

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

FARM SANCTUARY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 6:19-cv-6910-EAW-MWP
v.)	
)	
THOMAS VILSACK, in his official capacity)	
as Secretary of Agriculture, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**Plaintiffs' Reply to Defendants' Opposition to
Plaintiffs' Motion to Stay Plaintiffs' Second and Third Causes of Action**

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PLAINTIFFS' MEMORANDUM OF LAW IN REPLY

In opposition to Plaintiffs' motion to stay their second and third causes of action, Defendants offer no evidence or assurance that concerns relating to humane handling and environmental impacts will be addressed by Defendants' Time-Limited Trials program, which they admit will generate worker safety data that would allow Defendants to eliminate the line speed cap at issue in this litigation. Defendants additionally fail to explain why the pending appeal of the District of Minnesota's partial vacatur of that rule does not provide sufficient reason alone to justify a stay of Plaintiffs' line speeds claims, relegating their minor arguments on this point to a footnote. *See generally United Food & Commercial Workers Union, Local No. 663 v. USDA*, 532 F. Supp. 3d 741 (D. Minn. 2021) ("the UFCW case"); Defs.' Opp. to Pls.' Mot. to Stay at 5, n. 3, ECF No. 73. However, what they do offer the Court is a fresh announcement, published since Plaintiffs' February 16, 2022 motion, that the Food Safety and Inspection Service (FSIS) is "developing a technical corrections regulation to remove the regulatory provision which is no longer in effect that allowed for unlimited inspection line speeds in the NSIS." ECF No. 73 at 1. Contrary to Defendants' bold position, this announcement further supports Plaintiffs' request that the Court stay their second and third causes of action.

A. Defendants' evolving regulatory landscape indicates the Slaughter Rule may be revived following the Time-Limited Trials program.

On March 4, 2022, the U.S. Department of Agriculture's FSIS issued a "Constituent Update" about its Time-Limited Trials program, stating that it was "developing a technical corrections regulation to remove the regulatory provision which is no longer in effect that allowed for unlimited inspection line speeds in the NSIS." Food Safety & Inspection Service, Constituent Update, *Swine Time-Limited Trial Approval Chart To Be Added to the FSIS Website* (Mar. 4, 2022), <https://www.fsis.usda.gov/news-events/news-press-releases/constituent-update->

march-4-2022; *see also* ECF No. 73 at 1 (discussing the update). Notably, with this update, FSIS admits that it plans to use a technical correction process to comply with the District of Minnesota’s partial vacatur of the line speeds portion of the Slaughter Rule, a process FSIS could easily deploy to revive that same rule once it has collected limited data related to worker safety in consultation with the Occupational Safety and Health Administration. *Id.* Indeed, what this “revision” shows is that a future regulatory change may not take the form of a new rulemaking at all.

In addition to announcing this upcoming “technical correction” to the regulations, the update establishes—and Defendants’ opposition brief then reiterates—that FSIS has already begun accepting slaughterhouse establishments into its Time-Limited Trials program. *Id.*; ECF No. 73 at 6-7. The USDA effectively acknowledges it will not collect data related to humane handling or environmental impacts, ECF No. 73 at 7, as neither formed the basis for the District of Minnesota’s vacatur, and defendants do not indicate any intent to collect data to respond to Plaintiffs’ concerns during the Time-Limited Trials. *See generally* ECF No. 73; *see also UFCW Case*, 532 F. Supp. 3d at 741.

Based on this update, it seems highly probable that FSIS intends to paper over its failure to collect worker safety data, without further considering humane handling or environmental impacts, and then merely issue another “technical correction” to revive the line speed provisions of the Slaughter Rule. Once that happens, Plaintiffs’ second and third causes of action challenging the elimination of the line speed caps for failing to consider the impacts to animal welfare and the environment will likewise spring back into question. If this Court were to dismiss Plaintiffs’ second and third causes of action, Plaintiffs would then be forced to start over with a new lawsuit. To preserve judicial and party resources already expended litigating

Defendants’ motion to dismiss and lodging the Administrative Record—issues which would arise again in a new lawsuit—this Court should stay Plaintiffs second and third claims until the occurrence of the earliest of three triggering events¹: (1) FSIS terminates its “Time-Limited Trials” program that allows certain pig slaughter establishments to operate their evisceration lines at faster speeds following the UFCW case *and* announces, through notice published in the Federal Register or on the agency’s website, that it does not intend to revive the rulemaking challenged here by plaintiffs; (2) FSIS initiates a new rulemaking process to revise line speeds in pig slaughter establishments; or (3) the Eighth Circuit Court of Appeals reverses the District of Minnesota’s vacatur of the line speeds portion of the rulemaking at issue in this case.

