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Senior Staff Attorney  
Animal Legal Defense Fund  
July 28, 2021

# Case Update: Litigating Against the Federal Government Under a New Administration

# Overview

1. Brief background on Animal Legal Defense Fund and the Litigation Team
2. Five Ongoing Animal Legal Defense Fund Lawsuits against the Federal Government
3. Reflection: Is the New Administration Moving towards Protecting Animals, and at What Pace?
4. Q&A

# Personal Views and Opinions

Standard Disclaimer:

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Opinions are personal  
and not necessarily  
representative of those of the  
Animal Legal Defense Fund  
or any clients.

# Animal Legal Defense Fund at-a-glance

- Litigation Program
  - Fellowships and clerkships.
  - Pro bono.



# Animal Legal Defense Fund at-a-glance

Mission:

To protect the lives and advance the interests of animals through the legal system.

# Animal Legal Defense Fund at-a-glance

- *Justice v. Vercher*, Oregon Court of Appeals

**teen**VOGUE

NEWS AND POLITICS

## A Horse Is Suing His Former Owners for Medical Expenses Stemming From Alleged Neglect

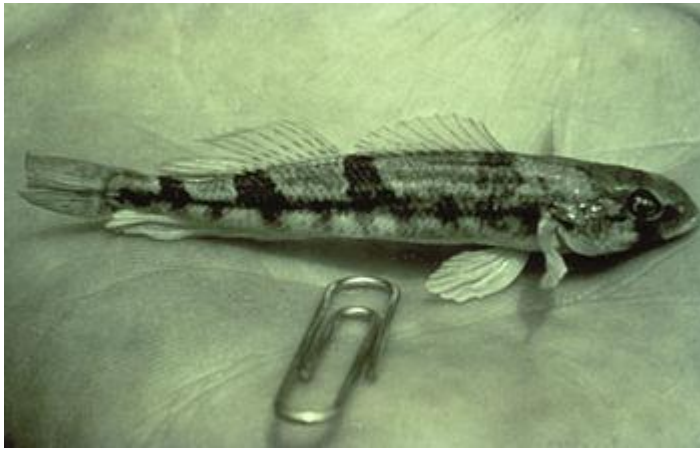
—  
A courtroom drama for horse girls everywhere.

**tV** Sarah Mearhoff  
AUG 14, 2018 3:45PM EDT



# Endangered Species Act

- *Tennessee Valley Authority (“TVA”) v. Hill*, 437 U.S. 153 (1978)



# Endangered Species Act: Previous Administration Rollback



Among other changes to implementation of the ESA, the previous administration's rules:

- Redefined to narrow the scope of protected "critical habitat"
- Consider the economic costs of protecting species
- Reduce consideration of climate change in determining whether to protect species



# Endangered Species Act: Lawsuit and New Administration Moves

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

v.

DAVID BERNHARDT, U.S. Secretary of the  
Interior; U.S. FISH AND WILDLIFE  
SERVICE; WILBUR ROSS, U.S. Secretary of  
Commerce; and NATIONAL MARINE  
FISHERIES SERVICE,

Defendants.

Case No. 4:19-cv-06812-JST

Related Cases: No. 4:19-cv-06013-JST  
No. 4:19-cv-06812-JST

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

(Administrative Procedure Act, 5 U.S.C.  
§ 551, et seq.)

CRITCHFIELD, HARRINGTON &  
SUTCLIFFE LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO



The screenshot shows the U.S. Fish & Wildlife Service website. The header includes the agency logo and the slogan "Conserving the Nature of America". Below the header is a search bar and social media icons for Facebook, Twitter, YouTube, and Instagram. Navigation links for "FWS Home", "Newsroom Home", and "Offices" are visible. The main content area features a "Back" link, a "PRESS RELEASE" label, and a headline: "U.S. Fish and Wildlife Service and NOAA Fisheries to Propose Regulatory Revisions to Endangered Species Act". The date "June 4, 2021" and contact information for Brian Hires and Kate Brogan are also displayed.

