

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN FEDERATION OF GOVERNMENT)
EMPLOYEES, AFL-CIO,)
80 F Street, N.W.,)
Washington, D.C. 20001 ,)
202-639-6424,)

and)

CHARLES STANLEY PAINTER,)
4673 County Road 24,)
Crossville, Alabama 35962,)

Plaintiffs,)

v.)

THOMAS J. VILSACK,)
in his official capacity as United States)
Secretary of Agriculture,)
1400 Independence Avenue, S.W.,)
Washington, D.C. 20250,)

and)

ALFRED V. ALMANZA,)
in his official capacity as Administrator of the)
Food Safety and Inspection Service,)
1400 Independence Avenue, S.W.,)
Washington, D.C. 20250,)

and)

UNITED STATES DEPARTMENT OF)
AGRICULTURE, FOOD SAFETY AND)
INSPECTION SERVICE,)
1400 Independence Avenue, S.W.,)
Washington, D.C. 20250,)

Defendants.)

Civil Action No. _____

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

1. The Poultry Products Inspection Act (“PPIA”), in relevant part, requires in each official establishment processing poultry or poultry products for commerce: (a) that government inspectors perform a post-mortem inspection of the carcass of each bird processed; (b) that government inspectors condemn and supervise the destruction for human food purposes of all adulterated poultry carcasses, parts, and products; and (c) that government inspectors supervise the reprocessing of all partially adulterated poultry carcasses, parts, and products. 21 U.S.C. § 451, et seq.; 21 U.S.C. § 455.
2. On August 21, 2014, defendants, United States Department of Agriculture (“USDA”), Food Safety and Inspection Service (“FSIS”), Secretary of Agriculture Thomas J. Vilsack, and FSIS Administrator Alfred V. Almanza, published a final rule in the federal register modifying FSIS regulations. The title of the rule is “Modernization of Poultry Slaughter Inspection” (“the Rule”). 79 Fed. Reg. 49566 (2014).
3. The Rule is the latest in a series of rules, dating from at least 1972, containing FSIS poultry inspection regulations.¹
4. The new and modified regulations in the Rule, if implemented, do not require: (a) that government inspectors perform a post-mortem inspection of the carcass of each bird processed; (b) that government inspectors supervise the destruction for human food purposes of all adulterated poultry carcasses, parts, and products; and (c) that government inspectors supervise the reprocessing of all partially adulterated poultry carcasses, parts,

¹ The complaint will refer to those regulations or portions thereof added by the Rule as “new” or “added;” those regulations modified by the Rule as “modified;” and preexisting regulations not modified by the Rule as “unmodified.”

and products.

5. The new and modified regulations in the Rule thereby increase the risk that adulterated poultry and poultry products will be sold to and consumed by the public because government inspectors will no longer inspect the carcass, and all parts thereof, of each bird processed.
6. The new and modified regulations in the Rule violate the PPIA.
7. Plaintiffs therefore bring this action seeking declaratory relief that the Rule is contrary to the PPIA and to enjoin defendants from implementing any regulation, policy, or practice that permits anything less than the carcass-by-carcass post-mortem inspection of poultry required by the PPIA.
8. Plaintiffs further seek to enjoin defendants from permitting anyone other than a government inspector from exercising the statutory authority to conduct post-mortem poultry inspections that are the prerequisites for the USDA inspection legend for wholesomeness.

JURISDICTION

9. Jurisdiction over this action is conferred upon the United States District Court by 28 U.S.C. § 1331 and 5 U.S.C. §§702, 704.
10. Plaintiffs seek a declaratory judgment pursuant to 28 U.S.C. § 2201.

VENUE

11. The District of Columbia is a proper venue for this action under 28 U.S.C. § 1391(e) because plaintiff American Federation of Government Employees is headquartered here, and because defendants' principal offices are located here.

