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November 15, 2017

Docket Clerk
Food Safety and Inspection Service
United States Department of Agriculture
Patriots Plaza 3
1400 Independence Avenue SW
Mailstop 3782, Room 8-163A
Washington D.C., 20250-3700

Re: Petition for Rulemaking to the Food Safety and Inspection Service to Include Chickens, Turkeys, and other Birds Slaughtered for Food Under the Humane Methods of Slaughter Act and the Humane Slaughter Provisions of the Federal Meat Inspection Act

Dear Docket Clerk,

Please see the attached citizens' petition for rulemaking to the Food Safety and Inspection Service, including exhibits in support of the Petition.

Please direct all correspondence regarding this Petition to:

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Sincerely,

A handwritten signature in blue ink, appearing to read "Vandhana Bala".

Vandhana Bala
General Counsel
Mercy For Animals

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INTRODUCTION

There is a major gap in the United States Department of Agriculture's implementation of the Humane Methods of Slaughter Act (HMSA) and the Federal Meat Inspection Act (FMIA): the agency's refusal to recognize protections for poultry under these laws. As a result, the HMSA, the only federal law protecting farmed animals against egregious cruelty at slaughter, covers just 2 percent of the animals who are slaughtered for food in this country.

As currently written, the HMSA and the FMIA authorize the United States Department of Agriculture (USDA)—through its Food Safety and Inspection Service (FSIS)—to regulate poultry along with other livestock. Such regulation is not only authorized but necessary to bring FSIS's implementation of the statutes into the 21st century by accurately reflecting the current reality of meat production. It is also critical to ensuring that standards of practice in the meat industry match consumer expectations for the treatment of all animals in the industry, both domestically and in trade markets.

Since enactment of the HMSA, the meat industry has undergone a seismic shift. The poultry sector now dominates every other meat sector, in terms of number of lives affected, per capita consumption, and profit. What we know about animals in the poultry industry has also significantly changed. Chickens are now scientifically recognized as highly intelligent, sentient beings as capable of experiencing pain and suffering as the cows, pigs, and sheep the HMSA currently covers. Accordingly, in 2005 Congress amended the FMIA, broadening the USDA's authority to include regulation of the slaughter of species not listed in the original statute. Pursuant to this authority, USDA can—and should—apply the handling and slaughter requirements of the HMSA to poultry.

Congress had three primary goals in enacting the HMSA: to prevent needless animal suffering, to make safer and better working conditions for slaughterhouse workers, and to benefit consumers.¹ Eliminating the arbitrary distinction between poultry and other types of livestock, and applying the HMSA to poultry, who constitute 98 percent of all animals slaughtered for food in this country, is necessary to fulfilling each of these goals.

USDA's refusal to include poultry under the HMSA and the FMIA would be arbitrary and capricious. Numerous undercover investigations and FSIS's own inspection records

¹ See 7 U.S.C. § 1901 (findings and declaration of policy).

of poultry slaughterhouses demonstrate that specific, enforceable regulatory controls for handling and slaughtering poultry are necessary to deter egregious cruelty.

For these reasons, we respectfully request² that FSIS issue regulations under the HMSA and the FMIA requiring the humane slaughter of poultry and the humane handling of poultry in connection with slaughter. Such regulations should make clear that (1) any method of slaughter that involves hanging of live, conscious chickens is not humane, and (2) enforcement actions, including withdrawal of inspection services, will be taken against establishments that fail to slaughter or handle poultry humanely.

INTEREST OF PETITIONER

Mercy For Animals (MFA) is a leading international animal protection charity dedicated to preventing cruelty to farmed animals and promoting compassionate food choices and policies. With operations in the United States, Canada, Brazil, Mexico, India, and Asia, MFA has conducted more than 60 undercover investigations of factory farms and slaughterhouses. Our corporate campaigns, which seek to end the worst forms of institutionalized animal abuse, have impacted animals in over 90 countries.

MFA's seven investigations of poultry slaughter plants in North America documented the cruelty inflicted on these animals at the time of slaughter in the absence of meaningful protections. Because current regulatory policies are inadequate to curtail egregious and illegal animal cruelty, MFA has had to direct significant organizational resources toward engaging companies to voluntarily adopt meaningful poultry welfare standards and commitments.

MFA has 2.5 million members and supporters, all of whom care about the humane treatment of animals raised and slaughtered for food. MFA's members are concerned that customary poultry handling and slaughter practices are cruel. MFA's members are also concerned that current FSIS regulations do not adequately protect poultry or adequately protect consumers from food safety risks or deceptive claims by the poultry industry regarding the treatment of poultry. Without meaningful regulation, MFA's members are concerned that slaughterhouses will continue their needlessly cruel practices.

REQUESTED ACTION

Petitioner respectfully requests that FSIS promulgate rules providing that:

² Pursuant to 5 U.S.C. § 553(e), 9 C.F.R. § 392, and 7 C.F.R. § 1.28.

1. The terms “livestock” and “other livestock,” as used in 7 U.S.C. §§ 1901 and 1902, include chickens, ducks, turkeys, and other species of birds slaughtered for human consumption;
2. chickens, ducks, turkeys, and other species of birds slaughtered for human consumption are “amenable species,” for purposes of 21 U.S.C. §§ 601(w)(3) and 603; and
3. pursuant to 7 U.S.C. § 1904, “methods of slaughter and the handling of [poultry] in connection with slaughter which are practicable . . . and humane with reference to other existing methods and . . . current scientific knowledge” be determined. (Any method that entails hanging of live, conscious chickens in shackles prior to any stunning should *not* be deemed a humane method of slaughter.)

The final rule might provide a reasonable timeline for affected slaughterhouses to implement new slaughter systems to come into compliance with the regulations.

Petitioner further requests that, consistent with the above rules, FSIS do the following:

4. Amend any existing regulations, directives, notices, and other policy and/or guidance memoranda to reflect that, pursuant to 21 U.S.C. § 603(b), “examination and inspection of the method by which [poultry] are slaughtered and handled in connection with slaughter in slaughtering establishments” within FSIS’s jurisdiction will be undertaken and FSIS “may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if [FSIS] finds that any [poultry] have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with [the HMSA, 7 U.S.C. §§ 1902–1906].”

FACTUAL BASIS FOR RULEMAKING

Massive growth and changes in the poultry industry since the HMSA’s original enactment mean any policy that falls short of including poultry under the HMSA is manifestly contrary to Congress’s goals in enacting this statute. It is now undeniable that poultry are as capable of suffering as the mammals FSIS protects under the HMSA. Given the serious animal welfare, food safety, worker safety, and consumer protection concerns within poultry slaughter, FSIS’s self-imposed distinction between poultry and other livestock is arbitrary and capricious and contrary to the intent of the HMSA.

Current policy with respect to handling and slaughter of poultry—merely encouraging “good commercial practices” (GCP)—is insufficient to prevent egregious cruelty and inhumane handling. This, in turn, jeopardizes food safety, imperils slaughterhouse workers, and undermines consumer confidence in the U.S. food system. Furthermore, in light of FSIS’s existing inspection activities and commitments already undertaken by some leaders in the poultry industry, the benefits to animals, workers, consumers, and businesses greatly outweigh any regulatory or fiscal burden caused by the proposed agency action. FSIS has a duty to fill this gap, and given the factual record before the agency, refusal to enact regulations mandating humane handling and slaughter of poultry would be arbitrary and capricious.

I. Changed Circumstances: U.S. Poultry Industry Then and Now

Since 1958, when the HMSA was originally enacted, the poultry industry has grown from a small, highly localized segment of the meat industry to the industry’s dominant segment. Also, our society has learned a great deal more about poultry—in particular, chickens: Their intelligence, ethology, and capacity to suffer make them far more like the animals currently covered under the HMSA than previously believed.

In 1958, poultry meat produced in the U.S. totaled 6,355 million pounds.³ But in 2005, when Congress added the term “amenable species” to the FMIA, total poultry meat production in the U.S. had increased to 41,981 million pounds.⁴ In 2016, it was 47,364 million pounds.⁵ Per capita consumption of poultry was 34.3 pounds in 1960 but is projected to be 108.6 pounds in 2017.⁶ Thus, since the HMSA was enacted, poultry production has increased over 745 percent, and consumption per person has increased 317 percent.

In contrast, red meat production has only increased from 29,407 million pounds in 1958 to 47,441.5 million pounds in 2014.⁷ Per capita consumption of total red meat (from

³ USDA Economic Research Service (ERS), Food Availability (Per Capita) Data System, <https://www.ers.usda.gov/data-products/food-availability-per-capita-data-system/> (scroll down to Poultry (chicken and turkey) to open excel spreadsheet) (last visited Oct. 24, 2017).

⁴ *Id.*

⁵ USDA National Agricultural Statistics Service (NASS), Poultry Slaughter Annual Survey (2016), <http://usda.mannlib.cornell.edu/usda/current/PoulSlauSu/PoulSlauSu-02-24-2017.pdf>.

⁶ National Chicken Council, Per Capita Consumption of Poultry and Livestock, 1965 to Estimated 2018, in Pounds, <http://www.nationalchickencouncil.org/about-the-industry/statistics/per-capita-consumption-of-poultry-and-livestock-1965-to-estimated-2012-in-pounds/> (last visited Oct. 24, 2017).

⁷ USDA ERS, *supra* note 3 (scroll down to Red Meat to open excel spreadsheet).

cows and pigs) was 133 pounds in 1960 and is projected to decrease to 109.4 pounds in 2017.⁸ Unlike poultry meat production, red meat production has only increased 160 percent and consumption has actually decreased by 17 percent.

Today, the number of birds used for poultry products far exceeds the number of animals used for red meat.

In 2016, federally inspected poultry plants slaughtered just over 9 *billion* individual chickens, turkeys, and ducks, while other federally inspected plants slaughtered approximately 146 million mammals, including all cattle, pigs, sheep, goats, and bison.⁹ According to USDA records, therefore, chickens, turkeys, and ducks make up 98 percent of all federally slaughtered land animals in the United States.¹⁰ Yet FSIS does not legally require poultry slaughterhouses to handle birds humanely or to render birds unconscious before shackling and bleeding, as is required for mammals under the HMSA.¹¹

At the time of the HMSA's original enactment, poultry killing and processing were largely executed by small local operations.¹² Now, just five companies breed, grow, slaughter, and process 60 percent of the chickens consumed in the United States, and three of those companies produce half of the country's chicken.¹³

Thus, since Congress first declared that all livestock be handled and slaughtered by humane methods, the livestock industry has completely shifted. Poultry production significantly impacts more lives than do other types of meat production—not just those

⁸ National Chicken Council, *supra* note 6.

⁹ USDA NASS, Livestock Slaughter Annual Summary (2016), <http://usda.mannlib.cornell.edu/usda/current/LiveSlauSu/LiveSlauSu-04-19-2017.pdf>.

¹⁰ This percentage is calculated using the figures from USDA NASS, Poultry Slaughter Annual Survey, *supra* note 5, and USDA NASS, Livestock Slaughter Annual Summary, *supra* note 9.

¹¹ Compare 9 C.F.R. §§ 313.2, 313.5, 313.15–16 (for each of the approved methods of slaughter under the HMSA, providing that it must be administered so that the animal is rendered unconscious and insensible before being shackled, hoisted, thrown, cast, or cut) with 9 C.F.R. § 381.90 (FSIS regulations under the PPIA only provide that “[c]arcasses of poultry showing evidence of having died from causes other than slaughter shall be condemned.”).

¹² Human Rights Watch, Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants 14 (2005), <https://www.hrw.org/report/2005/01/24/blood-sweat-and-fear/workers-rights-us-meat-and-poultry-plants>.

¹³ Austin Alonzo, *Top 5 Broiler Producers Dominate US Production*, WATTAGNET.COM (June 1, 2016), <http://www.wattagnet.com/articles/26925-top-5-broiler-producers-dominate-us-production>.

of animals but those of workers and consumers. Yet FSIS allows the poultry industry alone to handle livestock without any mandatory animal welfare standards. Given the serious and undeniable animal welfare concerns raised by current poultry slaughter practices, the agency's persistent failure to apply the protections of the HMSA to poultry renders the statute anachronistic and is arbitrary and capricious.

FSIS should therefore implement and enforce the HMSA in a manner that reflects the modern reality of the industry, our food system, and consumer expectations.

II. Regulating Poultry Slaughter Under the HMSA Furthers Each of Congress's Goals in Enacting the Statute

The text of the HMSA outlines Congress's key goals in enacting the HMSA: (1) preventing needless animal suffering, (2) making slaughter work safer, and (3) providing benefits to consumers. Failure to extend the HMSA's protections to poultry slaughter is an abdication of FSIS's duty to give effect to congressional intent.

A. Including Poultry in the HMSA Would Undeniably Prevent Needless Animal Suffering

Current standard practices in poultry slaughter, as described in detail below, cause needless suffering for birds.

Under the current regime, inspection program personnel are instructed to observe and document process control failures that lead to mishandling, mutilation, or death of large numbers of birds—that is, not following “Good Commercial Practices” (GCP).¹⁴ Currently, FSIS deems only serious instances, such as large numbers of birds entering the scalding tank while breathing, to be non-compliant with GCP. Cases involving a single bird or a small number of birds are not considered noncompliances.¹⁵ Therefore, an untold number of birds injured, mutilated, or dead other than by slaughter go unacknowledged and such instances unabated.

Further, FSIS is limited in the enforcement actions it can take for violations in poultry slaughterhouses. While inspectors can document GCP noncompliance and take regulatory control action (temporarily stopping the line), FSIS cannot suspend or

¹⁴ FSIS Directive 6100.3, Ante-Mortem and Post-Mortem Inspection of Poultry.

¹⁵ FSIS Notice 44–16: Instructions for Writing Poultry Good Commercial Practices Noncompliance Records and Memorandum of Interview Letters for Poultry Mistreatment 2–3 (June 27, 2016).

withdraw inspection, which severely curtails the sole enforcement mechanism of consequence available to FSIS.¹⁶ In contrast, if any of the incidents of injury, mutilation, and botched slaughter of birds described below involved mammals slaughtered for human consumption, the slaughterhouses would be subject to the full spectrum of FSIS enforcement actions, including suspension or withdrawal of inspection services by FSIS.

Protecting poultry under the HMSA by eliminating this arbitrary distinction is necessary to give effect to Congress's goal of preventing needless animal suffering. Birds are as capable of suffering as the mammals currently protected under the HMSA, and both FSIS inspection reports and undercover investigations demonstrate that egregious cruelty and animal suffering occur at every step of the poultry slaughter process: transport, handling, hanging, stunning, cutting, bleeding, and scalding.

1. Birds Are as Capable of Suffering as the Mammals Currently Protected Under the HMSA

A vast body of scientific evidence demonstrates that birds suffer just as much from inhumane handling as mammals do. Birds have highly developed pain sensors similar to those of mammals located in their beaks, mouths, noses, and skin.¹⁷

Chickens raised for their meat commonly suffer from severe lesions to the feet, footpad dermatitis, inflammatory joint disease, and lameness, all of which are chronically painful conditions.¹⁸ These conditions aggravate the suffering of birds from handling, shackling, and slaughter.

Even the poultry industry recognizes that chickens are capable of suffering from stress.¹⁹ As one leading expert explains, both mammals and birds "are, by virtue of being sentient, equally susceptible to suffer pain and distress."²⁰

¹⁶ 9 C.F.R. §§ 500.2–500.4, 500.6.

¹⁷ Michael J. Gentle, *Pain Issues in Poultry*, 135 APPLIED ANIMAL BEHAVIOR SCIENCE 252, 255 (2011); M.J. Gentle and V.L. Tilston, *Nociceptors in the Legs of Poultry: Implications for Potential Pain in Pre-Slaughter Shackling*, 9(3) ANIMAL WELFARE 227, 234 (2000); J.M. Sparrey & P.J. Kettlewell, *Shackling of Poultry: Is It a Welfare Problem*, 50 WORLD'S POULTRY SCI. J. 167, 174 (1994).

¹⁸ Gentle (2011), *supra* note 17, at 255–56.

¹⁹ See W.S. Virden, M.T. Kidd, *Physiological Stress in Broilers: Ramifications on Nutrient Digestibility and Responses*, 18(2) J. APPL. POULTRY RES. 338, 338–339 (2009).

²⁰ Mohan Raj, *Stunning and Slaughter in* IAN DUNCAN AND PENNY HAWKINS, ED., *THE WELFARE OF DOMESTIC FOWL AND OTHER CAPTIVE BIRDS* 260 (2010).

