

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL No. 227,
330 Pinecroft Drive
Louisville, KY 40219;

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL No. 1529,
8205 Macon Road
Cordova, TN 38018;

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL No. 1995,
4207 Lebanon Road, Suite 100
Hermitage, TN 37076;

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL No. 2008,
7924 Interstate 30, Suite A
Little Rock, AR 72209-2900;

RETAIL, WHOLESALE AND
DEPARTMENT STORE UNION – MID
SOUTH COUNCIL,
1901 10th Avenue South
Birmingham, AL 35205-2601

UNITED FOOD AND COMMERCIAL
WORKERS UNION, AFL-CIO, CLC,
1775 K Street, NW
Washington, DC 20006,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE,
1400 Independence Avenue, SW
Washington, DC 20250-1400

Defendant.

Civil Action No. 1:20-cv-2045

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs, five local labor unions and their affiliated international labor union, bring this action pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§ 702 & 706(2), to set aside a waiver program adopted by defendant United States Department of Agriculture (USDA) through its Food Safety Inspection Service (FSIS) and seven waivers granted by FSIS to poultry plants at which Plaintiffs' members work. FSIS adopted the waiver program without using procedures required by the APA, and the program is arbitrary and capricious.

2. FSIS's waiver program permits plants that obtain a waiver to exceed the maximum line speed set forth in a regulation that FSIS adopted in 2014. When FSIS issued its 2014 regulation, it considered an extensive rulemaking record demonstrating the harms that faster line speeds can cause poultry workers. On the basis of that rulemaking record, FSIS abandoned a proposal to allow poultry processing plants to operate at a maximum line speed of 175 birds per minute (bpm), instead capping the maximum line speed at 140 bpm and adopting other regulations designed to protect worker safety at poultry processing plants.

3. With its new waiver program, FSIS reversed course, creating a program under which plants can operate at speeds up to 175 bpm. As a result, although the 2014 regulation adopted through notice-and-comment rulemaking states a maximum line speed of 140 bpm, FSIS now permits nearly 43 percent of all plants subject to that regulation to operate at 175 bpm.

4. In adopting the new waiver program, FSIS ignored concerns—raised by plaintiff UFCW and others—that increasing line speeds at poultry processing plants would increase the risk of injury to workers on the line. Instead, the agency asserted that it lacked the legal authority to address worker safety concerns, even as it acknowledged that it had considered and addressed worker safety concerns in its 2014 rulemaking.

5. FSIS did not promulgate its new waiver program through notice-and-comment rulemaking procedures. Instead, FSIS sought to justify the new program as an application of an existing waiver regulation through which FSIS may grant waivers to experiment with new technologies to facilitate “definite improvements.” The new waiver program does not fall within that regulation, however, because faster line speeds are neither a new technology nor a definite improvement.

6. FSIS’s failure to consider and address the impact of its actions on worker safety violates basic standards of reasoned decisionmaking, and its unexplained departure from the conclusions set forth in its 2014 rulemaking represents classic arbitrary and capricious action. In addition, FSIS violated the APA’s procedural requirements by failing to undertake notice-and-comment rulemaking procedures to adopt its new waiver program. For these reasons and those set forth below, the waiver program and waivers granted under it violate the APA and must be vacated.

JURISDICTION AND VENUE

7. This Court has jurisdiction under 28 U.S.C. § 1331.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1) and 5 U.S.C. § 703 because defendant resides in this district.

PARTIES

9. Plaintiff United Food and Commercial Workers Union, Local No. 227 is a labor organization headquartered in Louisville, Kentucky. Local 227 represents workers who work on the poultry processing line in Tyson Foods plants in Robards, Kentucky (FSIS Establishment No. P-19514) and Corydon, Indiana (FSIS Establishment No. P-1241). In April 2020, the Robards and Corydon plants received waivers from FSIS that allow each plant to increase its line speed from 140 birds per minute to 175 birds per minute.

10. Plaintiff United Food and Commercial Workers Union, Local No. 1529 is a labor organization headquartered in Cordova, Tennessee. Local 1529 represents workers who work on the poultry processing line in the Wayne Farms plant in Laurel, Mississippi (FSIS Establishment No. P-519). In April 2020, the Laurel plant received a waiver from FSIS that allows the plant to increase its line speed from 140 birds per minute to 175 birds per minute.

11. Plaintiff United Food and Commercial Workers Union, Local No. 1995 is a labor organization headquartered in Hermitage, Tennessee. Local 1995 represents workers who work on the poultry processing line in the Wayne Farms plant in Albertville, Alabama (FSIS Establishment No. P-1317). In April 2020, the Albertville plant received a waiver from FSIS that allows the plant to increase its line speed from 140 birds per minute to 175 birds per minute.

12. Plaintiff United Food and Commercial Workers Union, Local No. 2008 is a labor organization headquartered in Little Rock, Arkansas. Local 2008 represents workers who work on the poultry processing line in the Wayne Farms plant in Danville, Arkansas (FSIS Establishment No. P-1009), and in the Tyson Foods plants in Dardanelle, Arkansas (FSIS Establishment No. P-72) and Noel, Missouri (FSIS Establishment No. P-1362). In September 2019, the Dardanelle plant received a waiver from FSIS that allows the plant to increase its line speed from 140 birds per minute to 175 birds per minute. In April 2020, the Danville and Noel plants received waivers from FSIS that allow each plant to increase its line speed from 140 birds per minute to 175 birds per minute.

13. Plaintiff Retail, Wholesale and Department Store Union – Mid South Council (Mid-South) is a labor organization headquartered in Birmingham, Alabama. Mid-South represents workers who work on the poultry processing line in the Wayne Farms plants in Jack, Alabama (FSIS Establishment No. P-7485) and Decatur, Alabama (FSIS Establishment No. P-1235), and in

the Tyson Foods plant in Forest, Mississippi (FSIS Establishment No. P-164). In September 2019, the Jack plant received a waiver from FSIS that allows the plant to increase its line speed from 140 birds per minute to 175 birds per minute. In April 2020, the Decatur and Forest plants received waivers from FSIS that allow each plant to increase its line speed from 140 birds per minute to 175 birds per minute.

14. Plaintiff United Food and Commercial Workers International Union (UFCW) is an international labor organization headquartered in Washington, DC. It has approximately 1.3 million members and represents approximately 180,400 workers in the meat and poultry processing industry. It represents approximately 70,600 poultry processing workers. Members of UFCW Local 227, UFCW Local 1529, UFCW Local 1995, UFCW Local 2008, and Mid-South are also members of UFCW.

15. Defendant U.S. Department of Agriculture is an agency of the United States within the meaning of the APA.

FACTS

Poultry Processing and Worker Safety

16. In the United States, chickens are slaughtered for meat primarily in poultry processing plants regulated by FSIS. These plants take in live birds and convert them into food products ready to be packaged and shipped to restaurants and retail outlets.

17. Despite the increasing use of automation, plants continue to rely on human workers to perform many tasks involved in transforming live chickens into poultry products.

18. The process of converting live birds into food products is organized around “lines.” Workers hang chickens on the lines that will carry their carcasses throughout the plant. Workers use saws, knives, scissors, and other tools to cut up and debone the birds prior to packaging. The

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