PARTIES

12. Plaintiff American Federation of Government Employees, AFL-CIO (“AFGE”) is a labor organization that represents, on its own and through its affiliated councils and locals, approximately 600,000 federal government employees throughout numerous federal government departments and agencies. In particular, AFGE represents federal poultry inspectors employed by FSIS, who conduct post-mortem inspections of poultry carcasses and perform other official functions at poultry slaughter establishments, for the purpose of preventing the sale of adulterated poultry and poultry products.
13. One object of AFGE is to promote the general welfare of government employees.
14. AFGE’s headquarters is located at 80 F Street, N.W. Washington, D.C. 20001.
15. AFGE is a consumer of poultry products that are subject to inspection under the PPIA.
16. AFGE regularly purchases cooked and prepared poultry products for events hosted by AFGE. Those purchased poultry products are consumed by AFGE employees, members, and/or prospective members.
17. The health and welfare of AFGE employees, members, and prospective members are likely to be adversely affected due to the Rule’s unlawful abdication of USDA’s statutory duty to inspect poultry and poultry products, in that the Rule increases the risk that AFGE’s employees, members, and prospective members will become ill after consuming poultry or poultry products.
18. AFGE is also likely to be adversely affected due to an increased risk of litigation exposure from employees, members, and prospective members that become ill after consuming poultry or poultry products at an AFGE-sponsored event.
19. Plaintiff Charles Stanley Painter (“Painter”) is a federal employee appointed by the

Secretary of Agriculture to perform poultry inspections and has been continuously employed in that capacity for the last 29 years.

20. Painter is a member and officer of AFGE.
21. Painter is also a consumer of poultry products that are subject to inspection under the PPIA.
22. Painter's health and welfare are likely to be adversely affected by the Rule's unlawful abdication of USDA's statutory duty to inspect poultry and poultry products, in that the Rule increases the risk that Painter will become ill after consuming poultry or poultry products.
23. Defendant Thomas J. Vilsack is the Secretary of Agriculture ("Secretary") and the senior officer of the USDA located in Washington, D.C. He is sued solely in his official capacity.
24. Defendant Alfred V. Almanza is the Administrator ("Administrator") of FSIS, a component of USDA, located in Washington, D.C. He is sued solely in his official capacity.
25. Defendant FSIS is a federal agency, headquartered in Washington D.C., charged with administering and enforcing the PPIA.

FACTS

Poultry Products Inspection Act and Implementing Regulations

26. Congress enacted the PPIA so that "the health and welfare of consumers [would] be protected by assuring that poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged" and because "[u]nwholesome, adulterated, or misbranded poultry products impair the effective regulation of poultry

products in interstate or foreign commerce, are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry products, and result in sundry losses to poultry producers and processors of poultry and poultry products, as well as injury to consumers.” 21 U.S.C. § 451.

27. With limited exceptions not relevant here, both the PPIA and FSIS’s unmodified regulations require the inspection of poultry and poultry products at each official establishment slaughtering or processing poultry and poultry products for transportation or sale in commerce and intended for use as human food. See 21 U.S.C. § 455; 9 C.F.R. § 381.6 (not modified by the Rule); cf. 9 C.F.R. §§ 381.10, 381.11 (not modified by the Rule).
28. The PPIA requires inspection at three points in the poultry slaughter process: ante-mortem (before the poultry is slaughtered), post-mortem (after the poultry is slaughtered), and during processing. See 21 U.S.C. § 455.
29. The PPIA requires poultry slaughter establishments to operate their premises, facilities, and equipment in accordance with the sanitary practices required by FSIS regulations. 21 U.S.C. § 456.
30. The PPIA defines inspector as “an employee or official of the United States Government. . .or any employee or official of the government of any State or territory or the District of Columbia authorized by the Secretary to inspect poultry and poultry products under authority of this chapter. . .” 21 U.S.C. § 453(k).
31. The Secretary appoints inspectors pursuant to the PPIA.
32. The PPIA requires that government inspectors conduct post-mortem inspections of “the carcass of each bird processed[.]” 21 U.S.C. § 455(b).

33. The PPIA defines “processed” as “slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.” 21 U.S.C. § 453(w).
34. “Carcass” is defined by an unmodified FSIS regulation to mean “all parts, including viscera, of any slaughtered poultry.” 9 C.F.R. § 381.1(b) (not modified by the Rule).
35. An unmodified FSIS regulation states that “[p]rocess used as a verb means to conduct any operation or combination of operations whereby poultry is slaughtered, eviscerated, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.” 9 C.F.R. § 381.1(b) (not modified by the Rule).
36. The Rule does not modify or otherwise change the first and last sentences of Section 381.76(a) as they existed prior to the Rule. Those portions of the regulation provide that “[a] post-mortem inspection shall be made on a bird-by-bird basis on all poultry eviscerated in every official establishment...[e]ach carcass, or all parts comprising such carcass, must be examined by an inspector except for **parts** that are not needed for inspection purposes **and** are not intended for human food **and** are condemned.” 9 C.F.R. § 381.76(a) (the quoted regulatory portions were not modified or otherwise changed by the Rule) (emphasis added).
37. Adulterated poultry products include any poultry product which consists “in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.” 21 U.S.C. § 453(g)(3).
38. The PPIA requires that government inspectors condemn all poultry carcasses, parts, and products found to be adulterated that may not be made unadulterated by reprocessing. 21 U.S.C. § 455(c).
39. The PPIA requires that government inspectors supervise the destruction for human food

