/i/153470> (last visited Feb. 28, 2022).
- ^{ix} See repeat and serious citations issued by the NC Occupational Safety and Health Administration on February 22, 2022 to Mountaire Farms, Lumberton, NC, a recipient of an FSIS waiver in April 2020, for failing to protect workers from antimicrobial Spectrum 22, which contains Peracetic Acid.
- ^x Angela Stuesse & Nathan T. Dollar, *Who Are America's Meat & Poultry Workers?*, Economic Policy Institute (Dec. 24, 2020), <https://www.epi.org/blog/meat-and-poultry-worker-demographics/> (last visited Feb. 28, 2022).
- ^{xi} D. Berkowitz, *What the Label on Your Thanksgiving Turkey Won't Tell You*, Washington Post, (Nov. 23, 2016), https://www.washingtonpost.com/opinions/what-the-label-on-your-thanksgiving-turkey-wont-tell-you/2016/11/23/977fe740-b0e1-11e6-8616-52b15787add0_story.html (last visited Feb. 28, 2022).
- ^{xii} C. Siemaszko, *Language Barriers Helped Turn Smithfield Foods Meat Plant into COVID-19 Hotspot*, NBC News, (Apr. 23, 2020), <https://www.nbcnews.com/news/us-news/language-barriers-helped-turn-smithfield-foods-meat-plant-covid-19-n1190736> (last visited Feb. 28, 2022).
- ^{xiii} D. Berkowitz, *What the Label on Your Thanksgiving Turkey Won't Tell You*, Washington Post, (Nov. 23, 2016), https://www.washingtonpost.com/opinions/what-the-label-on-your-thanksgiving-turkey-wont-tell-you/2016/11/23/977fe740-b0e1-11e6-8616-52b15787add0_story.html (last visited Feb. 28, 2022).
- ^{xiv} A. Alonso, *Why Poultry Employees Leave or Stay*, WATTPoultry.com, (Aug. 9, 2018), <https://www.wattagnet.com/articles/34821-why-poultry-employees-leave-or-stay?v=preview#:~:text=High%20turnover%20rates,all%20manufacturing%20is%2030.4%20percent> (last visited Feb. 28, 2022) (“According to the survey, the average annual poultry employee turnover rate is 65 percent. Some locations said turnover was as low as 3.4 percent while others said it was as high as 150 percent.”)
- ^{xv} *When We're Dead and Buried, Our Bones Will Keep Hurting*, Human Rights Watch, (Sep. 4, 2019), <https://www.hrw.org/report/2019/09/04/when-were-dead-and-buried-our-bones-will-keep-hurting/workers-rights-under-threat> (last visited Feb. 28, 2022).
- ^{xvi} See Nat'l Inst. for Occupational Safety & Health, *Evaluation of Carpal Tunnel Syndrome and Other Musculoskeletal Disorders among Employees at a Poultry Processing Plant 17* (June 2015), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2014-0040-3232.pdf> (last visited Feb. 28, 2022). See, Evaluation of Musculoskeletal Disorders and Traumatic Injuries among Employees at a Poultry Processing Plant 11 (Mar. 2014), available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2012-0125-3204.pdf> (last visited Feb. 28, 2022).
- ^{xvii} The National Institute for Occupational Safety and Health, *NIOSH Health Hazard Evaluation at a South Carolina Poultry Plant, 2014*, (April 7, 2014), <https://www.cdc.gov/niosh/topics/poultry/letterapril72014.html> (last visited Feb. 28, 2022).
- ^{xviii} See, e.g., Inspection: 1165129.015 - Tyson Foods, Inc./Tyson Foods, OSHA (July 21, 2016), https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1165129.015 (last visited Feb. 28, 2022) (citing a Tyson Foods poultry processing plant in Shelbyville, Texas for violating its obligation under 29 C.F.R. § 1904.4(a) to record work-related injuries and illnesses).
- ^{xix} See OSHA Regional News Brief, *Deficient Medical Management Leads to Musculoskeletal Injuries at Delaware Poultry Processing Plant*, OSHA, (Sept. 2, 2015), <https://www.osha.gov/news/newsreleases/region3/09022015> (last visited Feb. 28, 2022) (describing hazard alert findings and noting that “[t]he medical management practices at this facility create an environment of fear and distrust. The use of the first aid station to prevent injuries from being reported as required by law undermines the purpose of on-site treatment and leaves employees at risk of further injury.”).
- ^{xx} See Press Release, U.S. Dep't of Labor, Occupational Safety & Health Admin., *Citation and Notification of Penalty to Pilgrim's Pride Corporation*, 6-7 (July 21, 2016), <https://www.osha.gov/news/newsreleases/region4/07272016> (last visited Feb. 28, 2022); *Citation & Notification of Penalty: Pilgrim's Pride Corporation*, U.S. Dep't of Labor (July 21, 2016), <https://www.dol.gov/sites/dolgov/files/legacy-files/newsroom/newsreleases/OSHA20161541b.pdf> (last visited Feb. 28, 2022).
- ^{xxi} House Select Subcommittee on the Coronavirus Crisis, *Select Subcommittee Releases Data Showing Coronavirus Infections And Deaths Among Meatpacking Workers At Top Five Companies Were Nearly Three Times Higher Than Previous Estimates*, (Oct. 27, 2021), <https://coronavirus.house.gov/news/press-releases/select-subcommittee-releases-data-showing-coronavirus-infections-and-deaths> (last visited Feb. 28, 2022).