The fact that birds suffer and feel pain at all should be enough in a civilized society to compel us to protect them. But if additional arguments are needed, chicken ethology places them on a par with mammals, including the mammals currently protected under the HMSA, in terms of sentience and intelligence. Studies have found that even five-day-old chicks can do basic arithmetic and differentiate sets of objects based on how many objects are in each set. Such cognitive abilities are comparable to those of chimpanzees, bottlenose dolphins, and African grey parrots.²¹ Experts have found that “[c]hickens don’t just live in the present, but can anticipate the future and demonstrate self-control, something previously attributed only to humans and other primates.”²² They can “understand that an object, when taken away and hidden, nevertheless continues to exist. *This is beyond the capacity of small children.*”²³ Chickens are also emotionally intelligent: They exhibit empathy and appreciate the perspective of other birds.²⁴

Given this remarkable intelligence and capacity for suffering, the failure to regulate slaughter of poultry causes “needless suffering” in contravention of the language, intent, and purpose of the HMSA.²⁵

2. Birds Needlessly Suffer During Transport to Slaughter

When birds arrive at poultry slaughterhouses, they are often already injured from being thrown and crammed into transport cages.²⁶ Birds are sometimes dead on arrival

²¹ Lori Marino, *Thinking Chickens: A Review of Cognition, Emotion, and Behavior in the Domestic Chicken*, 20 *ANIMAL COGNITION* 127, 131 (2017); see also Nicholas Kristof, *Are Chickens Brighter Than Babies?*, *NY TIMES* (Oct. 20, 2013),

<http://www.nytimes.com/2013/10/20/opinion/sunday/are-chicks-brighter-than-babies.html>.

²² Jennifer Viegas, *Chickens Worry About the Future*, *ABC SCIENCE* (July 15, 2005),

<http://www.abc.net.au/science/articles/2005/07/15/1415178.htm>.

²³ William Grimes, *If Chickens Are So Smart, Why Aren’t They Eating Us?*, *N.Y. TIMES* (Jan. 12, 2003), <http://www.nytimes.com/2003/01/12/weekinreview/if-chickens-are-so-smart-why-aren-t-they-eating-us.html> (emphasis added).

²⁴ Carolyn L. Smith and Sarah L. Zielinski, *The Startling Intelligence of the Common Chicken*, *SCI. AM.* (Feb. 2014), <http://www.scientificamerican.com/article/the-startling-intelligence-of-the-common-chicken/>.

²⁵ 7 U.S.C. § 1901 (“The Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering . . .”).

²⁶ Undercover videos have documented workers doing this. See, e.g., Mercy For Animals, *Tyson Tortures Animals*, at 1:04 to 1:10 (May 24, 2016), <http://www.tysontorturesanimals.com/> (workers holding chickens by their legs and throwing them several at a time into transport crates); Mercy For Animals, *Chick-fil-A Suppliers Caught on Hidden-Camera Torturing Animals*, at 0:46–1:12 (Nov.

because of overcrowding in these cages or because they were exposed to extreme temperatures during transportation. There have also been multiple incidents in which slaughterhouse personnel callously left birds who had survived the journey in transport cages. Exposure to the elements for hours or even days resulted in mass casualties.

Inspection program personnel are currently instructed to observe and document mishandling that results in birds frozen in their cages or dead from heat exhaustion and trucks driving over or equipment crushing live birds.²⁷ But there is no regulatory enforcement mechanism of consequence other than condemnation as “adulterated” of carcasses of birds who have died “other than by slaughter.”²⁸ Most producers will likely view these mortalities as a mere cost of doing business. Thus, in the absence of enforcement authority, no incentive exists for preventing the horrific suffering of birds, which results in repeat egregious incidents that are easily preventable.

For example, twice in two months in 2015, plant personnel at Tip Top Poultry left thousands of birds who had arrived by truck on the slaughterhouse premises for two whole days without food, water, or protection from the elements, causing these birds to suffer and die in their transport cages. Plant personnel did so despite the inspectors’ urging to move or process the animals.²⁹ On both of these occasions, the weather approached 100 degrees. Knowledge that the agency is toothless in taking action to prevent cruelty to poultry is the only explanation for such flagrant disregard of FSIS inspectors’ recommendations and of animal welfare.

These were not isolated incidents. In just a three-year sample of enforcement records (December 2011 to April 2014) collected and analyzed by the Animal Welfare Institute, there were at least 67 incidents documented by FSIS inspectors in noncompliance records or memoranda of interviews where birds were either DOA because of exposure to extremely cold temperatures in transport or dead from being left in cages after arrival without protection from the weather.³⁰

19, 2014), <http://www.chickfilacrueity.com/> (workers holding chickens by their legs and throwing them several at a time and from some distance into transport cages, slamming cage doors on chicken wings, kicking chickens on the floor).

²⁷ FSIS Directive 6100.3: Ante-Mortem and Post-Mortem Inspection of Poultry 4 (2011).

²⁸ *Id.* at 3.

²⁹ See Letter from Vandhana Bala, General Counsel of Mercy For Animals, to Alfred Almanza re. Tip Top Poultry (Aug. 12, 2016) (attached); Response from William C. Smith, Assistant Administrator, OFO, (Oct. 19, 2016) (attached).

³⁰ Animal Welfare Institute (AWI), *The Welfare of Birds at Slaughter in the United States* 9 (Figure 5) (2016), <https://awionline.org/sites/default/files/products/FA-Poultry-Slaughter-Report-2016.pdf> (hereinafter, “AWI Report”).

Had any of these incidents involved cows, pigs, or other mammals slaughtered for human consumption, FSIS inspectors could at a minimum have temporarily halted slaughter and even have suspended inspection at the slaughterhouse.³¹ FSIS inspectors, who are this country's frontline of food safety and animal welfare, should have similar enforcement authorities over poultry slaughterhouses. Otherwise FSIS's own inspectors, highly trained officials and veterinarians, are reduced to pleading for bird welfare with the very entities that FSIS is charged with regulating.

3. Birds Needlessly Suffer from Inhumane Handling in Connection with Slaughter

After delivery, plant employees unload the birds from the crates by upending the cages or by quickly and violently pulling the birds out of the cages. The process of unloading and dumping birds onto conveyor belts can cause bruising and severe injuries, particularly for birds who already have leg deformities or broken bones.³²

Both undercover investigations and FSIS inspection reports confirm that birds are frequently mishandled during removal from transport cages. To list just a few recent examples, the following undercover investigations at chicken slaughter plants documented cruel handling of birds prior to slaughter:

- A 2015 MFA investigation of a Wayne Farms slaughterhouse in North Carolina documented Wayne Farms employees pulling numerous dead chickens (dead on arrival, or DOA) from transport bins, roughly dumping birds out of transport bins onto the conveyor belt, and hanging severely injured birds with broken bones into shackles.³³ The investigator also documented the plant manager instructing workers to hang birds regardless of whether they had broken bones or wings. "If they're breathing, you need to hang 'em," he said.³⁴

³¹ See 9 C.F.R. § 313.2(e).

³² Because of genetic manipulation and rapid growth, chickens raised for meat (referred to by the industry and FSIS as "broilers") frequently suffer from leg deformities. D. Sahbiha, *Leg Weaknesses/Disorders in Poultry*, Avitech Technical Bulletin (2009) (cited in American Society for the Prevention of Cruelty to Animals, *A Growing Problem: Selective Breeding in the Chicken Industry and the Case for Slower Growth*, https://www.aspc.org/sites/default/files/chix_white_paper_nov2015_lores.pdf). The birds may already be suffering broken bones from inhumane handling on the farm or during capture for transport. See Raj (2010), *supra* note 20; see also *supra* note 26.

³³ Mercy For Animals, *The Video the Poultry Industry Doesn't Want You to See*, at 0:27–0:53 (Mar. 14, 2015), <http://www.goryfoodservice.com/>.

³⁴ *Id.* at 0:55–1:04.

- In the same investigation, the investigator documented Wayne Farms employees tormenting birds on the conveyor belt before hanging, including by suffocating live birds with their gloved hands.³⁵
- A 2014 MFA investigation of a Koch Foods slaughterhouse in Chattanooga, Tennessee, documented plant employees dumping chickens from transport crates onto the conveyor belt, tossing chickens who had fallen from the belt up into the air and onto the belt overhead,³⁶ and violently throwing and kicking birds while “catching” them at the farm to deliver to slaughter.
- A 2015 investigation by the Animal Legal Defense Fund of a Tyson Foods slaughterhouse in Carthage, Texas, documented how Tyson employees in the receiving area were required to dump a certain number of transport crates per day, which they did without regard to the proper functioning of the conveyor belt. During the investigator’s 30-day period of employment at the plant, she witnessed numerous mass deaths when hundreds of birds were piled on the belt and suffocated.³⁷

FSIS inspection records from 2011 to 2014 have documented at least 112 similar instances of inhumane handling of birds by establishment employees prior to slaughter, 117 instances of mechanical problems on the line leading to injury and death of birds, and 128 instances of cages in disrepair and cage unloading problems.³⁸ For each of these instances, there are probably many more involving fewer birds, since FSIS personnel are instructed that only loss of “process control” is a noncompliance.³⁹ The following are examples of such instances:⁴⁰

- At PECO Foods Plant on February 12, 2013, a chicken’s leg was stuck in a hole in a crate, and when the bird pulled his leg out of the hole, it was cut open to the bone.
- At Tyson Foods on November 15, 2013, 212 birds died of suffocation in a pileup on the conveyor belt while birds were being unloaded from the transport crate.

³⁵ *Id.* at 1:06–1:12.

³⁶ *Chick-fil-A Suppliers Caught on Hidden-Camera Torturing Animals*, *supra* note 26, at 1:27–1:36.

³⁷ Letter from Animal Legal Defense Fund (ALDF) to FSIS Administrators and Directors at 12–15 (September 14, 2015), <http://aldf.org/wp-content/uploads/2015/09/09-14-15-FSIS-Complaint-for-Public.pdf>.

³⁸ AWI Report, *supra* note 30 at 9 (Figure 5).

³⁹ FSIS Notice 44–16 at 2.

⁴⁰ Each of these records is from AWI Report, *supra* note 30, at 10–13.

- At Garner Abattoir on June 7, 2013, during postmortem inspection, at least half of the carcasses were found with bruised or broken wings and other broken and dislocated bones.
- At Perdue Farms on May 6, 2012, inspectors observed broken wings on more than one-fifth of the birds entering the slaughter plant.
- At Case Farms Processing on February 14, 2013, inspectors observed workers throwing as many as 10 live birds against the wall in the live-hang area.

While District Veterinary Medical Services may report certain instances to local law enforcement via a "letter of concern,"⁴¹ Petitioner is unaware of any letter of concern that has resulted in charges brought by state or local law enforcement.

4. Birds Needlessly Suffer from Inhumane Methods of Slaughter

i. Shackling Live Birds Is Needlessly Inhumane and Stressful

With the single exception of poultry, no other animals slaughtered for meat are hung upside down in shackles while they are still alive and fully conscious prior to slaughter. Live hanging or shackling of chickens results in cruel handling and tremendous suffering at slaughter. To keep up with line speeds, workers grab chickens and shackle them upside down quickly and roughly.⁴²

Numerous studies have concluded that live shackling of chickens is "a very painful procedure."⁴³ Shackling can be even more painful in male birds, who have larger legs, and in animals suffering diseases, deformities, and injuries—which are common in chickens raised for meat and "spent" laying hens.⁴⁴ Many birds arrive at the

⁴¹ FSIS Directive 6100.3 at 5.

⁴² Sara Shields and Mohan Raj, An HSUS Report: The Welfare of Birds at Slaughter 2 (2008), https://www.researchgate.net/publication/238675067_An_HSUS_Report_The_Welfare_of_Birds_at_Slaughter; see also *infra* notes 48 to 53.

⁴³ Michael J. Gentle, *Pain Issues in Poultry*, 135 APPLIED ANIMAL BEHAVIOR SCI. 252, 255 (2011); see also Michael J. Gentle and V.L. Tilston, *Nociceptors in the Legs of Poultry: Implications for Potential Pain in Pre-slaughter Shackling*, 9(3) ANIMAL WELFARE 227, 234 (2000); J.M. Sparrey and P.J. Kettlewell, *Shackling of Poultry: Is It a Welfare Problem?*, 50 WORLD'S POULTRY SCI. J. 167, 174 (1994).

⁴⁴ Sara Shields and Mohan Raj, *A Critical Review of Electrical Water-Bath Stun Systems for Poultry Slaughter and Recent Developments in Alternative Technologies*, 13(4) J. APPLIED ANIMAL WELFARE SCI. 281, 283 (2010).

slaughterhouse with leg injuries or deformities.⁴⁵ Animal welfare experts suggest that these birds already suffer so much from their lameness that they should be euthanized prior to hanging.⁴⁶

Further, many studies of poultry welfare establish that “[h]anging upside down is a physiologically abnormal posture for chickens, and handling, inversion, and shackling are ‘traumatic’ and stressful.”⁴⁷ Stressed birds struggle and flap their wings. At least 90 percent of birds flap immediately after shackling and 66 percent flap in response to any irregular movement on the line.⁴⁸ This can cause a bird’s throat to miss the kill blade. When this happens, birds can be mutilated, but not killed, before entering the scalding tank.

The following small sample of recent investigations documented cruelty to birds from live shackling:

- A 2015 MFA investigation at Tyson Foods in Carthage, Mississippi, documented Tyson employees throwing birds into the shackles instead of properly hanging them, punching birds after they were shackled, and ripping the heads off live animals.⁴⁹
- The same MFA investigation of Tyson Foods documented birds on the line who were still conscious after they had passed the kill blade, live birds on the line who had missed the kill blade entering the decapitator, and improperly shackled birds getting their feet cut off by the decapitator instead of their heads while still alive and fully conscious.
- A 2015 MFA investigation at Foster Farms in Fresno, California, documented Foster Farms employees violently throwing birds into the shackles instead of properly hanging them, throwing and punching birds, and ripping the feathers out of live birds to throw them at coworkers.⁵⁰

⁴⁵ A significant percentage of birds are lame on arrival at poultry slaughterhouses. Raj (2010), *supra* note 20, at 262; Sparrey and Kettlewell (1994), *supra* note 43, at 171.

⁴⁶ Raj (2010), *supra* note 20 at 262; Sparrey and Kettlewell (1994), *supra* note 43, at 171.

⁴⁷ Shields and Raj (2010), *supra* note 44, at 283.

⁴⁸ *Id.*

⁴⁹ Mercy For Animals, *Tyson Caught on Hidden Camera Ripping Heads Off Live Animals* (Oct. 27, 2015), <https://www.youtube.com/watch?v=0L2mGC4zezM>.

⁵⁰ Mercy For Animals, *Shocking Animal Abuse Exposed at “American Humane Certified” Foster Farms Slaughterhouse* (June 17, 2015), <https://www.youtube.com/watch?v=vBZW2FKs8qs>.

- The same MFA investigation of Foster Farms also documented improperly shackled birds who had missed the kill blade heading live and conscious to the scalding tank, and carcasses of “red birds” who had been scalded alive.
- A 2015 investigation by Compassion Over Killing at Mountaire Farms in Robeson County, North Carolina, documented employees violently throwing birds at the shackles instead of properly hanging them; punching, shoving, and pushing birds who were hanging in the shackles; and ripping the feathers out of live birds to throw them at coworkers.⁵¹
- A 2015 investigation by the Humane Society of the United States at Butterfield Foods Company in Butterfield, Minnesota, documented numerous birds on the line flapping their wings after going through the electric bath and kill blade and 45 birds scalded alive within 30 minutes.⁵²
- A 2015 investigation by ALDF at Tyson Foods documented employees slamming birds into shackles with great force, intentionally mistreating birds by spiking them down onto the conveyor belt, and throwing chickens around the room like footballs.⁵³
- The same ALDF investigation of Tyson Foods also documented numerous improperly hung birds entering the scalding tank alive.
- A 2014 MFA investigation of a Koch Foods slaughterhouse in Chattanooga, Tennessee, documented many post-electric-bath birds flapping their wings, birds cut on the wings and chest instead of on the throat, and birds scalded alive.⁵⁴

FSIS inspection records document the same issues at numerous other facilities. Records from 2011 to 2014 document 187 reported instances of improper shackling, stunning, or cutting, and an additional 433 instances of improper shackling, stunning, or cutting that resulted in birds dying in the scalding tank.⁵⁵

The following are just a few examples of documented process control failures leading to improper cuts, including incidents where large numbers of birds died in the scalding tank because of improper shackling:⁵⁶

⁵¹ Compassion Over Killing, *Mountaire Farms Chicken Slaughterhouse* (May 4, 2015), <http://cok.net/inv/mountaire/>.

⁵² Humane Society of the United States, *Spent Hen Slaughter Exposé: Birds Abused and Scalded Alive* (Jan. 5, 2015), <https://www.youtube.com/watch?v=eM-lsyyfSmE>.