B. Plaintiffs’ second and third causes of action are not moot and, as Defendants admit, they may “become live again.”

Defendants retort that the appeal of the UFCW case, “has little, if any, bearing on Plaintiffs’ ability to litigate their second and third causes of action here.” ECF No. 73 at 5, n.3. At the same time, Defendants disclose their intention to file a motion to dismiss Plaintiffs’ claims as moot based on the District of Minnesota’s partial vacatur of the Slaughter Rule. Plaintiffs’ claims are not moot because the Eighth Circuit may overturn the District of Minnesota’s partial vacatur of the Slaughter Rule. Trial courts have authority to enter a stay of a cause of action in these circumstances. *See Goldstein v. Time Warner N.Y.C. Cable Grp.*, 3 F. Supp. 2d 423 (S.D.N.Y. 1998) (staying claims related to the enforcement of a regulation, the validity of which was under consideration in a separate proceeding). In line with this general rule of judicial economy, Plaintiffs have asked this Court to stay their second and third causes of action pending

¹ Defendants incorrectly characterize plaintiffs’ proposed stay as one of “indefinite duration[.]” ECF No. 73 at 2. Plaintiffs propose three triggering events for revival of these claims, each of which demonstrates the fluid nature of the status of this regulation.

resolution of the UFCW case, which is on appeal to the Eighth Circuit. If intervenors are successful and ultimately win an order overturning the District of Minnesota's partial vacatur of the Slaughter Rule, the very rule Plaintiffs challenge in this case will be revived. That appeal is an independent proceeding whose pending resolution "bears upon this case," warranting a stay Plaintiffs' second and third causes action. *Goldstein*, 3 F. Supp. 2d at 423.

In their opposition, Defendants admit Plaintiffs' second and third causes of action could "become live again[.]" ECF No. 73 at 2, 6. If and when those claims are live, the Court and the parties should benefit from the considerable resources already spent in this litigation regarding standing and production of the administrative record. The Court should stay Plaintiffs' second and third causes of action until the triggering events identified in Plaintiffs' motion.

C. Plaintiffs would be prejudiced if their second and third claims were dismissed.

If Defendants win dismissal of Plaintiffs' claims, Plaintiffs could be severely prejudiced because they may lose their claims altogether for failure to meet the statute of limitations for challenging agency action under the Administrative Procedures Act. The Slaughter Rule became final in 2019, and the statute of limitations to sue for violations of the Administrative Procedures Act is six years. *See* 84 Fed. Reg. 52,300; *see also* 28 U.S.C. § 2401(a). Plaintiffs satisfied the statute of limitations when they filed the complaint. ECF No. 1. Defendants should not be able to force plaintiffs out of Court until their claims are time barred, especially when Defendants have control over the speed with which they address the District of Minnesota's ruling regarding deficiencies in worker safety data. At this time, Defendants represent that their Time-Limited Trials program will take one year; staying the case for one year is not "indefinite" as Defendants suggest. The Court should stay the second and third causes of action to avoid substantial prejudice to Plaintiffs.

D. Plaintiff's first cause of action should not be stayed.

Plaintiffs' first cause of action was not affected by the District of Minnesota's partial vacatur of the Slaughter Rule and has nothing to do with Defendants' Time-Limited Trials program. Instead, Plaintiffs' first cause of action challenges an entirely separate portion of the Slaughter Rule related to Defendants' reckless decision to delegate ante-mortem inspection duties to slaughterhouse workers. *See* ECF No. 70 at 9. As explained in Plaintiffs' complaint, Plaintiffs will prove that the delegation portion of the Slaughter Rule unlawfully imperils animal welfare and human health by reassigning critical inspection responsibilities to untrained slaughterhouse workers that by law are required to be conducted by USDA inspectors. ECF No. 22, ¶ 6.

Defendants advance no theory, in law or equity, that would justify a stay or dismissal of Plaintiffs' first cause of action. Defendants also fail to respond to the prejudice Plaintiffs would suffer if the Court stayed the first cause of action pending the appeal of the UFCW case or conclusion of its Time-Limited Trials, both of which relate to the line speeds portion of the Slaughter Rule only. The Court should not stay Plaintiffs' first cause of action.

E. Conclusion

Plaintiffs respectfully request that the Court grant their motion to stay or hold in abeyance their second and third causes of action related to the line speed portion of the Slaughter Rule as set forth in Plaintiffs' Motion to Stay Plaintiffs' Second and Third Causes of Action.

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Dated: March 16, 2022

Respectfully submitted,

/s/ Jessica L. Blome

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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2022, I electronically filed the foregoing Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Stay their Second and Third Causes of Action with the Clerk of the U.S. District Court in the Western District of New York using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Jessica L. Blome
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