

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FARM SANCTUARY, ANIMAL EQUITY,  
ANIMAL LEGAL DEFENSE FUND,  
CENTER FOR BIOLOGICAL DIVERSITY,  
MERCY FOR ANIMALS, INC.,  
NORTH CAROLINA FARMED ANIMAL SAVE,  
ANIMAL OUTLOOK,

Plaintiffs,

6:19-CV-06910

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, FOOD SAFETY AND  
INSPECTION SERVICE, PAUL  
KIECKER, in his official capacity as  
Food Safety and Inspection Service  
Administrator,

Defendants.

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FARM SANCTUARY,  
ANIMAL LEGAL DEFENSE FUND,  
ANIMAL OUTLOOK,  
ANIMAL WELFARE INSTITUTE,  
COMPASSION IN WORLD FARMING,  
FARM FORWARD, MERCY FOR ANIMALS, INC.,

Plaintiffs,

6:20-CV-06081

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, FOOD SAFETY AND  
INSPECTION SERVICE, THOMAS  
VILSACK, in his official capacity as  
Secretary of Agriculture, PAUL  
KIECKER, in his official capacity as Food

Safety and Inspection Service  
Administrator,

Defendants.

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## **INTRODUCTION**

Plaintiffs are nonprofit organizations working to protect animals, people, and environments from industrial animal agriculture, and to ensure that laws intended to regulate industrial animal agriculture are properly implemented. In the above two captioned lawsuits, they challenge certain actions by Defendants related to the slaughtering of pigs. Specifically, on December 18, 2019, Plaintiffs Farm Sanctuary, Animal Equity, Animal Legal Defense Fund, Center for Biological Diversity, Mercy for Animals, Inc., North Carolina Farmed Animal Save, and Animal Outlook filed a complaint against Defendants United States Department of Agriculture (“USDA”), the Food Safety and Inspection Service (“FSIS”), and the FSIS Administrator, challenging the implementation of the Modernization of Swine Slaughter Inspection, 84 Fed. Reg. 52,300 (Oct. 11, 2019), promulgated by the FSIS and the USDA (hereinafter, the “Slaughter Rule”), which Plaintiffs allege “will allow nearly all of the pigs slaughtered in the United States to be slaughtered at unlimited speeds with very little federal oversight, posing serious risks to animal welfare, consumer health and safety, and the environment.” (*See Farm Sanctuary v. USDA*, Docket No. 19-CV-06910, Dkt. 22 at ¶ 1 (the “2019 Action”)).

Additionally, on February 6, 2020, Plaintiffs Farm Sanctuary, Animal Legal Defense Fund, Animal Outlook, Animal Welfare Institute, Compassion in World Farming, Farm Forward, and Mercy for Animals, Inc., filed a complaint against the USDA, FSIS,

the USDA Secretary, and the FSIS Administrator, challenging Defendants' failure to ban the slaughter of all non-ambulatory, or "downed" pigs. (*See Farm Sanctuary v. USDA*, Docket No. 20-CV-06081, Docket No. 13 at ¶ 1 (the "2020 Action")).

Defendants have filed motions to dismiss Plaintiffs' amended complaints in both actions. (*See* 2019 Action, Dkt. 25; 2020 Action, Dkt. 14). Defendants raise virtually the same arguments in both cases: that Plaintiffs' amended complaints must be dismissed pursuant to Fed. R. Civ. P. 12(b)(1), because Plaintiffs lack standing to sue. (*Id.*). For the following reasons, the motions are denied.

## **BACKGROUND**

The following facts are taken from Plaintiffs' amended complaints. (2019 Action, Dkt. 22; 2020 Action, Dkt. 13). As is required at this stage of the proceedings, the Court treats Plaintiff's well-pleaded allegations as true.