⁵³ Letter from ALDF to FSIS, *supra* note 37, at 18–20.

⁵⁴ *Chick-fil-A Suppliers Caught on Hidden-Camera Torturing Animals*, *supra* note 26.

⁵⁵ AWI Report, *supra* note 30, at 10.

⁵⁶ The following instances are drawn from AWI’s report at 9–10.

- At Case Farms of Ohio on July 31, 2013, 115 birds had to be manually bled in five minutes because they were hanging by only one leg in the shackles.
- At Case Farms of Ohio on November 21, 2014, live birds were taken off the line just before entering the scalding tank and one had been cut by the kill blade across her face.
- At Case Farms Processing on November 27, 2013, 42 live birds were taken off the line before entering the scalding tank with insufficient cuts.
- At Townsends on May 8, 2011, 41 live birds were taken off the line before entering the scalding tank—all had missed the kill blade.
- At Foster Farms on June 30, 2011, 37 birds drowned in the scalding tank within a 25-minute period.
- At House of Raeford Farms on July 27, 2013, 47 birds drowned in the scalding tank before the USDA inspector intervened.
- At Pilgrim's Pride on August 18, 2014, 101 cadaver birds⁵⁷ were observed on the line with either no neck cut or an insufficient neck cut.
- At Tyson Foods on Dec 3, 2012, 183 birds were observed to have entered the scalding tank alive.

The following are just a few examples of documented process control failures revealing the bruising and broken wings caused by the standard industry practice of rapidly shackling live birds:⁵⁸

- At Garner Abattoir on June 7, 2013, half or more of the bird carcasses at postmortem inspection exhibited bruised or broken wings and legs, broken ribcages, and dislocated legs.
- At Cargill Meat Solutions on December 14, 2012, as many as 10 birds in 10 minutes were observed with broken and dislocated wings, and the bruising on their bodies indicated that the injuries had occurred while the birds were still alive.
- At Perdue Farms on May 6, 2012, more than 20 percent of the birds were observed to have at least one broken wing.
- At Pilgrim's Pride on January 15, 2011, many birds were observed on postmortem inspection to have broken bones and bruising.

⁵⁷ "Cadavers are poultry that die from causes other than slaughter or are not physiologically dead because of ineffective slaughter before they enter the scald vat and drown." FSIS Directive 6100.3 at 9.

⁵⁸ These incidents are from AWI Report, *supra* note 30, at 11.

Under current FSIS policy, inspectors are to note whether any birds go into the scalding tank still breathing and whether there are increased numbers of “cadavers,” or birds who died in the scalding water instead of bleeding out.⁵⁹ However, postmortem condemnation of cadavers does not effectively address the needless suffering of the animals or adequately deter violations, as evidenced by the consistent documentation of egregious cruelty by undercover investigations at random slaughterhouses and by FSIS records showing repeat violators.⁶⁰ Although FSIS inspection officials were present during each of the incidents described above, Petitioner is unaware of any letter of concern sent to local officials urging investigation of the apparent and egregious animal cruelty.

ii. Current Customary Methods Use Electric Water-Bath Stunning to Induce Paralysis at Killing, Not Unconsciousness

The most commonly used poultry slaughter system (live shackle with electric-bath stunning) does not render birds fully unconscious and insensitive to pain. FSIS currently directs inspectors to note signs of effective stunning, including an arched neck and tucked wings.⁶¹ Studies suggest, however, that these physical signs are merely symptomatic of tonic seizure and paralysis, not true unconsciousness—particularly given the standard settings used in the U.S.⁶² In other words, it is highly likely that birds slaughtered in the United States are sensible to pain—but immobile—when their throats are slit.

Current customary settings for electric-stunning systems in poultry slaughter do not adequately produce unconsciousness because they aim to optimize meat quality rather than animal welfare.⁶³ Several laboratory studies using electroencephalogram recordings of birds after electrical stunning reveal that the frequencies and settings commonly used in U.S. slaughterhouses do not achieve immediate unconsciousness in the birds.⁶⁴ One study found that as few as 36 percent of chickens are adequately stunned at settings commonly used in U.S. slaughter plants.⁶⁵ This may be due to

⁵⁹ FSIS Directive 6100.3 at 4–5.

⁶⁰ AWI Report, *supra* note 30, at 14–16.

⁶¹ FSIS Directive 6100.3 at 4.

⁶² Charlotte Berg and Mohan Raj, *A Review of Different Stunning Methods for Poultry—Animal Welfare Aspects*, 5 ANIMALS 1207, 1211 (2015); Shields and Raj (2010), *supra* note 44, at 287–288; Shields and Raj (2008), *supra* note 42, at 4–5.

⁶³ *Id.* at 285; Berg and Raj (2015), *supra* note 62, at 1211.

⁶⁴ See Shields and Raj (2010), *supra* note 44, at 284–285.

⁶⁵ Shields and Raj (2010), *supra* note 44, at 287.

multiple birds in the water bath at one time, which causes birds to receive inconsistent currents.⁶⁶ The electrical current experienced by each bird is highly variable, and the process and integrity of the electric-bath stunning system are difficult to control.⁶⁷

When birds are not stunned immediately upon entering the water bath, they can flap their wings in distress and suffer painful electric shocks on their wings.⁶⁸ Turkeys are especially prone to pre-stun shocks due to their shape.⁶⁹ Birds who are too short or who continue to struggle in the shackles often miss the bath entirely.⁷⁰ Birds who are hung improperly or are moving can also miss the kill blade and enter the scalding tank alive and conscious.⁷¹ This is especially likely if the plant does not employ a worker to cut the throats of the birds who miss the automated cutter or if that worker is distracted by other tasks or incapable of keeping up with the fast line speeds.⁷²

Therefore, by failing to prescribe methods of slaughter and handling in connection with slaughter for poultry that comply with the HMSA, USDA effectively authorizes and even sanctions egregious cruelty during the slaughter process for approximately 9 billion animals each year.

B. Regulating Poultry Slaughter Under the HMSA Would Result in Safer Working Conditions

Another goal of the HMSA is to make slaughterhouse work safer. Poultry workers make up at least 50 percent of the meat industry workforce.⁷³ FSIS's failure to include poultry under the HMSA thus leaves behind at least one-half of the meat industry's workers in contravention of one of the three main goals of the statute.

⁶⁶ Berg and Raj (2015), *supra* note 62, at 1211; Shields and Raj (2008), *supra* note 42, at 4; Mohan Raj and Angeliki Tserveni-Gousi, *Stunning Methods for Poultry*, 56(4) WORLD'S POULTRY SCI. J. 291, 293-4 (2000).

⁶⁷ Shields and Raj (2010), *supra* note 44, at 286.

⁶⁸ Berg and Raj (2015), *supra* note 62, at 1211.

⁶⁹ Shields and Raj (2008), *supra* note 42, at 2.

⁷⁰ *Id.* at 5.

⁷¹ *Id.*; see also *supra* notes 48 to 55.

⁷² Shields and Raj (2008), *supra* note 42, at 6.

⁷³ National American Meat Institute, Fact Sheet: Employment and Wages in the Meat Industry, <https://www.meat institute.org/index.php?ht=a/GetDocumentAction/i/82885> (citing U.S. Department of Labor data from 2010 stating that there are 332,900 workers in meat packing and meat processing, and 224,700 workers in poultry processing).

Poultry slaughter and processing is dangerous, harmful, and often cruel to the people who toil in these facilities.⁷⁴ In 2004, after conducting a thorough study of the meat and poultry slaughter industries and conducting interviews with dozens of workers, Human Rights Watch—an NGO that typically focuses on human rights atrocities in developing nations—concluded that the United States was “failing to meet its obligations under international human rights standards to protect the humane rights of meat and poultry industry workers” and that “systematic human rights violations [are] embedded in meat and poultry industry employment.”⁷⁵

As with the cruelty to birds detailed above, a significant cause of unsafe working conditions for poultry slaughter workers is the recklessly fast slaughter line speeds. The live-shackle method of slaughter further exacerbates the danger to workers. They must hang live, struggling birds as the line speeds by at 180 shackles per minute.⁷⁶ Poultry workers revealed to Oxfam America that, while they were told they’d have to work at a rate of 25 birds per minute, once on the job they were required to hang 33 chickens per minute into the shackles.⁷⁷ Similarly, an undercover investigator hired to work in the live-hang department of a Tyson Foods poultry slaughter facility in Carthage, Texas, in 2015 reported that Tyson had demanded that workers hang 35 chickens per minute.⁷⁸

The Southern Poverty Law Center reported that 74 percent of poultry slaughter workers doing live-hang work in Alabama reported chronic, debilitating pain from repetitive motion injuries.⁷⁹ During hanging, the birds frequently scratch, peck, urinate,

⁷⁴ See Human Rights Watch, *supra* note 12; Southern Poverty Law Center (SPLC) and Alabama Appleseed, *Unsafe at These Speeds: Alabama’s Poultry Industry and its Disposable Workers* (2013), https://www.splcenter.org/sites/default/files/Unsafe_at_These_Speeds_web.pdf; Oxfam America, *Lives on the Line: The Human Cost of Cheap Chicken* (2015), https://www.oxfamamerica.org/static/media/files/Lives_on_the_Line_Full_Report_Final.pdf.

⁷⁵ Human Rights Watch, *supra* note 12, at 2 (2004).

⁷⁶ Humane Society of the United States, *An HSUS Report: Human Health Implications of Live Hang of Chickens and Turkeys on Slaughterhouse Workers 2*, <http://www.humanesociety.org/assets/pdfs/farm/HSUS-Human-Health-Report-on-Poultry-Slaughter-Live-Hang-Workers.pdf> (citing KM Lee, *Design Criteria for Developing an Automated Live-Bird Transfer System*, 17(4) INST. OF ELECTRICAL AND ELECTRONICS ENGINEERS (IEEE) TRANSACTIONS ON ROBOTICS AND AUTOMATION 483 (2001)).

⁷⁷ Oxfam America, *supra* note 74, at 12.

⁷⁸ Letter from ALDF to Dr. David Michaels, Asst. Sec. of Labor, Occupational Safety and Health Administration (OSHA) 2 (Sept. 14, 2015), <http://aldf.org/wp-content/uploads/2015/09/2015-09-14-OSHA-Complaint-for-Media.pdf>.

⁷⁹ SPLC and Alabama Appleseed, *supra* note 74, at 8.

and defecate on the workers.⁸⁰ Live-hang workers “get covered with poultry mess and dust that can expose them to diseases associated with handling live chickens and contact with poultry feces and dust,” reports the Occupational Safety and Health Administration.⁸¹ Indeed, live-hang workers often suffer respiratory issues, skin infections, and other painful ailments.⁸²

According to government statistics, the incidence of occupational illness in the poultry industry is more than six times the average rate in private industry, and the incidence of carpal tunnel syndrome is more than seven times the national average.⁸³ In a study of a HIMP⁸⁴ poultry establishment, investigators from the National Institute for Occupational Safety and Health (NIOSH) “found an alarming 42 percent prevalence of carpal tunnel syndrome in exposed workers.”⁸⁵ Many of the musculoskeletal injuries suffered by poultry slaughterhouse workers, from live hang to processing, are debilitating and permanent, destroying their ability to do future work or even to enjoy life.⁸⁶

But rather than exercising its authority to make this industry safer by accepting responsibility under the HMSA for poultry slaughter, USDA has instead actively worked to make poultry slaughter even faster. USDA has sponsored studies on how to maximize worker efficiency by timing their movements to increase the pace of processing chickens.⁸⁷ In 2014, FSIS authorized line speed increases from a maximum of 91 chickens per minute to 140 chickens per minute—a maximum number that was

⁸⁰ HSUS, *supra* note 76, at 2; Human Rights Watch, *supra* note 12, at 39.

⁸¹ OSHA, Poultry Processing Industry eTool, Tasks: Receiving & Killing, <https://www.osha.gov/SLTC/etools/poultry/receiving.html>.

⁸² See, e.g., ALDF Letter to OSHA, *supra* note 78, at 4.

⁸³ OSHA, Inspection Guidance for Poultry Slaughtering (Oct. 28, 2015), https://www.osha.gov/dep/enforcement/poultry_processing_10282015.html.

⁸⁴ HIMP stands for: Hazard-analysis-and-critical-control-points-based Inspection Models Project.

⁸⁵ Letter from NIOSH to FSIS (April 7, 2014), <https://www.cdc.gov/niosh/topics/poultry/letterapril72014.html>.

⁸⁶ See, e.g., Oxfam America, *supra* note 74, at 23 (describing the story of Roberto, who, even after two surgeries, suffers from chronic, unbearable pain in his hands, shoulders, and back from working as a live chicken hanger at a Simmons slaughterhouse in Arkansas); *id.* at 24 (describing the story of Karina, who can no longer use her hands to grab a spoon or glass after pulling out the bones of cooked breasts and thighs at a chicken slaughterhouse in North Carolina).

⁸⁷ Marc Linder, *I Gave My Employer a Chicken That Had No Bone: Joint Firm-State Responsibility for Line-Speed-Related Occupational Injuries*, 46 CASE WESTERN RESERVE L. REV. 33, 69–71 (1995).

reduced from the proposed 175 birds per minute after massive public opposition⁸⁸—in plants operating under the New Poultry Inspection System.

Current customary poultry slaughter practices lead to egregious animal cruelty and are causing an epidemic of chronic injuries among workers. Inclusion of poultry under the HMSA would necessitate less cruel slaughter systems that would benefit animals and workers alike. Moreover, the change in policy would have a minimal regulatory burden because companies are already adopting commitments to switch to less cruel slaughter practices. This Petition asks FSIS to apply the same principle that industry leaders have already recognized: What's better for animals, workers, and consumers is also good for business.

C. Regulating Poultry Under the HMSA Would Benefit Consumers

As FSIS already recognizes, humane handling of birds during the slaughter process has food safety benefits for consumers. Regulating poultry under the HMSA would align government oversight of the treatment of poultry with public perception and preferences.

1. Regulating Poultry Under the HMSA Promotes Food Safety and Product Quality

According to FSIS, “poultry products are more likely to be adulterated if . . . they are produced from birds that have not been treated humanely, because such birds are more likely to be bruised or to die other than by slaughter.”⁸⁹

⁸⁸ See Final Rule, Modernization of Poultry Slaughter Inspection, 79 Fed. Reg. 49566, 49567 (Aug. 21, 2014) (codified at 9 C.F.R. pts. 381, 500). The maximum of 91 birds per minute is for chicken slaughter plants operating under the New Line Speed Inspection System (NELS); for plants operating under traditional inspection, the maximum speed is 64 birds per minute. *Id.* at 49567. For turkeys, the Final Rule increased line speeds to 55 birds per minute. Prior maximum line speeds were 51 birds per minute (light turkeys) and 45 birds per minute (heavy turkeys) under the New Turkey Inspection System, or 39 turkeys per minute under traditional inspection. *Id.* at 49570. FSIS is currently considering a dangerous petition, filed by the National Chicken Council, to ignore the public opposition to increased slaughter line speeds and to issue broad waivers for chicken slaughterhouses to operate at whatever line speeds they want. Petition Submitted by National Chicken Council (Sept. 1, 2017),

<https://www.fsis.usda.gov/wps/portal/itsis/topics/regulations/petitions>. This proposal, if granted, will only exacerbate the problems of animal cruelty and worker injuries.

⁸⁹ Notice, Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. 56624, 56624 (Sept. 28, 2005).

Birds who “die other than by slaughter” are adulterated and not permitted to enter the food supply.⁹⁰ As documented above, however, the standard practice of live shackling at breakneck speeds increases the risk that birds become bruised or die from abuse or mishandling.⁹¹

Additionally, standard slaughter practices associated with inhumane handling are likely to contribute to bacterial contamination. For example, live birds entering the scalding tank, an occurrence greatly increased by the standard practices of hanging live birds at a speed of 35 birds per minute and ineffective electrical water-bath stunning discussed above, is a risk factor for fecal contamination. This is because “many birds enter [the scalding tank] still alive and expelling waste.”⁹² Indeed, according to a 2014 Consumers Union study, 97 percent of chicken breasts purchased at grocery stores across the nation contained bacteria, and over half were contaminated with fecal matter.⁹³

The Centers for Disease Control and Prevention (CDC) estimates that each year, “48 million [or one in every six] people get sick, 128,000 are hospitalized, and 3,000 die from foodborne diseases.”⁹⁴ The CDC study also found that of all other foods, including other meats and plant foods, poultry accounted for the most deaths caused by a foodborne

⁹⁰ 21 U.S.C. §§ 452, 453(g)(5).