# National Environmental Policy Act

## A “Hard Look” Before You Leap:

- *Anderson v. Evans*, 314 F.3d 1006 (9th Cir. 2002)



# National Environmental Policy Act: Previous Administration Rollback

43304

Federal Register / Vol. 85, No. 137 / Thursday, July 16, 2020 / Rules

## COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Parts 1500, 1501, 1502, 1503,  
1504, 1505, 1506, 1507, 1508, 1515,  
1516, 1517, and 1518

[CEQ-2019-0003]

RIN 0331-AA03

### Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act

**AGENCY:** Council on Environmental  
Quality.

**ACTION:** Final rule.

**SUMMARY:** The Council on

- B. Council on Environmental Quality  
Regulations, Guidance, and Reports
- 1. Regulatory History
- 2. CEQ Guidance and Reports
- 3. Environmental Impact Statement  
Timelines and Page Count Reports
- C. Judicial Review of Agency NEPA  
Compliance
- D. Statutory Developm
- E. Presidential Directi
- F. Advance Notice of
- G. Notice of Proposed
- II. Summary of Final Ru
- A. Changes Througho
- B. Revisions To Upda
- Policy, and Mandat
- 1. Purpose and Policy
- 2. Remove and Reserv
- 3. NEPA Compliance
- 4. Reducing Paperwor
- (§§ 1500.4 and 1500
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# National Environmental Policy Act: Lawsuit and New Administration Moves

Case 1:20-cv-02715 Document 1 Filed 09/23/20 Page 1 of 33

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

IOWA CITIZENS FOR  
COMMUNITY IMPROVEMENT  
2001 Forest Avenue  
Des Moines, Iowa 50311,

ANIMAL LEGAL DEFENSE FUND  
525 East Cotati Avenue  
Cotati, California 94931,

ASSOCIATION OF IRRIGATED RESIDENTS  
29389 Fresno Avenue  
Shafter, California 93263,

INSTITUTE FOR AGRICULTURE  
AND TRADE POLICY  
2105 First Avenue South  
Minneapolis, Minnesota 55404,

WATERKEEPER ALLIANCE, INC.  
180 Maiden Lane, Suite 603  
New York, New York 10038, and

WATERKEEPERS CHESAPEAKE  
P.O. Box 11075  
Takoma Park, Maryland 20913,

*Plaintiffs,*

v.

COUNCIL ON ENVIRONMENTAL QUALITY  
1650 Pennsylvania Avenue NW  
Washington, D.C. 20502,

MARY NEUMAYR, Chairperson,  
Council on Environmental Quality  
1650 Pennsylvania Avenue NW  
Washington, D.C. 20502,

*Defendants.*

Civ. Action No. 20-cv-2715



ENERGY — 28 Jun 2021 | 21:06 UTC

## Eyeing changes, White House gives agencies two-year extension on NEPA

# Environmental Planning and Community Right-to-know Act (“EPCRA”)

*Sierra Club v. Tyson Foods*, 299 F. Supp. 2d 693, 714 (W.D. Ky. 2003)

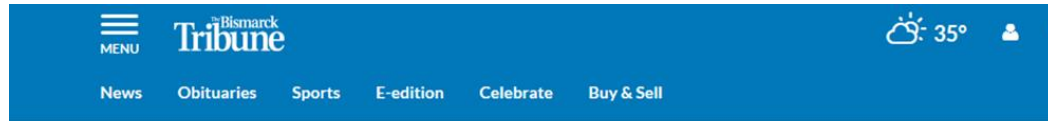
“Plaintiffs allege that venting gaseous ammonia into the atmosphere from the chicken houses is subject to the reporting requirements of CERCLA and EPCRA”

- Shellbank Facility, Battleboro, NC
- At over 8550 pigs, emits over 100 lbs ammonia per day