^{xxiii} *Hormel: USDA-Approved High Speed Slaughter Hell*, *supra* note 5; Andrew Wasley & Natalie Jones, *Chickens Freezing to Death & Boiled Alive: Failings in U.S. Slaughterhouses Exposed*, *The Guardian* (Dec. 17, 2018), <https://www.theguardian.com/environment/2018/dec/17/chickens-freezing-to-death-and-boiled-alive-failings-in-us-slaughterhouses-exposed> (last visited Feb. 24, 2022); *They Die Piece by Piece*, *supra* note 7 ("The cattle were supposed to be dead before they got to Moreno. But too often they weren't. 'They blink. They make noises,' he said softly. 'The head moves, the eyes are wide and looking around.' Still Moreno would cut. On bad days, he says, dozens of animals reached his station clearly alive and conscious. Some would survive as far as the tail cutter, the belly ripper, the hide puller. 'They die,' said Moreno, 'piece by piece.'"); *HORROR: One Million Birds Boiled Alive Each Year*, Mercy For Animals, <https://mercyforanimals.org/blog/horror-one-million-birds-boiled-alive-each-year/> (last visited Feb. 24, 2022).

^{xxiv} Press Release, *New CDC Data Shows Foodborne Illness on the Rise*, Consumer Fed. of America (Apr. 30, 2020), https://consumerfed.org/press_release/new-cdc-data-shows-foodborne-illness-on-the-rise/ (last visited Feb. 24, 2022); Kimberly Kindy, *Pork Plants in USDA Test Program Had Higher Contamination Rates than Traditional Plants*, *Wash. Post* (Feb 18, 2021), https://www.washingtonpost.com/politics/pork-plants-contamination/2021/02/18/8d90c986-7133-11eb-93be-c10813e358a2_story.html (last visited Feb. 24, 2022) ("Whether it's cattle, whether it's beef, whether it's pigs, whether it's chicken, they're moving down that line faster and faster and faster to increase the profit rate," Biden said. "People are getting sicker. People are getting hurt.>").

^{xxv} P.W. Gerbens-Leenes, *The Water Footprint of Poultry, Pork & Beef: A Comparative Study in Different Countries & Production Systems* (2013), <https://www.sciencedirect.com/science/article/pii/S2212371713000024> (last visited Feb. 24, 2022).

^{xxvi} See 2014 Final Rule, 79 Fed. Reg. at 49,566, 49,570 (citing U.S. Dep't of Agric., Food Safety & Inspection Serv., *Modernization of Poultry Slaughter Inspection*; Proposed Rule, 77 Fed. Reg. 4408 (Jan. 27, 2012)).

^{xxvii} See *id.* at 49,591