⁹¹ In addition to the food safety benefits of regulating poultry slaughter under the HMSA, it is well-recognized that “[f]rom a product quality perspective, gas stunning is generally considered superior to water-bath stunning, and has substantial capacity in terms of number of birds stunned per hour.”⁹¹ Berg and Raj (2015), *supra* note 62, at 1214. Therefore, regulating poultry under the HMSA and requiring less cruel methods of slaughter and handling in connection with slaughter would benefit the industry as well.

⁹² Linder, *supra* note 87, at 93; see also USDA FSIS, Improvements for Poultry Slaughter Inspection Technical Report 7 (2008), https://www.fsis.usda.gov/wps/wcm/connect/86695053-e060-4a56-81cd-90e4aa5440fe/Poultry_Slaughter_Tech_Report.pdf?MOD=AJPERES (“[C]ross-contamination can also occur during scalding from microorganisms present on the external and internal surfaces of the carcass and in the scalding water.”); GAIL EISNITZ, SLAUGHTERHOUSE: THE SHOCKING STORY OF GREED, NEGLECT, AND INHUMANE TREATMENT INSIDE THE U.S. MEAT INDUSTRY 167 (2007) (“In the scald tank, fecal contamination on skin and feathers gets inhaled by live birds.”).

⁹³ Consumer Reports, *Dangerous Contaminated Chicken*, CONSUMER REPORTS MAGAZINE (January 2014), <https://www.consumerreports.org/cro/magazine/2014/02/the-high-cost-of-cheap-chicken/index.htm>.

⁹⁴ CDC, Estimates of Foodborne Illnesses in the United States, <https://www.cdc.gov/foodborneburden/estimates-overview.html>.

illness.⁹⁵ Poultry (tied with dairy products) also accounted for more bacterial illnesses than any other food.⁹⁶ Given the serious public health consequences, and the known connection between cruel practices and food safety,⁹⁷ FSIS should be doing all within its authority to protect against cruel practices.

2. Regulating Poultry Slaughter Under the HMSA Would Protect Against Consumer Deception

Regulating poultry slaughter under the HMSA would also align legal requirements and oversight with consumer expectations and beliefs—yet another benefit to consumers that furthers the purposes of the HMSA. A study of U.S. consumers found that 76 percent agree that chickens should be rendered unconscious by controlled-atmosphere stunning before being killed, including 55 percent who “strongly agreed.”⁹⁸ Another recent study found that 77 percent of American consumers are concerned about the welfare of animals raised for human food but also believe that these animals are more protected by laws and government oversight than they actually are.⁹⁹ Yet another survey found that 95 percent of U.S. consumers are “very concerned” about the welfare of animals raised and slaughtered for human food.¹⁰⁰ Numerous other studies have consistently found that a majority of consumers support greater regulations to protect the welfare of farmed animals, including poultry.¹⁰¹ Even the National Chicken Council

⁹⁵ CDC, Attribution of Foodborne Illnesses: Findings,

<https://www.cdc.gov/foodborneburden/attribution/attribution-1998-2008.html>.

⁹⁶ John A. Painter, et al., CDC, *Attribution of Foodborne Illnesses, Hospitalizations, and Deaths to Food Commodities by Using Outbreak Data, United States, 1998–2008*, 19(3) EMERGING INFECTIOUS DISEASES 407 (2013), https://wwwnc.cdc.gov/eid/article/19/3/11-1866_article.

⁹⁷ 70 Fed. Reg. 56624.

⁹⁸ NRG Research Group, *Broiler Chicken Welfare Survey 12* (2017),

http://www.mercyforanimals.org/files/MFA_2017_Survey_US.pdf.

⁹⁹ Lake Research Partners, *Results from a Recent Survey of American Consumers* (2016), https://www.aspc.org/sites/default/files/publicmemo_aspc_labeling_fi_rev1_0629716.pdf.

¹⁰⁰ American Humane, *2014 Humane Heartland Farm Animal Welfare Survey* (2014), <https://www.americanhumane.org/publication/2014-humane-heartland-farm-animal-welfare-survey/>.

¹⁰¹ AWI, *Consumer Perceptions of Farm Animal Welfare 3–4*, https://awionline.org/sites/default/files/uploads/documents/fa-consumer_perceptionsoffarmwelfare_-112511.pdf.

admits consumers understand that inhumane treatment of chickens “has a direct impact on the safety and quality of the meat they buy.”¹⁰²

The American public overwhelmingly supports higher welfare standards and better regulation of the poultry industry, which makes them vulnerable to misleading and deceptive claims by the industry that current customary poultry slaughter practices are humane and that the government regulates poultry welfare.¹⁰³ For example, on Chicken Check-In, a chicken industry promotion website, industry poultry scientist Dr. Karen Christensen strongly insinuates that the HMSA actually covers poultry, stating that “[i]n 1957, the Humane Methods of Slaughter Act included a section regarding poultry”¹⁰⁴ without any clarification. In response to the question “Are there animal welfare regulations to guide the slaughtering practice in the United States?” Dr. Christensen falsely implies that the USDA has animal welfare regulations specific to the treatment of individual animals, writing that “[t]he USDA inspection service has strong regulations regarding how birds are slaughtered and any deviations are immediately brought to the attention of plant management.”¹⁰⁵

FSIS regulations currently do not address the welfare of poultry during slaughter. Instead, they address contamination and adulteration only. Welfare is only addressed by a vague requirement to slaughter poultry in accordance with “Good Commercial Practices” (GCP), but FSIS does not set standards for GCP. Furthermore, in contrast to industry representations above, inspectors do not report “any deviations” but only process control failures that warrant attention per FSIS policy.¹⁰⁶ The industry suggests

¹⁰² Alyssa Conway, *Consumer Demands: Key Drivers in Chicken Marketing*, WATTAG.NET (Aug. 1, 2016), <http://www.wattagnet.com/articles/27746-consumer-demands-key-drivers-in-chicken-marketing>.

¹⁰³ For additional examples of the poultry industry making deceptive claims about the extent of FSIS oversight of humane handling and slaughter of poultry, see AWI Report, *supra* note 30, at 18–19.

¹⁰⁴ Chicken Check-In, FAQ: Stunning Chickens, <http://www.chickencheck.in/faq/stunning-chickens/> (last accessed May 22, 2017) (attached).

¹⁰⁵ *Id.*

¹⁰⁶ See FSIS Notice 44–16 at 2 (GCP is a “process control issue . . . not a bird-by-bird performance standard issue.”). In other words, if a single bird or a few birds are mistreated, FSIS does not consider that a violation of good commercial practices. Inspectors can only write a noncompliance record for a violation of GCP if the plan shows an “ongoing pattern or trend” of birds dying other than by slaughter. *Id.* Even an “unusually high number of injuries to the birds, e.g., broken legs or wings but . . . no evidence of intentional mistreatment” is not considered a violation of good commercial practices, because FSIS does not deem this to be a process control loss. *Id.* In stark contrast, under humane handling requirements under the HMSA currently

that individual bird welfare is considered, which is absolutely untrue under current policy.

Even more troubling, Dr. Christensen wrongly claims on this website—in stark contrast to the reality of poultry slaughter documented in the investigations and inspection reports detailed above—that electric water-bath stunning renders chickens insensitive to pain, and she falsely describes live hanging as a gentle process:

If the stunning system requires the birds to be unloaded, equipment operators make sure the right number of birds are moving into the plant to prevent crowding. Birds are unloaded in reduced light to keep them quiet and minimize stress. Rub bars make gentle contact with the birds while shackled to keep them calm. Equipment in the plant is monitored for each flock and necessary adjustments are made.¹⁰⁷

This website is just one of many examples of the poultry industry taking advantage of consumers: their desire for better farmed animal welfare, their lack of knowledge about industrial meat production, and their lack of knowledge about the absence of meaningful government regulation.¹⁰⁸

Failure to include poultry under the HMSA also places progressive suppliers at a disadvantage. In response to consumer demand for higher-welfare products, many companies, including Nestlé and Perdue, have committed to improved poultry welfare standards, including ending live-shackle slaughter in favor of controlled-atmosphere stunning.¹⁰⁹ Consumer confusion, coupled with the absence of regulation and

applied to mammals, inhumane handling or inadequate stun of a single animal—regardless of evidence of intent or negligence—may be grounds for enforcement. *See* FSIS Directive 6900.2: Humane Handling and Slaughter of Livestock (2011).

¹⁰⁷ Chicken Check-In, *supra* note 104.

¹⁰⁸ According to National Chicken Council research, a full 87 percent of consumers who purchase chicken meat are either “not at all knowledgeable” (40 percent) or only “somewhat knowledgeable” (47 percent) about the care of chickens. National Chicken Council, Presentation to Chicken Marketing Summit (July 18, 2017), http://www.nationalchickencouncil.org/wp-content/uploads/2017/07/US3002925_NCC_Consumption_Presentation_Final_170713.pdf.

¹⁰⁹ *See, e.g.,* Chelsie Schadt, *Progress! Nestlé Announces Animal Welfare Policy for Chickens*, MERCY FOR ANIMALS BLOG (Oct. 16, 2017); Perdue Foods, Press Release, *Perdue Farms Announces Animal Care Improvements and Commits to Future Advancements* (July 17, 2017), <https://www.perduefarms.com/news/press-releases/commitments-to-animal-care-2017-announcem>. *See also infra* pages 26–27 (“E. The Requested Regulation Would Not Overburden the Industry or FSIS”).

enforcement, allows other companies to take advantage of consumer demand without taking these same steps, which ultimately hinders fair competition.

To protect consumers from deceptive and predatory self-promotion by the industry, FSIS must align itself with the expectations of Americans and meaningfully regulate the slaughter of poultry under the HMSA.

D. Alternative Systems Are Available That Would Greatly Reduce Needless Suffering, Improve Worker Safety, and Protect Consumers

Controlled-atmosphere stunning (CAS) offers measurable improvements over electrical stunning for both poultry welfare and product quality. CAS involves changing the atmosphere within a chamber containing birds in multiple stages, either by manipulating the proportion of carbon dioxide or inert gases in the air (referred to as gas stunning) or by changing the pressure (referred to as low-atmosphere pressure stunning) within the chamber. When used to slaughter birds, rather than merely render them unconscious, both methods are referred to as controlled-atmosphere killing.¹¹⁰

Potentially the greatest welfare improvement offered by CAS is elimination of live shackling and pre-stun shocks.¹¹¹ Instead, birds are placed inside the stunning chamber while in their transport cages.¹¹² In such a system, conscious birds need not be removed from their transport cages, thrown onto conveyor belts, hung upside down, and violently shackled.¹¹³ Given the suffering endured by birds during live shackling, not to mention the stress and injury to slaughterhouse employees, removing this step alone would result in significant poultry welfare and worker safety improvements.

Gas stunning is also considered superior to water-bath stunning for meat quality reasons. Studies comparing meat quality between gas stunning and electrical stunning found that controlled-gas stunning was optimal and improved meat quality.¹¹⁴ Shackling birds only after they are stunned also improves product quality by minimizing broken bones, hemorrhaging, and bruising.¹¹⁵

¹¹⁰ Shields and Raj (2010), *supra* note 44, at 8.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Berg and Raj (2015), *supra* note 62, at 1214.

¹¹⁴ Berg and Raj (2015), *supra* note 62, at 1213; Shields and Raj (2010), *supra* note 44, at 8; Theo Hoen and Jeannette Lankhaar, *Controlled Atmosphere Stunning of Poultry*, 78 POULTRY SCI. 287, 287 (1999).

¹¹⁵ See sources listed in *supra* note 114.

E. The Requested Regulation Would Not Overburden the Industry or FSIS

Fiscal or administrative burden is not a balancing factor identified in the HMSA, so any perceived burden should not counter doing what is necessary to achieve Congress's goals in enacting the HMSA. Still, the fiscal and regulatory burden of the proposed regulation would be insignificant.

First, FSIS inspectors are already documenting inhumane handling and slaughter issues in noncompliance records and memoranda of interview.¹¹⁶ Thus, humane handling and slaughter inspections pursuant to the HMSA and the FMIA can be absorbed into the existing model of inspection responsibilities and duties within poultry slaughterhouses. Regulating the treatment of poultry under the HMSA and the FMIA would simply empower inspectors when slaughterhouses refuse to handle poultry humanely by authorizing inspectors to take enforcement actions.¹¹⁷

Second, as a practical matter, as of the date of this submission, over 150 brands and companies have committed to switching some of their plants to less cruel slaughter systems or to sourcing from plants that have switched. The industry, driven by consumer demand, is shifting; soon companies that slaughter poultry will need to supply chickens who are killed by methods other than live hang and electric water-bath stunning to meet consumer demand. Any argument from producers that the proposed regulatory changes would be too burdensome would be disingenuous.

Producers globally increasingly demonstrate the economic viability of shifting to less cruel systems. For example, the United Kingdom already uses inert-gas stunning for many turkey and chicken slaughterhouses.¹¹⁸ The requested regulation in this Petition would codify practices that producers are already adopting.

The HMSA's goals of ensuring humane slaughter of livestock, protecting workers, and protecting consumers cannot be met if the statute reaches only 2 percent of the livestock slaughtered each year in this country. The poultry industry has grown and changed tremendously since the HMSA's original enactment. FSIS's current policy regarding handling and slaughter of poultry is utterly inadequate to prevent egregious cruelty and inhumane handling at slaughter. The current policy also makes an arbitrary distinction between poultry and mammals. FSIS has a duty to remedy these

¹¹⁶ FSIS Directive 6100.3 at 5.

¹¹⁷ See, e.g., the Tip Top Poultry incident described above at pages 9–10 and footnote 29.

¹¹⁸ Shields and Raj (2010), *supra* note 44, at 9.

inadequacies. The benefits to animals, workers, consumers, and businesses greatly outweigh any regulatory or fiscal burden caused by the proposed agency action.

LEGAL BASIS FOR RULEMAKING

As discussed above, FSIS's current regulatory scheme for poultry slaughter is woefully inadequate to curtail egregious animal cruelty, crippling worker injuries, food safety risks, consumer deception, and unfair competition. To address this problem, FSIS must close the regulatory gap it has created in failing to include poultry under the HMSA and the FMIA. Supported by the factual record above, there are two legal bases that compel USDA to grant this petition.

First, FSIS certainly has the authority to include poultry as "livestock" under the HMSA, and Congress, with the 2005 amendment to the FMIA, has clearly signaled to FSIS to include additional "amenable species" — such as poultry — within the ambit of its inspection and enforcement coverage of the HMSA. FSIS's refusal to exercise this authority and promulgate and implement meaningful and enforceable regulations for the humane treatment of poultry is manifestly contrary to the purpose and intent of the HMSA.

Second, the record before the agency demonstrates that refusal to promulgate meaningful and enforceable humane slaughter and handling regulations for poultry under FSIS's statutory authority would be arbitrary and capricious decision making in violation of the Administrative Procedure Act (APA).¹¹⁹

I. The Legislative and Regulatory Background of the HMSA and the FMIA Compel the Inclusion of Poultry Within Their Scope

Since 1958, it has been the federal government's policy that "the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods."¹²⁰ The HMSA contains two key mandates for purposes of this Petition:

- (1) "No method of slaughtering or handling in connection with slaughter shall be deemed to comply with the public policy of the United States unless it is humane,"¹²¹ which means that the animal is "rendered insensible to pain by a

¹¹⁹ 5 U.S.C. § 702(2)(A).

¹²⁰ The Humane Methods of Slaughter Act of 1958, 7 U.S.C. § 1901.

¹²¹ *Id.* § 1902(a)

single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut” or slaughtered “in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument”¹²²

- (2) USDA is to designate humane methods of slaughter “with respect to each species of livestock.”¹²³

Then, in 1978, Congress passed a separate Humane Methods of Slaughter Act, the sole purpose of which is “to require that meat inspected and approved under [the FMIA] be produced only from livestock slaughtered in accordance with humane methods.”¹²⁴ It did so by incorporating an inspection scheme and enforcement mechanism for the HMSA into the FMIA (hereinafter referred to as the “humane slaughter provisions in the FMIA”).

As enacted, the HMSA of 1978 provided that

[f]or the purpose of preventing the inhumane slaughtering of livestock, the Secretary shall [appoint inspectors for conducting] an examination and inspection of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this Act.¹²⁵

FSIS then promulgated regulations establishing standards of handling and treatment at slaughter and provided for a regime of escalating enforcement if a slaughterhouse violated these regulations.¹²⁶ FSIS inspectors are required to document inhumane handling and slaughter of mammals, and they are authorized to halt slaughter for serious violations, for dangerous or broken equipment, or for failure to immediately render an animal unconscious prior to being killed.¹²⁷ FSIS can also suspend

¹²² *Id.* § 1902(b).

¹²³ *Id.* § 1904. A third mandate requires that any plant supplying meat to the federal government must comply with the law. *Id.* § 1903.