# EPCRA: Previous Litigation, Legislation and Rollback

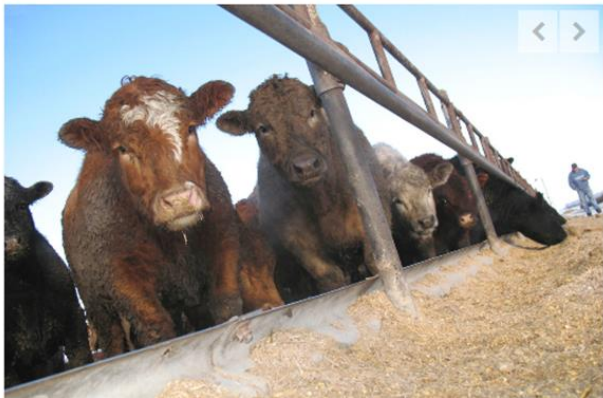
- FARM Act incorporated into Omnibus



## Livestock advocates worry about appeals court ruling on feedlot operators

Mikkel Pates Forum News Service Apr 30, 2017

SUBSCRIBE FOR 33¢ / DAY



## A New EPA Rule Would Allow Factory Farms to Avoid Reporting Air Pollution

A proposed rule from acting EPA administrator Andrew Wheeler would free large animal feedlots from having to report potentially toxic air emissions from animal waste.

# EPCRA: Lawsuit and New Administration Moves

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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RURAL EMPOWERMENT ASSOCIATION  
FOR COMMUNITY HELP, et al.,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, et al.,

Defendants.

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Civ. No. 18-cv-02260-TJK

**Motion for Summary Judgment  
And Request for a Hearing**



# Organic Foods Production Act ("Organic Welfare Rule")

7042 Federal Register / Vol. 82, No. 12 / Thursday, January 19, 2017

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 205

[Document Number AMS-NOP-15-0012;  
NOP-15-06FR]

RIN 0581-AD44

#### National Organic Program (NOP); Organic Livestock and Poultry Practices

**AGENCY:** Agricultural Marketing Service,  
USDA.

**ACTION:** Final rule.

**SUMMARY:** The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is amending the organic livestock and poultry production requirements by adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expanding and clarifying existing requirements covering livestock care and production practices and mammalian living conditions.

- A. Purpose of the Final Rule
- B. Summary of Provisions
- C. Costs and Benefits
- II. General Information
  - A. Does this Action Apply to Me?
- III. Background
- IV. Comments Received
  - A. Regulatory Authority of the Final Rule
  - B. Regulatory Clarity of the Final Rule
  - C. Consumer Education and Outreach
  - D. International Trade Agreements
  - E. Meat and Poultry Imports
- V. Related Documents.
- VI. Definitions (§ 205.2)
  - A. Description of Regulations
  - B. Discussion of Comments Received
- VII. Livestock Health Care Practices (§ 205.238)
  - A. Description of Regulations
  - B. Discussion of Comments Received
- VIII. Mammalian Living Conditions (§ 205.39)
  - A. Description of Regulations
  - B. Discussion of Comments Received
- IX. Avian Living Conditions (§ 205.241)
  - A. Description of Regulations
  - B. Discussion of Comments Received
- X. Transport (§ 205.242(a))
  - A. Description of the Final Rule
  - B. Discussion of Comments Received
- XI. Slaughter (§ 205.242(b) and (c))
  - A. Description of Regulations
  - B. Discussion of Comments Received





# Organic Welfare Rule: Previous Administration Rollback

## USDA will not impose additional rules for organic poultry, livestock

News [FOLLOW NEWS](#) | March 12, 2018



-USDA

WASHINGTON, March 12, 2018 — The U.S. Department of Agriculture announced a decision to withdraw the Organic Livestock and Poultry Practices (OLPP) rule, effective Jan. 19, 2017. The rule would have increased federal regulation of live animals for certified organic producers and handlers. The withdrawal becomes



Economic Policy

### Should 'USDA Organic' animals be treated more humanely? The Trump administration just said no.



# Organic Welfare Rule: Lawsuit and New Administration Moves

Case 3:18-cv-01763-RS Document 19 Filed 05/15/18 Page 1 of 42

1 GEORGE KIMBRELL (*Pro Hac Vice*)  
2 AMY VAN SAUN (*Pro Hac Vice*)  
3 SYLVIA SHIH-YAU WU (CSB No. 273549)  
4 Center for Food Safety  
5 303 Sacramento Street, 2nd Floor, San Francisco, CA 94111  
6 T: (415) 826-2770 / F: (415) 826-0507  
7 Emails: gkimbrell@centerforfoodsafety.org  
8 avansaun@centerforfoodsafety.org  
9 swu@centerforfoodsafety.org