purposes of all adulterated poultry carcasses, parts, and products which may not be made unadulterated by reprocessing. 21 U.S.C. § 455(c).

40. The PPIA requires that government inspectors supervise the reprocessing of adulterated poultry carcasses, parts, and products which may be made unadulterated by reprocessing. 21 U.S.C. § 455(c).

41. The PPIA requires that the condemnation of any poultry or poultry product “because of disease” must be supported by scientific fact, information, or criteria and be achieved through the uniform application of uniform inspection standards. 21 U.S.C. § 452.

42. All carcasses, parts, and poultry products found not to be adulterated by government inspectors are marked with the official inspection legend “Inspected for wholesomeness by U.S. Department of Agriculture.” 9 C.F.R. § 381.96 (not modified by the Rule); 21 U.S.C. §§ 453 (h), 457(a).

43. An unmodified FSIS regulation requires that carcasses affected with any form of avian leukosis complex must be condemned. 9 C.F.R. § 381.82 (not modified by the Rule).

Background and Prior Litigation

44. For decades, government inspectors have conducted post-mortem inspections of the carcass of each bird processed at fixed positions along a production line. American Federation of Government Employees v. Glickman, 215 F.3d 7, 8-9 (D.C. Cir. 2000), Docket No. 99-5320 (“Glickman”).

45. Government inspectors rely and have relied upon sight, touch, and smell to detect adulteration or unwholesomeness in poultry carcasses when conducting post-mortem inspections.

46. Post-mortem inspections which rely upon sight, touch, and smell occur under multiple

inspection systems authorized by FSIS including: Traditional Inspection, Streamlined Inspection System, New Line Speed Inspection System, and New Turkey Inspection System (referred to collectively hereinafter as “non-NPIS inspection systems”).

47. In the mid-1990s, FSIS proposed a fundamental change to the inspection regime for both poultry and meat in its Pathogen Reduction/Hazard Analysis and Critical Control Points (“HACCP”) final rule. See 61 Fed. Reg. 38806, 38817 (1996); Glickman, 215 F.3d at 9.
48. When HACCP was first implemented, FSIS delegated the responsibility to conduct “anatomical and pathological examinations of carcasses” to establishment employees while the inspection performed by FSIS employees was limited to “oversee[ing], evaluat[ing], and verify[ing] the effectiveness and reliability of the establishments’ slaughter process controls.” See Glickman, 215 F.3d at 9-10 quoting HACCP-Based Meat and Poultry Inspection Concepts: In-Plant Slaughter Inspection Models Study Plan, 63 Fed. Reg. 40381 (1998).
49. AFGE challenged HACCP’s implementation in the U.S. District Court for the District of Columbia. See American Federation of Government Employees, et al. v. Glickman, et al., District Court Docket No. 98-893 (RCL).
50. On appeal by AFGE to the U.S. Court of Appeals for the District of Columbia Circuit, the court of appeals found that the HACCP final rule, as implemented, violated both the PPIA and the Federal Meat Inspection Act (“FMIA”), 21 U.S.C. § 604.
51. The court of appeals found that the plain language of both the PPIA and the FMIA requires that government inspectors, as opposed to employees of private poultry slaughter establishments, conduct the required post-mortem inspection of each carcass and the parts thereof. See Glickman, 215 F.3d at 11.