¹²⁴ Pub. L. 95-445, § 5, 92 Stat. 1069 (1978).

¹²⁵ *Id.*

¹²⁶ Final Rule, Federal Meat Inspection Regulations and Humane Slaughter Regulations, 44 Fed. Reg. 68809, 68809-10 (Nov. 30, 1979).

¹²⁷ 9 C.F.R. § 500.2; FSIS Directive 6900.2 at 19-25.

temporarily, withdraw, or refuse to grant inspection services to a slaughterhouse that fails to handle and slaughter animals humanely,¹²⁸ and it can refer animal cruelty cases to local law enforcement.

When the HMSA was originally enacted in 1958, Congress did not define the term “livestock.” In 1978, Congress included a specific list of livestock who would be covered by the humane slaughter provisions of the FMIA: cattle, sheep, swine, goats, horses, mules, and other equines.¹²⁹ Thus, although the HMSA does not preclude inclusion of poultry as livestock, the 1978 amendments to the FMIA limited enforcement of the HMSA’s provisions to the enumerated list of species.

Over the years, however, public and congressional support for regulating the handling and slaughter of poultry to address animal cruelty mounted. In fact, FSIS received numerous letters from members of Congress, nearly 13,000 email messages, and “over 20,000 letters from the public . . . expressing concern regarding the humane treatment of livestock . . . including poultry.”¹³⁰

In September 2005, in response to this mounting public and congressional interest, and after denying a petition to require humane standards of slaughter under the Poultry Products Inspection Act,¹³¹ FSIS issued “Treatment of Live Poultry Before Slaughter,” a

¹²⁸ 9 C.F.R. §§ 500.3–500.4, 500.6; FSIS Directive 6900.2 at 19–25. Also, unlike for poultry, where no enforcement records are publicly posted, for the HMSA, FSIS posts public notices of suspension and withdrawal of inspection for slaughterhouses. Thus, while there is some transparency for FSIS’s oversight of plants that slaughter mammals, there is much less for FSIS’s oversight of plants that slaughter poultry—even though Americans are consuming much more poultry, more frequently, than any other type of meat.

¹²⁹ Pub. L. 95–445, § 5, 92 Stat. 1069 (1978).

¹³⁰ Notice, *Treatment of Live Poultry Before Slaughter*, 70 Fed. Reg. 56624, 56625 (Sept. 28, 2005).

¹³¹ *Id.* The Poultry Products Inspection Act (PPIA) is another statute granting FSIS the authority to inspect poultry slaughterhouses. The PPIA is meant to prevent the entry of “unwholesome” or “adulterated” meat from poultry animals into commerce. 21 U.S.C. § 451. Unlike the HMSA and the FMIA, the PPIA lacks humane handling and slaughter requirements, and FSIS personnel in poultry slaughterhouses have few enforcement options compared to FSIS personnel in establishments that slaughter mammals. Apart from condemnation of the carcass under the PPIA, inspectors may contact state or local officials, but only if required under state or local laws. FSIS Directive 6300.1. Additionally, inspectors can take a regulatory control action, but only if a situation is deemed “egregious.” FSIS Directive 6910.1: District Veterinary Medical Specialist: Work Methods, Rev. 1 (Dec. 7, 2009). Inspectors cannot suspend or withdraw inspection for even the most egregious inhumane handling instances as they can for mammals under the FMIA. 9 C.F.R. §§ 500.3–500.4; 500.6–500.7. Because of the distinct purposes and

notice expressing its view that there was “no specific federal humane handling and slaughter statute for poultry” and that “[t]he HMSA of 1978 (7 U.S.C. 1901 et seq.) requires that humane methods be used for handling and slaughtering livestock but does not include comparable provisions concerning the handling and slaughter of poultry.”¹³² FSIS was probably basing this position on the enumerated list of livestock initially identified in the FMIA and its own overly narrow interpretation of the HMSA.

In November 2005, merely two months after FSIS issued its notice claiming lack of authority to require and enforce humane slaughter for poultry, Congress amended the humane slaughter provisions in the FMIA.¹³³ It replaced the specific list of livestock covered¹³⁴ in the FMIA with the phrase “amenable species.” Congress defined “amenable species” to include those species already covered and “*any additional species of livestock that the Secretary considers appropriate.*”¹³⁵

Congress’s expansion of covered livestock to “any additional species of livestock that the Secretary considers appropriate” shortly after USDA issued a statement that there was “no specific federal humane handling and slaughter statute for poultry”¹³⁶ is an obvious delegation of authority to FSIS to add species slaughtered for human consumption, such as poultry, to the list of amenable species, especially in light of the numerous letters from members of Congress and over 30,000 emails and letters from citizens to USDA in favor of humane slaughter requirements for poultry.

Under the Administrative Procedure Act and well-established case law on agency decision making, FSIS has the duty to “consider varying interpretations and the wisdom of its policy on a continuing basis.”¹³⁷ Contrary to this duty, FSIS has so far failed to regulate the vast majority of animals slaughtered for human consumption under the only law that mandates humane slaughter in this country, despite clear public interest that FSIS regulate these animals and the unequivocal sign from Congress that such regulation would be permissible.

different administrative remedies available under the FMIA and the HMSA, on the one hand, and the PPIA, on the other, the PPIA in no way prevents FSIS from issuing humane handling and slaughter regulations for poultry under the FMIA and the HMSA.

¹³² 70 Fed. Reg. at 56624–25.

¹³³ Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, Pub. L. 109–97, 119 Stat. 2120 (2005).

¹³⁴ “[C]attle, sheep, swine, goats, horses, mules, and other equines.”

¹³⁵ 109–97, 119 Stat. 2120.

¹³⁶ 70 Fed. Reg. at 56624.

¹³⁷ *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 863–64 (1984).

Given the legislative history of the HMSA and the FMIA, FSIS's continued assertion that "there is no specific federal humane handling and slaughter statute for poultry" reflects a myopic view of its own statutory authority and reveals a willful refusal to adequately interpret the terms "livestock" and "amenable species" under the HMSA and the FMIA as Congress authorized it to do.

A. FSIS Should Include Chickens, Turkeys, and Other Poultry as "Livestock" Under the HMSA

The legislative history of the HMSA demonstrates that FSIS unquestionably has the authority to interpret "livestock" to include poultry. During floor debate on the HMSA bill (eventually enacted) Representative Clare Hoffman "read into the record . . . Webster's dictionary definition [of livestock] and then declared, '[N]ow, chickens and turkeys are livestock.'" ¹³⁸ Also, Senate Agriculture Committee member Senator Hubert Humphrey stated on the record that the HMSA could include poultry "under section 4" (specifying humane methods of slaughter), if the Secretary so designated. ¹³⁹

In sum, nothing in the statutory language precludes including poultry as "livestock" under the HMSA. To the contrary, FSIS appears to be holding on to a decades-old notion of "livestock," despite the fact that Congress's own use of the term has evolved and broadened considerably since 1958.

For example, the National Organics Act (enacted in 1990) defines "livestock" as "any cattle, sheep, goats, swine, *poultry*, equine animals used for food or in the production of food, fish used for food, wild or domesticated game, or other nonplant life." ¹⁴⁰ The Animal Health Protection Act (enacted in 2002), which charges USDA with protecting the health of agricultural animals and markets, defines "livestock" as "all farm-raised animals," *including poultry*. ¹⁴¹ The 2014 Farm Bill defines "livestock" to include "[t]he term (A) cattle (including dairy cattle); (B) bison; (C) *poultry*; (D) sheep; (E) swine; (F) horses; and (G) other livestock, as determined by the Secretary." ¹⁴² The term "livestock" is frequently inclusive of poultry species, both in common usage and by Congress in

¹³⁸ 104 Cong. Rec. H1659 (daily ed. Feb. 4, 1958) (cited in Bruce Friedrich, *Still in the Jungle: Poultry Slaughter and the USDA*, 23 N.Y.U. ENVTL. LAW J. 247, 264 (2015) [attached]).

¹³⁹ 104 Cong. Rec. S15,376 (daily ed. July 29, 1958) (cited in Friedrich, *supra* note 138, at 265).

¹⁴⁰ 7 U.S.C. § 6502(11) (emphasis added).

¹⁴¹ 7 U.S.C. § 8302 (10).

¹⁴² Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat. 649, 697, 974.

related statutes.¹⁴³ If Congress now interprets “livestock” to include poultry, so should FSIS.¹⁴⁴

FSIS’s interpretation of the term “livestock” in the HMSA as not including poultry is unreasonable because it undermines the statute’s goals.¹⁴⁵ As demonstrated in great detail above, inclusion of poultry as livestock is necessary to fulfilling the goals of (1) preventing needless animal suffering, (2) protecting workers in the slaughter industry, and (3) benefiting consumers.

B. FSIS Should Include Chickens, Turkeys, and Other Poultry as “Amenable Species” Under the FMIA

Congress granted FSIS authority to fill the gap with respect to federal humane slaughter requirements for poultry when it expanded the scope of FSIS’s inspection and enforcement jurisdiction under the FMIA to encompass “any additional species of livestock that the Secretary considers appropriate.” The scope of “amenable species” is broad, encompassing even catfish.¹⁴⁶ Surely, then, it should include America’s largest meat industry: poultry. FSIS should therefore include chickens, turkeys, and other poultry as “amenable species” under the FMIA.

An obvious guideline for FSIS in determining which species are “amenable” should be whether inclusion of that species furthers the purposes of the FMIA. There are two key goals of federal inspection under the FMIA: protecting food safety and preventing inhumane slaughter.¹⁴⁷

¹⁴³ Hence, there is no need for Congress to amend the HMSA to specifically include poultry, because the term “livestock” can already be interpreted to include poultry, and, as explained, inclusion of poultry is necessary to meaningfully achieve Congress’s goals and intent in enacting the HMSA.

¹⁴⁴ See, e.g., Farm Security and Rural Investment Act of 2002, Pub. L. No. 107–171, 116 Stat. 133, 254, 4954 (defining “livestock” as “dairy cattle, beef cattle, laying hens, broilers, turkeys” and “all farm-raised animals” [emphasis added]); Food, Conservation, and Energy Act of 2008, Pub. L. No. 110–246, 122 Stat. 1651, 1742, 1754, 2155–56, 2248 (defining “livestock” as “cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry,” as “all animals raised on farms, as determined by the Secretary,” and as “cattle, poultry, sheep, swine, horses” [emphasis added]).

¹⁴⁵ *Chevron*, 467 U.S. at 843–44 (where delegation of authority to an agency on a particular issue is implicit, a reviewing court may look to whether such an interpretation is “reasonable”).

¹⁴⁶ 21 U.S.C. § 601(w).

¹⁴⁷ Humane Methods of Slaughter Act of 1978, Pub. L. No. 95–445, § 2, 92 Stat. 1069, 1069.

As FSIS has already acknowledged, inhumane treatment of poultry and cruel handling that causes the birds to die other than by slaughter leads to adulterated products.¹⁴⁸ Furthermore, billions of birds each year are mishandled at slaughter in egregiously cruel ways, as documented by FSIS's own inspection records. Even without mishandling, under customary poultry slaughter systems, billions of birds suffer because standard electric water-bath stunning does not effectively render them insensible to pain when their throats are slit or their heads are sliced off.

Notably, FSIS already inspects and documents large process control failures in poultry slaughterhouses that fail to meet "good commercial practices."¹⁴⁹ While this current system is inadequate to prevent egregious cruelty to birds or sustain public trust in the safety of our food, it does strongly suggest that poultry are an amenable species for regulation under the FMIA because FSIS inspectors are already willing and able to identify and document certain inhumane slaughter practices in poultry slaughterhouses.

There should also be no doubt that the few remaining humane slaughter provisions of the FMIA that still list specific species of hoofstock¹⁵⁰ could be applied to poultry if FSIS

¹⁴⁸ 70 Fed. Reg. at 56625.

¹⁴⁹ See FSIS Directive 6100.3 at 6.

¹⁵⁰ E.g., 21 U.S.C. § 603(b). A "scrivener's error" explains this seeming inconsistency. See *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 82 (1994) (Scalia, J., dissenting) (courts, when interpreting statutes, can correct a "scrivener's error" despite what the text says in order to avoid absurd results); see also Friedrich, *supra* note 138, at 260 n.64. The law that amended the FMIA, the Agricultural Appropriations Act of 2005, used only the phrase "cattle, . . . *and* other equines." Pub. L. 109-97, 119 Stat. 2120 (emphasis added). The FMIA itself interchangeably uses the phrases "cattle, . . . *and* other equines" and "cattle, . . . *or* other equines." So when the text from the Agricultural Appropriations Act was incorporated into the U.S. Code sections of the FMIA, only the language where the FMIA's text said "*and* other equines" was substituted with "amenable species," but where the language said "*or* other equines," the substitution was mistakenly omitted. But it is clear that any remaining reference to a specific list of "cattle, . . . *or* other equines" should be read as "amenable species." For example, 21 U.S.C. 603(b), which authorizes inspection and enforcement of the humane slaughter provisions of the FMIA, contains both the phrase "amenable species" and the phrase "cattle, . . . *or* other equines." If this section is read without the proper insertion of "amenable species" throughout, then FSIS could not suspend or withdraw inspection for violations of these provisions for any amenable species, the *only* enforcement mechanism would be criminal penalties. It would be absurd to authorize only the most serious penalties for any new amenable species that FSIS might designate. See *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015) (agency interpretation of statutes should avoid "absurd results"). The Ninth Circuit Court of Appeals has also plainly said, without exception, that "[i]n 2005, Congress deleted the specific list of animals from the FMIA and replaced it with the term

determined that poultry were amenable species. Congress's intent, judicial interpretation, and FSIS's own subsequent implementation all make clear that these provisions of the FMIA apply to any "amenable species" as defined in the statute and as determined by FSIS. Any arguments to the contrary would be utterly disingenuous.

Given the size of the poultry industry and the serious food safety and inhumane slaughter issues identified above, refusal to find that poultry slaughtered for human consumption are "amenable species" would defy these important purposes of the FMIA.

II. FSIS's Failure to Include Poultry Within the HMSA and the FMIA Is Arbitrary and Capricious

As established above, FSIS not only clearly has the authority to include poultry under the HMSA and the FMIA but must do so to satisfy its statutory obligations to protect animal welfare, worker safety, and public health. The record before the agency also makes the factual arguments for inclusion of poultry under the HMSA and the FMIA beyond dispute.

Under well-settled law, an agency's denial of a citizen petition is arbitrary and capricious if the agency "offer[s] an explanation for its decision that runs counter to the evidence before the agency"; "entirely fail[s] to consider an important aspect of the problem"; or "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."¹⁵¹ Applying these standards to the evidence before FSIS in this case, denial of this petition and refusal to promulgate meaningful and enforceable humane handling and slaughter regulations for poultry would be arbitrary and capricious.

'amenable species.'" *Levine v. Vilsack*, 587 F.3d 986, 990 (9th Cir. 2009) (dismissing lawsuit for lack of standing without deciding the merits of the statutory interpretation issue). Lastly, FSIS has already interpreted the FMIA as if it said "amenable species" throughout. *See* Final Rule, Mandatory Inspection of Fish of the Order Siluriformes and Products Derived From Such Fish, 80 Fed. Reg. 75589, 75597–98 (Dec. 2, 2015) (stating that 21 U.S.C. § 620, which refers only to "cattle . . . or other equines," applies to catfish).

¹⁵¹ *Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

A. The Record Before the Agency Overwhelmingly Supports the Proposed Regulation

At present, the record before the agency includes this Petition and the supporting information and documentation contained herein, several other petitions filed by animal protection groups (including letters in support of those petitions) establishing compelling policy bases for meaningful regulation of the treatment of poultry in connection with slaughter,¹⁵² nearly 10 years of poultry Good Commercial Practices (GCP) records showing that egregiously inhumane treatment of poultry occurs too frequently in poultry slaughterhouses, and more than 33,000 total submissions from Congress and the public urging FSIS to adopt specific regulations for the humane treatment of poultry at slaughter.

As FSIS knows, at least 22 poultry slaughterhouses already use controlled-atmosphere stunning systems. Additionally, more than 120 brands of food service providers, restaurants, and food products have already committed to sourcing chickens from companies that do not use live-hang slaughter and electric-bath stunning and instead use less cruel systems that would comply with the requirements of the HMSA and FMIA. More and more companies are adopting similar commitments each day. The law as currently implemented by FSIS lags woefully behind industry standards.

This mountain of evidence overwhelmingly favors meaningful regulation and enforcement on this issue. Because FSIS clearly has the legal authority to include poultry under the HMSA and the FMIA, FSIS will have to provide an explanation against this factual evidence if it chooses not to grant this Petition.