10 *Counsel for Plaintiffs*

11 THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 NATIONAL ORGANIC COALITION, ) Case No. 3:18-cv-01763-RS  
14 CENTER FOR ENVIRONMENTAL )  
15 HEALTH, CENTER FOR FOOD SAFETY, )  
16 CULTIVATE OREGON, ) FIRST AMENDED COMPLAINT  
17 INTERNATIONAL CENTER FOR ) FOR DECLARATORY AND  
18 TECHNOLOGY ASSESSMENT, ANIMAL ) EQUITABLE RELIEF  
19 LEGAL DEFENSE FUND, AND HUMANE )  
20 SOCIETY OF THE UNITED STATES; )

21 *Plaintiffs,*

22 v.

23 SONNY PERDUE, in his official capacity as )  
24 the Secretary of Agriculture, BRUCE )  
25 SUMMERS, in his official capacity as )  
26 Acting Administrator of Agriculture )  
27 Marketing Service, RUIHONG GUO, Ph.D., )  
28 in her official capacity as Acting Deputy )  
29 Administrator of the National Organic )  
30 Program, and the UNITED STATES )  
31 DEPARTMENT OF AGRICULTURE )

32 *Defendants.*

## Statement from Agriculture Secretary Tom Vilsack on Organic Livestock and Poultry Practices Final Rule

**WASHINGTON, June 17, 2021** – Agriculture Secretary Tom Vilsack released the following statement today in regard to the Organic Livestock and Poultry Practices (OLPP) final rule:

“We intend to reconsider the prior Administration’s interpretation that the Organic Foods Production Act does not authorize USDA to regulate the practices that were the subject of the 2017 Organic Livestock and Poultry Practices (OLPP) final rule. **I have directed the National Organic Program to begin a rulemaking to address this statutory interpretation and to include a proposal to disallow the use of porches as outdoor space** in organic production over time and on other topics that were the subject of the OLPP final rule. We anticipate sending the proposed rule to OMB within six to nine months from the date of the remand. We look forward to receiving public comments on those topics and, after reviewing the comments, USDA will publish a final rule.”

### Statement

Release No. 0137.21

**Contact:** USDA Press

**Email:** [press@usda.gov](mailto:press@usda.gov)

# High Speed Pig Slaughter

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

ANIMAL LEGAL DEFENSE FUND, a non-profit corporation, 170 East Cotati Avenue, Cotati, CA 94931,

Plaintiff,

v.

HORMEL FOODS CORPORATION, 1 Hormel Place, Austin, MN 55912,

Defendant.

Case No. \_\_\_\_\_

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff Animal Legal Defense Fund ("ALDF"), a non-profit organization, by and



# High Speed Pig Slaughter: Previous Administration Giveaway to Industry

52300 Federal Register / Vol. 84, No. 190 / Tuesday, October 1, 2019 /

DEPARTMENT OF AGRICULTURE  
Food Safety and Inspection Service

9 CFR Parts 301, 309, and 310

[Docket No. FSIS-2016-0017]

RIN 0583-AD62

Modernization of Swine Slaughter  
Inspection

AGENCY: Food Safety and Inspection  
Service, USDA

employees but fewer than 500 employees, on January 29, 2020; and (3) In very small establishments, defined as all establishments with fewer than 10 employees or annual sales of less than \$2.5 million, on March 30, 2020.