### **I. The 2019 Action**

Plaintiffs are seven nonprofit organizations "dedicated to protecting the animals, people, and environments that suffer due to industrial animal agriculture and to ensuring that laws intended to protect against this suffering are faithfully implemented." (Dkt. 22 at ¶ 1). Under the Humane Methods of Slaughter Act ("HMSA"), the USDA has responsibility to ensure humane handling of all animals at slaughterhouses. (*Id.* at ¶ 65). The HMSA is incorporated by reference into the Federal Meat Inspection Act ("FMIA"), which is a "self-contained, comprehensive statutory inspection scheme that prohibits meat from covered species, including pigs, from entering interstate commerce unless both pre-slaughter (ante-mortem) and post-slaughter (post-mortem) inspections are conducted by

federal inspectors.” (*Id.* at ¶¶ 66-67). The FMIA requires USDA inspection of animals both before they enter a slaughtering establishment and after slaughter to ensure that no part of any carcass determined to be “adulterated” passes into the human food supply. (*Id.* at ¶ 71).

As relevant to this case, the ante-mortem provision of the FMIA expressly requires that USDA inspectors inspect all animals upon arrival at the slaughterhouse, before they enter the slaughterhouse. (*Id.* at ¶ 79). If an inspector’s ante-mortem inspection reveals an animal showing any signs of abnormality or disease, that animal must be set aside into a separate pen for examination by a USDA veterinarian. (*Id.* at ¶ 85). The ante-mortem inspection “has long been recognized by the USDA and experts as critical to protect against outbreaks of foreign animal diseases that pose devastating risks to animals, human health, and the U.S. economy.” (*Id.* at ¶ 90). Pigs who pass ante-mortem inspection are sent down a conveyor line for slaughter processes. (*Id.* at ¶ 93). USDA inspectors also ensure the humane handling of animals during their time in the slaughterhouse. (*Id.* at ¶¶ 94, 95). USDA regulations set maximum slaughter line speeds, which are based on the number of animals per hour inspectors are able inspect. (*Id.* at ¶ 99).

Pursuant to the National Environmental Policy Act (“NEPA”), federal agencies, including the USDA, are required to prepare a “detailed statement” regarding all “major Federal actions significantly affecting the quality of the human environment.” (*Id.* at ¶ 103). This statement is referred to as an Environmental Impact Statement (“EIS”) and it must describe and disclose the environmental impact of the proposed action. (*Id.* at ¶ 104). Under certain circumstances, a federal agency may prepare an Environmental Assessment

“EA”) to evaluate whether an EIS is necessary. (*Id.* at ¶ 111). An EIS or EA need not be prepared for a major federal agency action when the action is “categorically excluded” from NEPA review because it does not have a significant effect on the human environment. (*Id.* at ¶ 112).

In 1997, as part of a pilot program called the HACCP-Based Inspection Models Project (“HIMP”), the USDA granted five pig slaughterhouses a “waiver” from regulatory mandates, authorizing them to operate without any maximum line speeds and with fewer agency inspectors. (*Id.* at ¶ 121). Plaintiffs allege that while the stated goals of this pilot program were to increase food safety and plant efficiency, neither humane handling nor environmental impacts were considered. (*Id.* at ¶ 122). Numerous government audits have raised concerns about HIMP, including that the plants involved in the pilot program may have a higher potential for food safety risks. (*Id.* at ¶¶ 123-24). Likewise, a 2015 undercover investigation documented instances of inhumane handling and slaughter as workers attempted to keep animals moving in pace with high-speed lines. (*Id.* at ¶ 125).

On February 1, 2018, the USDA published a proposed rule announcing its plans to “establish a new inspection system” for pig slaughterhouses that would make the HIMP program available to any pig slaughterhouse, and allow them to opt out of line speed limits, reduce the number of federal inspectors, and have slaughterhouse personnel take on inspection responsibilities historically performed by agency officials, including examining and sorting animals upon arrival at the slaughterhouse. (*Id.* at ¶ 131). In proposing the rule, the USDA stated that it had determined that “40 high volume establishments that exclusively slaughter market hogs” and that “account for 92 percent of total swine

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