B. An “Important Aspect of the Problem” Is the Inadequacy of FSIS’s Current Scheme to Fulfill FSIS’s Statutory Duties and Responsibilities

Whether FSIS’s current scheme is adequate to satisfy the important statutory goals detailed above is an “important aspect of the problem” that FSIS will have to consider. The evidence shows that FSIS’s current policy with respect to treatment of poultry at

¹⁵² Petition submitted by Animal Welfare Institute (May 26, 2016), <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/petitions>; Petition submitted by Animal Welfare Institute and Farm Sanctuary (Dec. 17, 2013), <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/petitions>; Petition filed by Animal Welfare Institute and Animal Legal Defense Fund (Nov. 21, 1995) (denied by FSIS May 31, 1996) (attached).

slaughter is inadequate to address the serious animal cruelty, food safety, worker safety, and consumer deception issues that arise under the current regulatory regime.

FSIS inspectors currently lack meaningful enforcement power for inhumane handling and slaughter of poultry. Merely condemning adulterated products because the animal has died other than by slaughter is inadequate to deter practices or behavior that leads to animal cruelty and adulterated meat products. FSIS surely knows this, since inhumane handling and slaughter are grounds for a number of enforcement consequences above and beyond condemnation—including suspension and withdrawal of inspection services—for establishments that slaughter mammals under the HMSA.¹⁵³

This lack of enforcement authority has led to very real consequences. For example, the Tip Top Poultry incidents described above, where the company—ignoring FSIS inspectors’ instructions—left truckloads of birds to suffer and die over two separate weekends, highlight the inadequacy of the current scheme. In these incidents, local law enforcement was notified but declined to act. Moreover, Petitioner is not aware of any other incidents involving cruelty to birds where FSIS referred the case to local law enforcement.

FSIS’s current regulatory scheme is also inadequate to address repeat incidents involving inhumane treatment of poultry. FSIS’s own GCP records show that, in the absence of meaningful enforcement mechanisms, process failures leading to cruel treatment (and food safety risks) continue unabated.¹⁵⁴

Below are just a few examples:

- At a Simmons Food plant August 8–10, 2016, inspection personnel had to condemn numerous bird carcasses multiple times throughout the course of three slaughter shifts. Each time, inspectors found carcasses with “dark-red to purple bruising” throughout most of the body, dislocated legs, and “a large amount of pooled blood between the skin and the breast.” Some of the bird carcasses also had broken wing and leg bones. This happened multiple times on August 10. The memorandum of interview notes that this was “the third straight day of nearly double digit carcasses with dark-red to purple bruising affecting half the carcass” and that the same issue had been documented on July 11. Days later, on August 14, inspection personnel again documented numerous instances where multiple bird carcasses were found with severe bruising throughout the body,

¹⁵³ See 21 U.S.C. § 603; FSIS Directive 6900.2.

¹⁵⁴ See AWI, *supra* note, at 17 (Figure 5: Poultry Slaughter Plants with the Most GCP Records).

broken and dislocated bones, and pooled blood. Again, two weeks later, inspectors found a large number of bird carcasses piled up at the same plant. Upon closer look, the inspector found a live chicken in the pile of dead chickens.¹⁵⁵

- At a Tyson Foods plant on two occasions in August and September 2016, the inspector found numerous red cadavers, and the inspector determined that the birds were alive when they entered the scalding tank. During the September incident, the back-up killer failed to stop the line for live birds as should occur under the plant's process control plan. The inspector noted this was a repeat issue.¹⁵⁶
- At an OK Foods plant on January 6, 2016, the inspector found 10 birds hung on the shackles, each by one leg. Some of these birds were "not rendered insensible and had the dangling leg dismembered by the head removal saw" while alive and conscious. Minutes later, another 10 birds were observed, each hung by one leg. Regulatory control action reduced line speed, but 20 minutes later four more birds were observed hanging, each by just one leg. A similar incident had occurred three weeks prior. The plant was written up again on January 25 for the same issue; the inspector saw four birds, each hung by only one leg, miss the electric stunner and have the dangling leg cut off by the head removal saw while the birds were alive and conscious.¹⁵⁷

Based on inspection records for 2011 to 2014 obtained from FSIS, the Animal Welfare Institute identified many plants with numerous repeat citations. Two different Case Farms plants had 79 and 68 total records in the three-year period. A Pilgrim's Pride Plant was cited 14 times for birds scalded alive from October 2011 to February 2012.¹⁵⁸

Undercover investigations have also demonstrated that poultry slaughterhouses frequently engage in and allow egregiously cruel practices and treatment of birds, despite FSIS's admonishment that this does not comport with good commercial practices. In short, FSIS's current policy does not adequately address the seriousness of the cruelty problem in the poultry slaughter industry, and should FSIS deny this Petition, it will have to explain why doing so is justifiable.

¹⁵⁵ MOIs # XWN4820085711G (Aug. 11, 2016); XWN1520083016G (Aug. 16, 2016); XWN5413083329G (Aug. 29, 2016). (Attached).

¹⁵⁶ MOIs # YDM3010081602N and YDM2821093919N. (Attached).

¹⁵⁷ There is no MOI # provided in this record; the record is attached.

¹⁵⁸ AWI Report, *supra* note 30 at 16–17.

C. FSIS's Refusal to Regulate Poultry Slaughter Under the HMSA and the FMIA Is "Implausible"

Lastly, it is "implausible" that the HMSA and the FMIA—the only statutes intended to protect the welfare of animals slaughtered for human consumption—protect only 2 percent of the animals killed every year. This figure is even more shocking considering that there is no real difference, in terms of sentience and capacity to suffer, between the 146 million mammals who are currently covered by the HMSA under FSIS policy and the 9 billion chickens, turkeys, and ducks who are not.

The poultry industry has seen massive growth in the 60 years since enactment of the original HMSA. Now, the amount of poultry produced and consumed per capita each year in the United States exceeds that of any other type of meat.¹⁵⁹ The cruelty inflicted on poultry by customary slaughter practices is as shocking and unconscionable as the cruelty exposed in, for example, cow slaughterhouses that led to enhanced enforcement and inspection.¹⁶⁰

The poultry industry also impacts at least half of the nation's slaughterhouse workers; these workers also suffer from slaughter systems that needlessly expose them to injury and illness.¹⁶¹ It is implausible, then, that FSIS could address the needless suffering of countless animals and workers in slaughterhouses but chooses not to.

The record before FSIS makes clear that refusal to include poultry under the HMSA and the FMIA would be an abdication of the responsibility to protect the welfare of livestock, workers, and consumers.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the agency grant this Petition and undertake rulemaking to include poultry under the HMSA as "livestock" and under the FMIA as "amenable species." Consistent with this statutory scheme, Petitioner requests that FSIS determine methods of slaughter for species of poultry, such as multi-stage controlled-atmosphere stunning or killing, that comply with the requirements of the HMSA. Petitioner further requests that FSIS issue appropriate

¹⁵⁹ See pages 4–5, above.

¹⁶⁰ See, e.g., Jo Warrick, "*They Die Piece by Piece*," WASH. POST (Apr. 10, 2001), https://www.washingtonpost.com/archive/politics/2001/04/10/they-die-piece-by-piece/f172dd3c-0383-49f8-b6d8-347e04b68da1/?utm_term=.02042ecad46a.

¹⁶¹ See pages 18–21, above.

directives, notices, and other policy and/or guidance documents for enforcement of the humane slaughter provisions at USDA-inspected poultry slaughter establishments.

ATTACHMENTS

1. Letter from Ms. Bala to Mr. Almanza re. Tip Top Poultry
2. Letter from Mr. Smith to Ms. Bala re. Tip Top Poultry
3. Examples of Misleading Statements From Poultry Industry ("Chicken Check-in" Website)
4. Poultry Slaughter Petition Submitted by Animal Welfare Institute and Animal Legal Defense Fund (1995)
5. FSIS Denial of Poultry Slaughter Petition Submitted by Animal Welfare Institute and Animal Legal Defense Fund (1996)
6. FSIS GCP Records (Simmons)
7. FSIS GCP Records (OK Foods)
8. FSIS GCP Records (Tyson)



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866.632.6446
MercyForAnimals.org

Mr. Alfred V. Almanza
Deputy Under Secretary for Food Safety and Acting FSIS Administrator
U.S. Department of Agriculture
1400 Independence Ave. SW
Washington, DC 20250-3700

August 12, 2016

Dear Mr. Almanza:

I am writing in response to a disturbing trend that Mercy For Animals has noted regarding the cruel treatment of birds at USDA-inspected poultry plants. Mercy For Animals (MFA) is an international nonprofit animal protection organization dedicated to preventing cruelty to farmed animals and promoting compassionate food choices and policies. MFA has a long history of undercover investigations and legal advocacy efforts that have led to increased legal protections for farmed animals and enforcement of existing animal cruelty laws.

According to a poultry "good commercial practices" inspection record dated June 20, 2015, a USDA inspector became concerned that five trucks containing live birds arrived at Tip Top Poultry (plant number P1480) too late to be slaughtered that day. Over the objections of the inspector, thousands of birds were left without food and water for two whole days over the weekend to suffer and die in transport cages in 96–100°F heat. We are not aware of any disciplinary action taken against Tip Top Poultry for this egregious violation of good commercial practices.

Less than two months later, on August 1, Tip Top Poultry again left thousands of birds to suffer and die over the weekend, over the strenuous objections of the USDA inspector. Chickens filling three entire trucks were left in cages, without food and water, in 97–98°F weather. When the inspector returned the next day out of concern for the animals, the birds who were still alive were distressed and scores of others were dead. Again, we are not aware of any disciplinary action being taken.

This blatant disregard for the welfare of birds at Tip Top Poultry slaughterhouses is unacceptable. The abandonment of birds at these plants indicates a total breakdown of process control. The inspection records make clear that Tip Top Poultry is fully aware of how long it takes to slaughter each bird. It should therefore have adjusted its delivery times to avoid such cruelty.

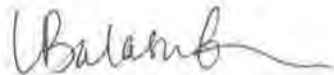
Unfortunately, these incidents are not isolated events. Investigations by MFA have repeatedly documented cruel treatment of birds by slaughterhouses and their employees. A Tyson investigation in Mississippi, for example, found employees beating and throwing birds and breaking their wings and legs while slamming them into shackles. This is not a "good commercial practice." USDA officials were aware of this investigation and in fact corresponded with MFA about it.

In the past two years, MFA has released four different investigations into poultry plants, from California to Tennessee to North Carolina. Each revealed cruel and extreme abuse of birds, many of whom died other than by slaughter. Under existing law, these actions by poultry plants are not acceptable.

The treatment of billions of birds every year in compliance with good commercial practices is squarely the responsibility of FSIS. At present, it is a responsibility that FSIS is not fulfilling. This needs to be made a priority.

USDA has the authority to prevent such egregious misconduct by poultry workers and poultry plants and yet has not taken any meaningful action against these facilities. MFA urges FSIS to immediately address this issue to prevent such future incidents of blatant and unacceptable cruelty.

Sincerely,



Vandhana Bala
General Counsel

Phone: (312) 909-6051

Email: VandhanaB@MercyForAnimals.org



United States Department of Agriculture

Food Safety and
Inspection Service

1400 Independence
Avenue, SW.
Washington, D.C.
20250

OCT 19 2016

Ms. Vandhana Bala
General Counsel
Mercy for Animals
8033 Sunset Boulevard, Suite 864
Los Angeles, California 90046
VandhanaB@MercyForAnimals.org

Dear Ms. Bala:

Thank you for your letter of August 12, 2016, to Deputy Under Secretary for Food Safety Alfred V. Almanza, regarding your concerns about treatment of animals at poultry slaughter establishments inspected by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS).

Following the June 20, 2015, noncompliance at the Tip Top Poultry, Inc. plant (establishment P-1480) in Marietta, Georgia, FSIS inspection personnel documented the actions on a noncompliance report. The establishment responded by adjusting its schedule to avoid birds remaining after a shift. This adjustment was not fully effective, as evidenced by the similar noncompliance on August 1 documented by FSIS inspection personnel. The establishment made further adjustments to its schedule. Inspection personnel have verified that these adjustments have been effective. Since then, there have been no further noncompliances of this nature at the establishment.

We appreciate that Mercy for Animals provided video footage of the poultry slaughter activities at the Tyson Foods, Inc. plant in Carthage, Mississippi. The FSIS Office of Investigation, Enforcement, and Audit (OIEA) initiated an investigation into the allegations. In their investigation OIEA did not find that Tyson Foods violated the PPIA or any FSIS regulation. The footage was reviewed by Agency experts and was considered with other evidence collected.

In the time since the allegations were made, the District Veterinary Medical Specialist (DVMS) and in-plant inspection personnel, including a public health veterinarian, have observed changes to operations and improvements in compliance related to good commercial practices for poultry. The company has installed surveillance cameras in areas of concern that are monitored regularly and installed security measures to restrict access to some of these areas of concern. The DVMS noted some of the improvements

Ms. Vandhana Bala
Page 2

during a routine DMVS check. These checks are unannounced, and the DVMS does not notify plant management of the check until after it is completed.

Again, thank you for writing.

Sincerely,



William C. Smith
Assistant Administrator
Office of Field Operations



Protecting public health by preventing foodborne illnesses is FSIS top priority.

Help protect your family. Check Your Steps at
<http://www.foodsafety.gov/keep/>
and get ready to **Clean, Separate, Cook, and Chill.**

Food safety is important to everyone.



FARM TO TABLE

A

CHICKEN BOOST



FAQ

THE CLUCK

ABOUT

WHAT IS STUNNING? HOW DOES STUNNING ENSURE THAT CHICKENS ARE NOT SLAUGHTERED WHILE CONSCIOUS?

Stunning is the process of rendering animals unconscious before slaughtering them for food. The stunning renders the birds insensitive to pain. Most commercial poultry slaughter facilities render chickens unconscious (stunning) prior to slaughter through the use of low voltage electrical current or controlled atmosphere stunning.

Not surprisingly, the stunning of chickens has been the subject of considerable research and discussion. Many wonder whether stunning is humane, if there are alternative methods of stunning and if there are any safeguards in place to ensure that chickens are not slaughtered while conscious. To help answer these questions, [Dr. Karen Christensen](#), Associate Professor/Extension Specialist at the University of Arkansas's Center of Excellence for Poultry Science, shares her professional expertise and experience, and answers the most frequently asked questions about stunning chickens.

1. WHY ARE BIRDS STUNNED PRIOR TO BEING SLAUGHTERED? IN THE OLD DAYS, DIDN'T GRANDMA JUST TAKE THEM OUT BACK?

Yes, many backyard-raised birds were slaughtered with an axe and a chopping block. Although swift, this method is not practical for the very large number of birds that are processed on a daily basis. In 1957, [the Humane Methods of Slaughter Act](#) included a section regarding poultry. The regulation required that "*fowl first be rendered insensible by the severing of the head from the body or by an electrical or other means determined by the Secretary (of Agriculture) to be rapid, effective and humane.*" The original stunning systems were installed in Europe in the 1960's. These systems were all electrical stun systems. Electrical systems positioned the birds in a more consistent posture for the automatic systems that were just being developed. It was later that stunning the birds before slaughter was considered important for welfare of the birds.



2. WHAT ARE SOME WAYS THAT COMPANIES USE TO STUN CHICKENS TO INDUCE UNCONSCIOUSNESS?



There is one primary method of stunning broilers prior to slaughter in the U.S. and that is “electrical stunning.” It is the predominant method of rendering birds unconscious. There are a limited number of facilities in the U.S. that utilize controlled atmosphere stunning (CAS) systems for broilers. These systems utilize carbon dioxide to render birds insensible. Another CAS system utilizes a reduction of atmospheric pressure to stun birds.

3. IS CONTROLLED ATMOSPHERE STUNNING MORE HUMANE AND MORE EFFECTIVE THAN LOW VOLTAGE ELECTRICAL STUNNING? WHAT ARE SOME OF THE PROS AND CONS OF EACH METHOD?

Most CAS systems render the birds unconscious while still in the transport modules used to transport them from the chicken house to the processing facility. Although stunning the birds in these modules eliminates the stress of unloading and shackling live birds, there is some degree of aversion to the carbon dioxide used to stun the birds. Some birds exhibit open-mouth breathing and a degree of alertness when exposed to the gas and some demonstrate excessive wing flapping which may cause damage that is a meat quality issue.

Electrical stunning creates an instantaneous unconsciousness but requires the birds to be unloaded from the trucks and the shackling of live birds.

4. WHAT KINDS OF SAFEGUARDS OR REGULATIONS ARE IN PLACE TO ENSURE THAT BIRDS ARE NOT SLAUGHTERED WHILE CONSCIOUS? ARE THERE ANIMAL WELFARE REGULATIONS TO GUIDE THE SLAUGHTERING PRACTICE IN THE UNITED STATES?