52. The court of appeals remanded the case for further proceedings.
53. After remand, FSIS modified its implementation of HACCP and added one government inspector to the end of each production line in poultry slaughter establishments to perform a carcass-by-carcass observation and up to three inspectors in hog slaughter establishments to perform a similar function.
54. AFGE objected to this modification on the grounds that both the statute and the court of appeals decision in Glickman required government inspectors to conduct a “close examination and critical appraisal” of each carcass. American Federation of Government Employees v. Glickman, 127 F. Supp. 2d 243, 245 (D.D.C. 2001) (“Glickman II”) (quoting plaintiff’s brief).
55. The district court ruled against AFGE and AFGE appealed.
56. On appeal, the court of appeals held that the addition of the carcass inspector to the production line during the HACCP pilot project complied with the PPIA’s requirement that government inspectors inspect each carcass. American Federation of Government Employees v. Veneman, 284 F.3d 125, 130-31 (D.C. Cir. 2002), Docket No. 01-5035 (“Veneman”).
57. However, the court of appeals explicitly stated that its decision was based on its review of the HACCP “test program” and left the issue open if the USDA were to expand HACCP beyond a test program. See Veneman, 284 F.3d at 130-31.
58. None of the earlier decisions reviewed or addressed the statutory definition of “processed.”

New Poultry Inspection System

59. On January 27, 2012, FSIS published its proposed rule, “Modernization of Poultry

Slaughter Inspection,” proposing a new inspection system for young chicken and turkey slaughter establishments. 77 Fed. Reg. 4408 (2012).

60. The proposed rule stated that the “key elements” of the new inspection system were: 1) requiring poultry establishment employees to sort and remove carcasses from the line before the carcasses reach government inspectors; 2) reducing the number of government inspectors on the production line to one per line; 3) permitting faster line speeds; and 4) replacing the Finished Product Standards with a recordkeeping requirement. 77 Fed. Reg. at 4408 (2012).
61. The proposed rule stated that the new inspection system “may facilitate the reduction of pathogen levels in poultry products by permitting FSIS to conduct more food safety related offline inspection activities, will allow for better use of FSIS inspection resources, and will lead to industry innovations in operations and processing.” 77 Fed. Reg. at 4408 (2012) (emphasis added).
62. AFGE filed comments opposing the proposed rule on May 25, 2012.
63. On August 21, 2014, FSIS issued the Rule creating a new inspection system, the New Poultry Inspection System (“NPIS”), for young chickens and turkeys. 79 Fed. Reg. 49566 (2014).
64. The Rule is not a personnel action under the Civil Service Reform Act of 1978.
65. The effective date of the Rule is October 20, 2014. 79 Fed. Reg. at 49566 (2014).
66. Establishments slaughtering young chickens and turkeys will have until February 23, 2015, to notify FSIS of the establishment’s intent to operate under the NPIS. 79 Fed. Reg. at 49566 (2014).
67. After October 20, 2014, FSIS will begin implementing the NPIS “in phases by clusters of

establishments in close geographic proximity to one another.” 79 Fed. Reg. at 45966 (2014).

68. The Rule reduces the number of government inspectors performing carcass-by-carcass post-mortem inspections on each production line to one in establishments operating under the NPIS. 79 Fed. Reg. at 49567 (2014); 9 C.F.R. § 381.36(f)(1)(i) (added by the Rule).
69. In non-NPIS inspection systems for young chickens, the number of government inspectors per production line performing carcass-by-carcass post-mortem inspections ranges from two to four depending on the inspection system and line speed. See 79 Fed. Reg. at 49567 (2014).
70. The maximum line speed in non-NPIS inspection systems per inspector performing carcass-by-carcass post-mortem inspections of young chickens ranges from 16 to 35 birds per minute. See 79 Fed. Reg. at 49567 (2014).
71. Under the NPIS, the maximum line speed per inspector performing carcass-by-carcass post-mortem inspections of young chickens is 140 birds per minute. 9 C.F.R. § 381.69 (added by the Rule); 79 Fed. Reg. at 49567 (2014).
72. The new regulations in the Rule permit a 400 percent increase in the maximum line speed per inspector for young chickens.
73. In young chicken establishments operating under the NPIS, the sole government carcass inspector will be required to “inspect” approximately 2.33 carcasses per second, 8400 carcasses per hour, or 67,200 carcasses per eight-hour shift on the production line.
74. In non-NPIS inspection systems for turkeys, the number of government inspectors per production line performing carcass-by-carcass post-mortem inspections is two. See 79 Fed. Reg. at 49567 (2014).