**FOR FURTHER INFORMATION CONTACT:**  
Roberta Wagner, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205-0495.

## US moves to scrap speed limits on pig slaughter lines

**New rules will allow production lines at pork plants to run faster, despite concerns over safety and quality**

### INFORMATION:

ary  
, 2018, FSIS published to modernize swine tion (83 FR 4780). This , with modifications, a the proposed rule. shing an optional new m for market hog shments, NSIS, Agency's experiences

# High Speed Pig Slaughter: Lawsuits and New Administration Moves

Case 6:19-cv-06910-EAW Document 1 Filed 12/18/19 Page 1 of 48

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

FARM SANCTUARY; ANIMAL EQUALITY; )  
ANIMAL LEGAL DEFENSE FUND; CENTER )  
FOR BIOLOGICAL DIVERSITY; COMPASSION )  
OVER KILLING; MERCY FOR )  
ANIMALS, INC.; AND NORTH CAROLINA )  
FARMED ANIMAL SAVE, )

Plaintiffs, )

Civil Action No.: )

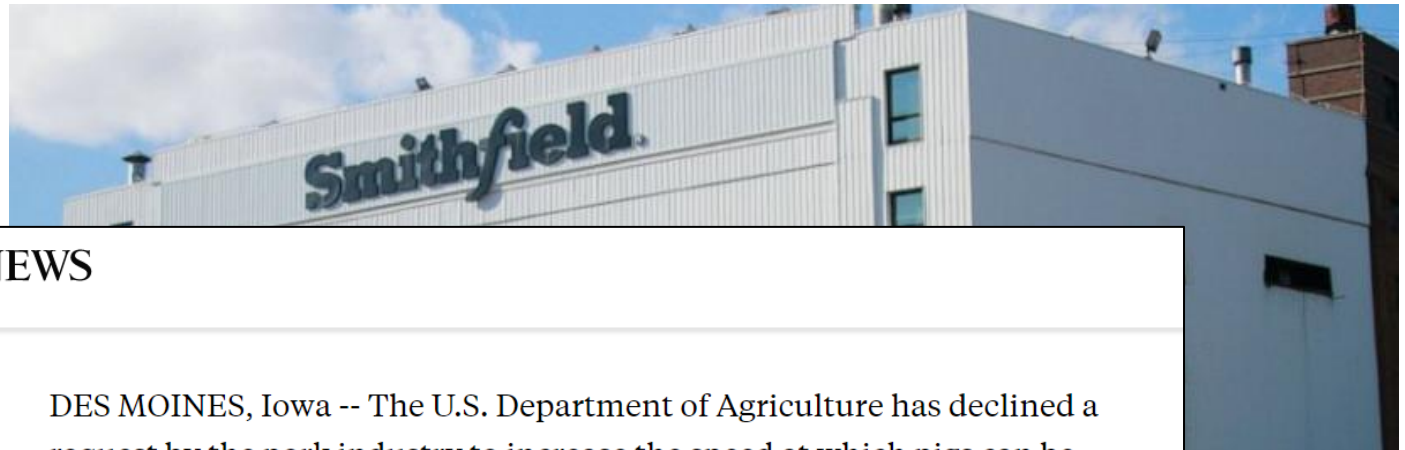
v. )

UNITED STATES DEPARTMENT OF )  
AGRICULTURE; FOOD SAFETY AND )  
INSPECTION SERVICE; AND CARMEN )  
ROTTENBERG IN HER OFFICIAL CAPACITY )  
AS FOOD SAFETY AND INSPECTION )  
SERVICE ADMINISTRATOR )

Defendants. )

## COMPLAINT FOR VACATUR, DECLARATORY, AND INJUNCTIVE RELIEF

1. Plaintiffs, 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, bring this suit to



abc NEWS

DES MOINES, Iowa -- The U.S. Department of Agriculture has declined a request by the pork industry to increase the speed at which pigs can be processed into meat, delivering a victory to slaughterhouse workers who had raised safety concerns about the plan.

The USDA announced Wednesday evening it would enforce a Minnesota judge's order issued in March. The judge struck down plans begun years ago but finalized by the USDA under former President [Donald Trump's](#) administration that would have lifted maximum line speeds at pork slaughterhouses, allowing dozens of plants to speed up production.

# Questions or Reactions?

- My email:
- [dwaltz@aldf.org](mailto:dwaltz@aldf.org)