Processing plants have rigorous welfare requirements that are part of their daily operating procedures. Companies that process animals for food understand that the welfare is important and the right thing to do. Additionally, customers like many of the fast food restaurants, grocers and others have strict requirements that their suppliers have working welfare programs in place. These programs are audited on a regular basis. The USDA inspection service has strict regulations regarding how birds are slaughtered and any deviations are immediately brought to the attention of the plant management.

5. BASED ON YOUR EXPERIENCE DO CHICKENS EXPERIENCE SUFFERING WHEN THEY ARE



FARM TO TABLE

A

CHICKEN ROOST



slaughter is getting a lot of attention and that process is under constant review. I am confident that any changes that are necessary will be made as the information becomes available.

F.A.Q.

THE CLUCK

ABOUT

6. IN ADDITION TO ETHICAL CONCERNS, ARE THERE ECONOMIC INCENTIVES TO MAKING SURE THE CHICKENS ARE PROPERLY STUNNED AND SLAUGHTERED?

We are constantly working to understand what is stressful and how we can reduce stress through the slaughter process. There are procedures in place that minimize stress and discomfort. The process of transportation and slaughter is getting a lot of attention and is under constant review. I am confident that any changes that are necessary will be made as the research becomes available.

7. DO INDEPENDENT RESEARCHERS FREQUENTLY VISIT COMMERCIAL PROCESSING PLANTS? AND IF SO, WHY?

Processing plants use the best science, technology and equipment to produce a high quality product and to reduce product loss, all while ensuring the optimum welfare of the birds they are processing. Plants regularly invite experts into the plants to evaluate their overall performance or address any new issue that may improve quality. In addition, many researchers are welcomed in plants to look for new ways to improve processes or utilize new equipment. Plants are always striving for continuous improvement.

I have regular opportunities to work with companies that are looking to improve processes and improve bird welfare. I enjoy working with plant personnel because they are interested in learning how to solve problems or add new ideas to improve the process.

8. IN YOUR OPINION, ARE THE ELECTRICAL SETTINGS USED IN THE U.S. ADEQUATE TO MEET INTERNATIONAL STANDARDS FOR HUMANE STUNNING AND SLAUGHTER OF POULTRY?

I have not seen any indication that a properly operating stun system in the U.S. is inhumane. "Stun to kill" systems used in Europe increase the amount of meat that is trimmed due to broken bones and blood spots. The other consideration is that for some religious slaughter requirements, stun to kill is not acceptable as the birds must still have a heart beat prior to slaughter.



9. PRIOR TO BEING SLAUGHTERED, WHAT ARE SOME OF THE STEPS COMPANIES TAKE TO HELP ALLEVIATE STRESS AND PAIN? ARE THEY EFFECTIVE?



FARM TO TABLE

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CHICKEN BROST



Environmental temperatures are considered and equipment to cool them or keep them warm is used to keep them comfortable. Density on trucks is monitored based on bird size so they have plenty of room while being transported. Holding areas are designed to maintain comfortable conditions prior to processing.

F.A.Q. THE CLUCK ABOUT

If the stunning system requires the birds to be unloaded, equipment operators make sure the right number of birds are moving into the plant to prevent crowding. Birds are unloaded in reduced light to keep them quiet and minimize stress. Rub bars make gentle contact with the birds while shackled to keep them calm. Equipment in the plant is monitored for each flock and necessary adjustments are made.

10. IS GAS STUNNING MORE HUMANE? DOES GAS STUNNING SYSTEMS PRODUCE CONSISTENTLY SUPERIOR MEAT QUALITY?

I am not sure we know enough about these systems to declare that one is more humane than the other. This is an important area that deserves – and is getting – a lot of attention and research. Processors want to make sure that if they need to make changes, they make the correct one for the welfare of the birds and meat quality for the consumers.



Karen Christensen, Ph.D., is an extension poultry specialist/ associate professor at the Center of Excellence for Poultry Science, University of Arkansas, Fayetteville. Karen received her BS and MS in Animal Science at Washington State University and her Ph.D. in Poultry Physiology from Mississippi State University. Karen enjoyed a long career in the broiler industry prior to joining the faculty at the University of Arkansas.

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BEFORE THE U.S. DEPARTMENT OF AGRICULTURE
PETITION FOR RULEMAKING REGARDING REGULATIONS
ISSUED UNDER THE POULTRY PRODUCTS INSPECTION
ACT (PPIA), 21 U.S.C. § 451, ET SEQ.

I. INTRODUCTION

The Poultry Products Inspection Act ("PPIA" or "Act") 21 U.S.C. § 451 et seq., is based on the premise that "it is essential in the public interest that the health and welfare of consumers be protected by assuring that poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled and packaged," 21 U.S.C. § 451. One of the Congressional policies behind the Act is to provide for the "inspection of poultry. . . and otherwise regulate the processing and distribution of such articles . . . to prevent the movement or sale. . . or the burdening of such commerce by, poultry products which are adulterated or misbranded," 21 U.S.C. § 452.

The Act defines as "adulterated" any poultry product

(3) if it 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;

(4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

21 U.S.C. § 453(g) (3), (4).

Under the PPPIA, USDA has provided by regulation that,

(c) Poultry shall be slaughtered in accordance

with good commercial practices in a manner that will result in thorough bleeding of the carcasses and assure that breathing has stopped prior to scalding. Blood from the killing operation shall be confined to a relatively small area.

9 C.F.R. § 381.65 (c).

The rationale for requiring that poultry shall be thoroughly bled has been to avoid "redskins," the occurrence of which, pursuant to another regulation, 9 C.F.R. § 381.90, requires that the redskinned bird be condemned. The rationale for requiring that breathing has stopped prior to scalding is that the presence of scald vat water in the air sac system means that the bird has been contaminated and requires condemnation under 9 C.F.R. §381.91 (a).

Current poultry slaughter practices, however, encourage precisely the problems they are meant to resolve and, in doing so, result in extreme cruelty to the birds during the slaughter process. Compounding these problems is an inspection system which does not assure that poultry who are supposed to be condemned because they have been inadequately bled or because they have inhaled scald vat water are actually condemned and taken out of the food chain.

As will be explained herein, "redskins" are birds who are alive when they are placed into the scald tank. Furthermore, since they are alive at that stage, they are able to and do ingest scald tank water. Poultry are alive at the scald tank immersion stage because they are not being killed at the beginning of the slaughter process. Whether

intentional or not, one of the reasons that poultry are only temporarily stunned during the beginning of the slaughter process is based on a widespread, mistaken assumption that birds must still be alive in order to be adequately bled. This assumption causes poultry to be only temporarily stunned, leading to the precise result that is unintended--that they are still alive when they enter the scald tank. Since this result is clearly prohibited by regulation, the Food Safety and Inspection Service ("FSIS") needs to promulgate regulations requiring adequate stunning which will contribute to the humane slaughter of poultry.

Scientific studies indicate that inadequate and improper stunning of poultry can be replaced with available, alternative humane slaughtering procedures and that the suffering poultry experience during slaughter can be decreased. Therefore, the Animal Legal Defense Fund, Animal Welfare Institute, Society for Animal Protective Legislation, on their own behalf and on behalf of their members, and consumer Nancy Powell, respectfully petition FSIS to ensure that all poultry sold in the United States is free of contamination, by amending its poultry products inspection regulations under the Act to require that humane standards of slaughter are adopted and followed.

II. PETITIONERS

This petition is being jointly submitted by the

following organizations:

1. The Animal Legal Defense Fund is a national organization of attorneys, law professors and law students dedicated to ensuring that laws enacted to protect animals are administered and enforced for the benefit of animals and that agency decisions and actions are undertaken with due consideration for the lives and interests of animals. ALDF testified in 1994 in support of legislation to require humane slaughter of poultry.

ALDF has among its members those persons who consume animal products, such as poultry products, and who, consequently, are interested in ensuring that the animals they consume are raised in as humane an environment as possible and when slaughtered are done so in as quick and humane a manner possible.

2. The Animal Welfare Institute is a non-profit charitable organization founded in 1951 to reduce the sum total of pain and fear inflicted on animals by humans.

One of AWI's major goals is to reform the cruel treatment of food animals. AWI's book, "Factory Farming: The Experiment That Failed," provides authoritative information on poultry with particular emphasis on laying hens. To quote from the introduction,

It is not commonly known that nearly all the millions hens who lay the nation's eggs are confined to cages in which they cannot spread their wings normally, and that they are so crowded

that one of the four or even five hens shoved into a 12" x 18" cage has to stand on top of the others. Not many people know that the birds are often 'debeaked' to keep them from injuring one another as they struggle for space in these intolerable conditions, nor that their feet may become deformed on the sloping wire cage floors which have no nest to lay eggs in nor roosts to grip in normal hen fashion, nor that by the end of a year in the batteries they are half naked of feathers and, under the title of 'spent' hens, are packed off to chicken soup, pet food and fertilizer factories. They are then subjected to painful slaughter methods.

AWI gives grants for development of systems in which animals can enjoy their brief lives while farmers can make a reasonable profit, which have been modest of necessity. But they have already played a useful part in such progress as has been made.

Only through determined public demand will changes take place. AWI will continue to report on and to encourage development of the best methods of housing and care. Alternative methods are practical, and they provide outlets for normal behavior that are acceptable to the animals themselves. AWI is a strong advocate of humane slaughter of all food animals and tried to have poultry included in the federal Humane Slaughter Act of 1958, but industry opposition at that time was too strong.

AWI has among its members those persons who consume animal products, such as poultry products, and who, consequently, are interested in ensuring that the animals they consume are raised in as humane an environment as possible and when slaughtered are done so in as quick and

humane a manner possible.

3. The Society for Animal Protective Legislation prepares information for use by Members of Congress and their staffs. It sends circular letters to individuals and organizations interested in animal protective legislation, informing them of ways in which they may help, principally by writing to Members of Congress or other government officials and to the editors of newspapers.

The Society worked actively toward passage of the first federal Humane Slaughter Act in 1958 and the broadening and strengthening of the law in 1978. The Society testified in 1994 in support of legislation to require humane slaughter of poultry and urged our correspondents to write in support of the pending bill. The Society vigorously supports the petition to USDA for humane slaughter of poultry.

The Society has among its members those persons who consume animal products, such as poultry products, and who, consequently, are interested in ensuring that the animals they consume are raised in as humane an environment as possible and when slaughtered are done so in as quick and humane a manner possible.

4. Consumer Nancy Powell is an attorney and member of the Animal Legal Defense Fund. She eats primarily poultry as a matter of dietary practice. She intends to continue to

eat poultry in the future.

Ms. Powell believes that the regulations and enforcement of regulations should be as are requested in the Petition. She is upset by the cruel and inhumane practices used and tolerated in the slaughter of poultry at the present time. In this civilized society, she believes there is no excuse for condoning mass cruelty when procedures are available to minimize that suffering and cruelty.

II. DESCRIPTION OF THE PROBLEM

A. Extent of the Problem

Poultry, i.e. birds such as chickens, turkeys, ducks, geese, ostriches and emus, represent the largest number of animals slaughtered for food in the United States. Approximately 7.5 billion birds were killed in federally-inspected slaughterhouses in 1994--7.2 billion chickens, 279 million turkeys, and 20 million ducks. National Agriculture Statistics Service/USDA, Poultry Slaughter, April, 1995 (Exhibit ["Exh."] 1).

Poultry, however, are not covered by the Federal Humane Methods of Slaughter Act of 1978, (referred to as "Humane Slaughter Act") 7 U.S.C. § § 1901, 1902. That act only covers the slaughter and handling of cattle, sheep, goats, horses, mules, and other equines. The Humane Slaughter Act requires that meat inspected and approved be produced only from livestock slaughtered in accordance with humane methods.¹

Many of the current poultry slaughtering practices would be considered inhumane by the standards of the Humane Slaughter Act. Furthermore, it is those very practices that

¹Gentle, Michael, "Behavioural and Physiological Responses to Pain in the Chicken," in A. Elzanowski and M. Abs, "Pain and Stress in Birds," Acta XX Congressus Internationalis Ornithologigici (1991) Exh. 2. There is no good explanation as to why poultry are not covered by the Act since, according to these experts, the "close similarity between birds and mammals in their physiological and behavioral response to painful stimuli argues for a common sensory and emotional experience."

cause an increased risk of contamination rendering it dangerous to humans or unfit for human consumption.

It is necessary to examine current poultry slaughter processes and practices to understand how and why they result in contamination of poultry products, as well as unnecessary suffering to the animals during handling and slaughter.

B. Poultry Slaughter Process

Pre-slaughter immobilization methods can be classified as chemical, mechanical and electrical. Bilgili, S.F., "Electrical Stunning of Broilers--Basic Concepts and Carcass Quality Implications: A Review," 1992 Journal of Applied Poultry Research 1:135, Exh. 3. Electrical immobilization, the far more prevalent method, is accomplished by passing a sufficient amount of electrical current through birds for a given amount of time. Id.

Today, the most common electrical stunning method employed in commercial operations is a brine-water "bath." This method is used to relax neck muscles and contract wing muscles for proper positioning of the head for automatic killing equipment, prevent excessive struggling and wing flapping during bleed out, facilitate rapid bleeding, and relax or loosen feathers. Id. Thus, the first step in the poultry slaughter process involves placement of the animals in an electrical water bath stunning. In the brine water "bath," the birds are shackled by their feet, are hung

upside down, are doused with water, and then electrically shocked. Evidence indicates that the birds receive the shocks at varying amperages which result in varying degrees of insensibility to pain.

After being stunned, the birds are killed either manually or mechanically by cutting their jugular veins. The neck is held open until all of the blood has exited the body. After the birds are bled, they are lowered into a "scalding" tank to loosen their feathers. If the birds have not been adequately stunned, they are conscious when placed into the tank. After removal from the scald tank, the birds are defeathered, have their heads removed and are eviscerated.

This petition addresses the problems inherent in the electrical stunning slaughter process. A recent survey indicated that 90% of all birds slaughtered except light fowl and geese are electrically stunned. Most slaughter facilities electrically stun the birds by applying either alternating or direct electrical current through the animal's brain. G.E. Heath et al., "A Survey of Stunning Methods Currently Used During Slaughter of Poultry," Journal of Applied Poultry research, Exh. 4.

Electrical stunning, or electrical immobilization, does not ensure that the bird is rendered insensible throughout the slaughter process. Rather, electrical immobilization, only induces reversible insensibility for a short period of

time. Grandin, Temple, "Cardiac Arrest Stunning of Livestock and Poultry" in M.W. Fox and L.D. Mickley, Advances in Animal Welfare Science, Exh. 5.

C. U.S. Poultry Processing Plants Are Not Adequately Stunning Poultry During Slaughter

Many of the current problems regarding quality of poultry products and the inhumane treatment of the birds stem from deficiencies in the stunning process. In the United States, poultry processors reportedly do not use amperages high enough to cause cardiac fibrillation (cardiac arrest) and resultant brain death prior to the birds entering the scald tank. Heath's 1995 survey of poultry processing plants, for example, revealed that "low voltage-type electrical stunning devices (10 to 25 volts) were employed in 216 of the 329 poultry slaughter plants, while 63 plants used stunners set at a range of other voltages and amperages with unspecified waveforms and frequencies." See Exh. 4. Thus, in at least 66% of the poultry processing plants in the United States, low voltage stunners are used on the poultry during slaughter. Furthermore, the exact voltage, amperage, and frequency applied to each bird at slaughter is unknown. Id. at 301.

These settings are too low to adequately stun the birds. Gregory and Wotton state that, for stunning of broiler chickens,

currents of greater than 120 mA give an unequivocal stun. Currents greater than 105 mA per bird should provide an adequate period of

insensibility provided the birds are slaughtered promptly and both carotid arteries are cut. Currents of greater than 110 mA can be associated with a raised incidence of carcass quality defects. A stunning current of 110 mA per bird would, therefore, maximise the likelihood of insensibility whilst minimising the carcass quality defects that are associated with high currents...It is recommended...that a stunning current of not less than 105 mA should be used to provide at least 52 s[econds] of apparent insensibility and that currents of less than 75 mA should never be used.

"Effect of Stunning on Spontaneous Physical Activity in the Brain," 31 British Poultry Science 215-20 (1990), Exh. 6.

Despite these findings, poultry stunners in U.S. commercial operations do not administer a current that even approaches 75 mA for broiler chickens. Wayne Austin of Simmons Engineering Company, Dallas, GA states, "The typical amperage used in stunning by our pulsing direct current pre-stunner is approximately 12 to 15 mA." [letter to Clare Druce, Farm Animal Welfare Network, February 1, 1994], Exh. 7. See also P. Bowers, "Look Beyond the Obvious," Poultry Marketing and Technology, June/July 1993, pp. 116-18, Exh. 8. In a personal communication to K. Davis (Oct. 7, 1993), W. Kuenzel, Professor of Physiology, Dept. of Animal/Poultry Science, University of Maryland at College Park, stated that each individual broiler chicken receives 15 mA.