75. The maximum line speed in non-NPIS inspection systems per inspector performing carcass-by-carcass post-mortem inspections of turkeys ranges from 13 to 25.5 birds per minute. 79 Fed. Reg. at 49567 (2014).
76. Under the NPIS, the maximum line speed per inspector performing carcass-by-carcass post-mortem inspections of turkeys is 55 birds per minute. 9 C.F.R. § 381.69 (added by the Rule); 79 Fed. Reg. at 49567 (2014).
77. The new regulations permit the maximum line speed per inspector for turkeys to be doubled.
78. The Rule requires poultry establishments operating under the NPIS to “conduct carcass with associated viscera sorting activities, dispose of carcasses and parts exhibiting condemnable conditions, and conduct appropriate trimming and reprocessing activities before carcasses are presented to the online carcass inspector.” 79 Fed. Reg. at 49635 (2014); 9 C.F.R. § 381.76(b)(6)(ii) (added by the Rule).
79. The Rule requires the creation, in NPIS establishments, of a new inspection station for government carcass inspectors “on each production line, at a point before the chiller and after the establishment has completed all sorting, trimming, and reprocessing activities necessary to comply with § 381.76(b)(6)(ii)[.]” 79 Fed. Reg. at 49633 (2014); 9 C.F.R. § 381.36(f)(1)(i) (added by the Rule) (emphasis added).
80. Because the inspection station under the NPIS is located after carcasses are eviscerated, trimmed, and reprocessed, government inspectors are no longer presented with both the viscera and the carcass as they are under the non-NPIS inspection systems. 77 Fed. Reg. at 4421 (2012).
81. Under the NPIS, the carcass inspector is not presented with the viscera of each bird

processed. 77 Fed. Reg. at 4421 (2012); see 9 C.F.R. § 381.76(b)(6)(iii) (added by the Rule).

82. The Rule only requires the inspection of the viscera of the first 300 birds in a flock in establishments operating under the NPIS. 9 C.F.R. §§ 381.36(f)(3), 381.76(b)(6)(iv)(B) (added by Rule).

83. The Rule does not require the viscera of each bird processed to be inspected by a government inspector in establishments operating under the NPIS. See 77 Fed. Reg. at 4421-22 (2012).

84. The placement of the inspection station at a location on the production line after the viscera has been separated from the carcass prevents the inspection by inspectors of the viscera of each bird processed.

85. Avian leukosis complex, a disease which requires condemnation of the entire carcass of any bird affected, can only be detected by observation of the viscera. 77 Fed. Reg. at 4421 (2012).

86. Viscera is capable of use as human food.

87. The Rule does not require that viscera be condemned, destroyed, denatured, or otherwise identified as not fit for human consumption, even though (a) it is capable of use as human food; and (b) it is not inspected by government inspectors.

88. Viscera is commonly referred to and sold for human use as “giblets.”

89. Under the NPIS, government inspectors will not inspect the carcass of each bird processed as required by the PPIA because the Rule requires that establishments “dispose of carcasses and parts exhibiting condemnable conditions, and conduct appropriate trimming and reprocessing activities before carcasses are presented to the online carcass

inspector.” See 9 C.F.R. § 381.76(b)(6)(ii) (added by the Rule) (emphasis added).

90. Under the NPIS, government inspectors will not inspect the carcass of each bird processed as required by the PPIA because the Rule places the inspection station “on each production line, at a point before the chiller and after the establishment has completed all sorting, trimming, and reprocessing activities necessary to comply with § 381.76(b)(6)(ii)[.]” See 9 C.F.R. § 381.36(f)(1)(i) (added by the Rule) (emphasis added).

91. Under the NPIS, government inspectors will not supervise the reprocessing of all adulterated carcasses as required by the PPIA because the Rule requires that establishments “dispose of carcasses and parts exhibiting condemnable conditions, and conduct appropriate trimming and reprocessing activities before carcasses are presented to the online carcass inspector.” See 9 C.F.R. § 381.76(b)(6)(ii) (added by the Rule) (emphasis added).

92. Under the NPIS, government inspectors will not supervise the reprocessing of all adulterated carcasses as required by the PPIA because the Rule requires that the inspection station be located “on each production line, at a point before the chiller and after the establishment has completed all sorting, trimming, and reprocessing activities necessary to comply with § 381.76(b)(6)(ii)[.]” See 9 C.F.R. § 381.36(f)(1)(i) (added by the Rule) (emphasis added).

93. Under the NPIS, government inspectors will not inspect the viscera of each bird processed as required by the PPIA and FSIS regulations, both pre-Rule and post-Rule, because inspectors will not be presented with the viscera at the inspection station required by the Rule. See 77 Fed. Reg. at 4421 (2012).

94. The NPIS permits poultry parts, e.g., viscera, that have not been inspected by a government inspector to be labeled as “Inspected for wholesomeness by U.S. Department of Agriculture” and sold for human consumption.

COUNT I

95. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 94.

96. The PPIA requires that defendants conduct post-mortem inspections of the carcass of each bird slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed in each official establishment processing poultry or poultry products for commerce.

97. Defendants’ Rule violates 21 U.S.C. § 455 by not requiring the inspection of the carcass of each bird slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed in each official establishment.

COUNT II

98. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 94.

99. The PPIA requires that defendants conduct post-mortem inspections of the carcass of each bird slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed in each official establishment processing poultry or poultry products for commerce.

100. Defendants’ Rule violates 21 U.S.C. § 455 by permitting poultry establishments to remove the carcass of any bird slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed from the production line thereby preventing

government inspectors from conducting a post-mortem inspection of the carcass of each bird processed.

COUNT III

101. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 94.

102. The PPIA requires that defendants conduct post-mortem inspections of the carcass of each bird slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed in each official establishment processing poultry or poultry products for commerce.

103. Carcass means “all parts, including viscera, of any slaughtered poultry.”

104. Defendants’ Rule violates 21 U.S.C. § 455 by not requiring the inspection by government inspectors of every carcass and part thereof, including viscera, of each bird slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed in each official establishment.

COUNT IV

105. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 94.

106. The PPIA requires that defendants supervise the reprocessing of all adulterated poultry carcasses, parts, and products.

107. Defendants’ Rule violates 21 U.S.C. § 455 by permitting an official establishment to reprocess adulterated poultry carcasses, parts, and products without the supervision of a government inspector.

COUNT V

108. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 94.
109. The PPIA requires that defendants supervise the destruction for human food purposes of all adulterated poultry carcasses, parts, and products.
110. Defendants' Rule violates 21 U.S.C. § 455 by permitting an official establishment to dispose of adulterated poultry carcasses, parts, and products without the supervision of a government inspector.

COUNT VII

111. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 94.
112. The PPIA requires that defendants conduct the post-mortem inspection of the carcass of each bird slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed in each official establishment processing poultry or poultry products for commerce.
113. Defendants' Rule violates 21 U.S.C. § 455 by permitting a maximum line speed that prevents government inspectors from inspecting each carcass and all parts thereof for adulteration.

COUNT VIII

114. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 94.
115. Because the PPIA requires that defendants perform post-mortem inspections of the carcass of each bird processed, defendants' authorization of anything less than a

carcass-by-carcass post-mortem inspection by a government inspector constitutes unlawful agency action; and, because there is no lawful basis for that action, it is arbitrary and capricious. As such, it violates 5 U.S.C. §§ 702, 706.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray that this Honorable Court enter an Order:

(1) Declaring that the Poultry Products Inspection Act, 21 U.S.C. § 455, mandates a post-mortem inspection of all poultry carcasses, parts, and products by a government inspector;

(2) Declaring the defendants' Rule to be contrary to law to the extent that it permits anything less than a carcass-by-carcass post-mortem inspection by government inspectors of poultry carcasses, parts, and products;

(3) Enjoining the defendants from implementing the Rule insofar as it permits anything less than post-mortem inspections of the carcass and all parts thereof of each bird slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed in each official establishment processing poultry or poultry products for commerce.

(4) Enjoining the defendants from permitting anyone other than a government inspector from exercising the statutory authority to conduct post-mortem poultry inspections that are the prerequisites for the USDA inspection legend;

(5) Granting plaintiffs attorneys' fees and costs; and

(6) Granting such other relief as this Court finds necessary and proper.

Respectfully Submitted,

David A. Borer
General Counsel
AFGE

/s/ Andres M. Grajales
Andres M. Grajales
Deputy General Counsel
D.C. Bar No. 476894
AFGE, Office of the General Counsel
80 F Street, N.W.
Washington, D.C. 20001
Tel.: (202) 639-6426
Fax.: (202) 379-2928
Email: andres.grajales@afge.org

/s/ Matthew W. Milledge
Matthew W. Milledge*
Assistant General Counsel
D.C. Bar No. 496262
AFGE, Office of the General Counsel
80 F Street, N.W.
Washington, D.C. 20001
Tel.: (202) 639-6424
Fax.: (202) 379-2928
Email: matthew.milledge@afge.org
*Lead Counsel

Attorneys for Plaintiffs