Another problem contributing to inadequate stunning is that several birds are usually stunned at the same time and, thus, receive differing levels of amperage. For example,

one study of a turkey plant indicated that five to eight turkeys are in the stunner at one time so that the "impedance to the flow of electrical current is quite varied between each turkey/shackle combination in the circuit, resulting in a wide range of currents passing through the individual turkeys." Peter Skewes and Glenn Birrenkott, "Turkey Stunning: Limit Amperage to Minimize Cardiac Fibrillation," Turkey World (April-May 1993), Exh. 9.

D. Problems Caused by Inadequate Stunning

Inadequate stunning leads to at least three problems: (1) the carcasses become "red skins" (the flesh appears red or pink in color instead of flesh color); (2) the birds are submerged in extremely hot scald tank water and thus inhale contaminated water which can then be passed on to the finished product; and (3) the birds suffer unnecessarily.

1. Inadequate stunning leads to occurrences of redskins, rendering the carcasses unwholesome.

The reason that "redwings" or "redskins" are considered an undesired product of the poultry process is that they are supposed to be condemned for human consumption. "Redskins" are, by regulation, required to be condemned for human consumption "because it is not known whether the bird was dead prior to slaughter or not fully bled before entering the scalding. Therefore, it would be considered an unsafe product." Per Telephone Message from Delilah Paran, DVM, USDA Slaughter Inspection Standards and Procedures

Department, December 21, 1994. Also, the USDA has indicated that a "bird that has been missed in the killing process will have a distinct red skin indicating a cadaver." See "Guidelines for Establishing and Operating Broiler Processing Plants," USDA Agriculture Handbook Number 581 at 25, Exh. 10. Cadavers should not exceed more than 1 or 2 birds per 1,000 slaughtered. Id.

"Redskins" are actually caused when birds enter the scald tank alive. In his article, "The Slaughter of Broiler Chickens," Exh. 11, Heath explains that his study on redskin carcasses yielded the following results: (1) pink or red skin never developed until the bird had been machine-plucked, (2) the presence or absence of pinkness was not related to the amount of blood left in the carcass, (3) red wing-tips and pygostyles were probably caused by rupture of blood vessels when big feathers were removed and the amount of blood in the vessels was unlikely to influence redness, (4) killed birds bled as well as lightly stunned birds, (5) redskin is not related to the amount of blood left in the carcass and (6) redskins were almost certainly birds which were alive when they were dragged into the scalding tank.

Heath concludes that taking "research from the laboratory to the field is a notoriously slow process but, if poultry packers adopt outright killing in the stunner, they will get more profit (no "redskins") and, furthermore, businesses might increase sales by judiciously advertising

their adherence to humane slaughtering." Heath at 157. Further, he contends that setting the electric stunner to 200V would make no difference in the quality of the carcasses except for the disappearance of redskins and the suspicion of cruelty which hangs over many factories. "Further Observations on the Slaughter of Poultry," 139 British Veterinary Journal 285 (1983), Exh. 12.

Heath is among several veterinarians, scientists, and researchers who have studied the relationship between stunning, bleeding, and redskins. Griffiths, for example, explains that the bruising of carcasses of birds results in significant loss to the industry. Furthermore, "redskin" carcasses were produced when the birds that had not been killed during stunning or exsanguination were taken through the scald tank. "A Survey of Slaughter Procedures Used in Chicken Processing Plants," 61 Australian Veterinary Journal 400 (1984), Exh. 13. In a further study, he concludes that redskins occur as a physiological response to heat, produced when birds are alive when entering the scald tank. In order to prevent this occurrence, there must be effective stunning. "The Occurrence of Red-Skin Chicken Carcasses," 141 British Veterinary Journal 312 (1985), Exh. 14.

The main reason that poultry processing plants do not use high voltage to stun poultry is that many plant managers mistakenly believe that dead birds do not bleed and they want bleeding to be as effective as possible. G.B.S. Heath,

"Observations on Poultry Slaughter," 108 The Veterinary Record 98 (1981), Exh. 15. N.G. Gregory explains that the redwing condition is one of the many factors which can contribute to the downgrading of chicken carcasses. "It detracts from the overall appearance of a carcass and can lead to a loss of weight if the wings require trimming." "Relationship between Wing Flapping at Shackling and Red Wingtips in Chicken Carcasses," 124 Veterinary Record 62 (1989), Exh. 16. Therefore, many processing plants use less amperage to insure that birds are not killed during stunning under the mistaken belief that badly bled birds become redwings.

As Heath has explained, "the management and workers at poultry packing stations are compassionate and wish to carry out their duties in a humane way. But all their actions are governed by a creed which is dominated by two tenets: (1) dead birds will not bleed and therefore light stunning is desirable, (2) red-skinned birds are a manifestation of bad bleeding." Heath, "Observations on Poultry Slaughter," at 98, Exh. 15

Likewise, Gregory and Wotton give four reasons for stunning chickens to the point of insensibility prior to slaughter:

Firstly, stunning will minimise the chance of the birds feeling pain during and after neck cutting. Secondly, it will minimise any distress that could occur during bleeding out. Thirdly, it will immobilise the bird and hence allow neck cutting to be performed easily and accurately. Lastly, it

will prevent the convulsions which occur during bleeding out in unstunned birds. To satisfy the humanitarian requirements of stunning, the birds must be rendered insensible from the outset and should not regain consciousness. //

N.G. Gregory and S.B. Wotton, "Effect of Stunning on Spontaneous Physical Activity and Evoked Activity in the Brain," 31 British Poultry Science 215 (1990), Exh. 17.

Thus, if the goal of the PPIA is to produce a product fit and wholesome for human consumption, then redskins must be eliminated. This can be achieved by promulgating regulations that ensure birds are rendered unconscious prior to slaughter.

- b. Inadequate stunning causes the birds to ingest water from the scald tank, rendering the carcasses unwholesome.

Poultry product contamination occurs when birds who are not rendered unconscious ingest scald tank water into their lungs. For this very reason, USDA regulations require "that birds are no longer breathing when they enter the scalding" in order to prevent "scald water from entering the air sacs or the lungs and causing product contamination." See "Guidelines for Establishing and Operating Broiler Processing Plants," USDA Agriculture Handbook Number 581 at 24-25, Exh. 10.

Adequate stunning that renders the birds unconscious early in the slaughter process is also effective at preventing contamination. A problem with the poultry slaughter process is that when the birds are dipped into the

scald tank, the mud and feces stuck onto their bodies becomes loosened and fills the tank. If a bird is still breathing upon entering the tank, he or she inhales the filthy, contaminated water and draws bacteria into his or her system. The "hot water also opens its pores, allowing more bacteria to enter the skin." "Dirty Chicken," The Atlantic, November 1990, Exh. 18.

If the birds were not breathing upon entering the tank, they would at least be unable to inhale the contaminated water. Adoption of humane slaughtering regulations that would assure the death of each bird would more effectively prevent contamination of birds who ingest scald tank water.

4. Inadequate stunning causes unnecessary suffering to poultry.

The methods of stunning that are being used in U.S. commercial operations are ineffective in rendering the poultry insensible to pain and are therefore cruel. The USDA Guidelines for Establishing and Operating Broiler Operating Plants, fail to even recognize that one of the purposes of stunning is to cause poultry to lose consciousness before proceeding through the remainder of the slaughter process. They state, for example, only that "It is essential that the birds be stunned sufficiently so that the necks can be guided into contact with the grooved rollers" of the mechanical killer guide bar.

In the absence of inducing cardiac arrest or cutting both the carotid arteries, the time from the beginning of

the slaughter process to brain failure in poultry is long (up to eight minutes), and there is danger that the birds will regain consciousness before they die. See "A Practical Guide to Neck Cutting in Poultry," Meat Research Institute Memorandum No. 54, Agricultural and Food Research Council, Langford, Bristol, U.K. 1984, Exh. 19

In the European community, poultry processors are stunning poultry at amperages intended to induce cardiac fibrillation in order to ensure brain death prior to bleed out. This method applies increased voltage and higher current (amperage) to stop the heart and thus stop the supply of oxygenated blood to the brain resulting in loss of brain function and unconsciousness.

Electrical immobilization is not synonymous with or a reliable indicator of surgical anesthesia or unconsciousness or brain death in birds (or mammals). Under current stunning policies and procedures, poultry are being placed either in one of two states of sensibility to pain. They are either in a "locked-in" state, in which they are immobilized and hence unable to outwardly express a response to pain perception, or they are being placed in an analgesic state, in which, although they are presumably insensible to pain, they nevertheless are conscious and capable of perceiving inspiratory gasps, gagging, fear, apprehension, and other forms of extreme distress.

Mere immobilization or inducing paralysis is not the

goal of stunning. The goal of stunning is to use high enough amperages to ensure unconsciousness or death so that the birds are immobilized and desensitized through the rest of the slaughter process. In order for electrical stunning to be effective, "high current densities are required in the brain to cause an epileptic seizure with consequent loss of consciousness." Sharon Woolley, "Flow Routes of Electric Currents in Domestic Hens during Pre-Slaughter Stunning," 27 British Poultry Science 403 (1986), Exh. 20. Also, Heath explains in his article, "The Slaughter of Broiler Chickens," reprinted from the WPSA Journal Vol. 40, No. 2 (June, 1984), Exh. 21, that "meat research workers often forget the principal intention of stunning the animals- what happens with the consciousness of the animal during the stunning and NOT what happens with the meat of the animal."

Similarly, E. Thomas states,

In the (commercial broiler chicken) plant where I work as an Official Veterinary Surgeon we use a current high enough to produce cardiac arrest and have done so for nine years ... We found that our birds were receiving 120-150 mA--well above the E.C. suggestion without adverse affects. I would point out that this is a commercial operation. This plant competes with other U.K. and other European plants to sell the product. Our birds are sold fresh (not frozen) and mostly as portions not whole birds so defects cannot be hidden. If this process had caused downgrading it simply would not have continued for nine years.

Letter to Karen Davis, Dec. 30, 1992, Exh. 22.

E. Inadequate stunning is partially caused by excessive line speeds, which, in turn cause carcass contamination via fecal splatter, and inspector inability to thoroughly inspect the poultry and condemn sufficient numbers of birds.

Another consequence of inhumane slaughter that leads to a poultry product unfit for human consumption is fecal splatter. Fecal splatter is a real problem that results in salmonella contamination of many broiler carcasses. Rep. Neal Smith, a former ranking majority member of the House Appropriations Subcommittee on Agriculture charged that the USDA "had abandoned its mandate to insure wholesome foods in the 1980s" by allowing the poultry industry to take responsibility for preventing fecal contamination by declaring that fecal splatter could simply be washed away. "Poultry Contamination Reaches 100 Percent, USDA Tells Congress," Nutrition Week March 15, 1990, Exh. 23.

In addition to its causative role in fecal contamination, evisceration is, along with the scalding and plucking stages of processing, the process most responsible for the transmission of foodborne pathogens. According to Mead,

Automatic evisceration equipment often causes fecal contamination of carcasses because of gut breakage. This is a consequence of natural variations in bird size and the inability of such machines to adjust automatically to size variation. The spread of fecal matter will transmit any enteric pathogens such as salmonellas and campylobacters...Because birds must remain whole throughout the processing operation, the abdominal cavity is a site which is particularly difficult to clean effectively following

evisceration. Even with inside-outside washers, many contaminants remain on the inner and outer surfaces of the birds.

G.C. Mead, Problems of Producing Safe Poultry," 86 Journal of the Royal Society of Medicine 39 (1993), Exh. 24.

The automatic eviscerating machine's role in causing contamination is well-described in an article that appeared in Atlantic magazine:

They remove the intestines of each bird at high speed, often breaking open the viscera and spilling the contents--including feces--over the bird...Chilling curbs microbial growth, but tanks allow feces to wash from one bird to another. (The scalding tanks have the same drawback.) /

"Dirty Chicken " Atlantic Vol. 266, No. 5, November 1990, Exh. 18.

USDA Field Inspector John Darbee, in comments submitted on the USDA's proposed Poultry Enhancement Program, stated that worst example of the "blatant disregard for consumer welfare" he has witnessed, and claims is "normal operating procedure in many poultry plants," was "plant managers and plant employees on the evisceration line attempting to wipe fecal contamination from the abdominal cavities of chickens and turkeys." Food Chemical News, November 14, 1994, Exh. 25.

III. OTHER SLAUGHTER PRACTICES RAISING HUMANE CONCERNS

1. Cutting of Improper Veins in the Neck

The fastest known way of producing brain death in poultry is by completely stopping the flow of blood to the brain either by inducing cardiac arrest (the faster method)

or by severing the two main arteries, the carotids, which supply the brain with most of its fresh blood. In contrast, since the jugular veins carry spent blood away from the brain, severing them does not stop the flow of blood to the brain. Poor neck-cutting techniques extend the time that it takes a bird to die. They prolong the pain and suffering. The worst situation is the severance of only one jugular vein, which can result in a bird's retaining consciousness while in severe pain for as long as eight minutes. Most of the blood has to drain out of the body before the heart stops pumping blood to the brain through the carotid arteries. If both jugular veins are cut, brain failure occurs approximately six minutes later and the bird is in danger of retaining or regaining consciousness, especially if breathing is resumed. If both carotid arteries are cut, the supply of oxygenated blood to the brain is interrupted, resulting in brain failure approximately four minutes later. See "A Practical Guide to Neck Cutting in Poultry,"

Exh. 19.

Cutting the spinal cord arteries is not humane because it induces asphyxia (suffocation) rather than deprivation of oxygenated blood to the brain, because the nerves that control breathing movements are severed within the spinal cord. Cutting the spinal cord interrupts the nerves connecting the brain with the bird's body making it

impossible for the bird to exhibit conscious awareness through physical expression. Consequently, birds that have been inhumanely stunned and then have their spinal cords cut cannot be identified by plant personnel.

Inspection regulations to ensure humane treatment of poultry should require that slaughter is conducted in a manner that renders poultry instantaneously, completely, and permanently insensible (unconscious or dead) by the rapid severance of both carotid arteries leading to the brain, near the head end of the neck where the two arteries emerge onto the surface of the muscle lining the under side of the neck and diverge on either side to enter the bird's skull. See "A Practical Guide to Neck Cutting in Poultry," Exh. 20

2. Stunning of Spent Hens and Small Birds

Spent laying fowl and small birds such as quail are not generally stunned in the U.S., although in Europe electrical stunning is widely used for hens, and hen meat is used for similar products as those in the United States.

Currently, from a humane standpoint, the best method of stunning hens appears to be high voltage electrical stunning ensuring that the birds are stunned without receiving an electric shock beforehand, and that cardiac arrest is induced at stunning by an electrical current of not less than 150 mA. Gregory, lecture, University of Maryland College Park, Nov. 12, 1993. Because of their relative maturity at slaughter (approximately 76 weeks old compared

to the six or seven week old broiler chickens), spent hens' skulls are harder than those of the immature broiler chickens making it likely that they require a higher current to be humanely stunned. In the future, it appears that, for spent hens as well as for other poultry, gas stunning methods based on hypoxia or hypoxia with low levels of carbon dioxide may be a more humane alternative to present methods, because they will eliminate the need for pre-slaughter shackling and produce less carcass damage.

Gregory, letter to Karen Davis, January 11, 1993, Exh. 26

3. Use of Improper Equipment and Inadequately Trained Personnel

Regulations should stipulate that all equipment that is used to apply and control electrical stunning, gas stunning, and slaughter will be maintained in good repair and that inefficient, malfunctioning equipment will be immediately shut down from the time it is tagged. All communications in regard to inefficient, malfunctioning humane slaughter equipment should be in writing and available for public inspection. Employees who handle or move poultry inhumanely should be so advised and reprimanded in writing and, thereafter, if the inhumane handling continues or recurs, they should be suspended, terminated, or suffer a pay reduction. All communications in regard to inhumane handling or moving of poultry by employees should be in writing and available for public inspection.

Regulations should also stipulate that all maintenance

shall be performed by qualified personnel at established intervals that ensure accuracy of the equipment. Every day before the equipment is used, proper care should be taken to ensure that it is in good repair and that all indicators, instruments, and measuring devices are in good repair and available for inspection by authorized inspectors. Equipment should be monitored throughout the day and immediately shut down for repairs when necessary. It is important that the humane slaughter equipment and personnel do not contribute to the pain and suffering of the birds instead of alleviating it.

III. PETITIONERS' REQUEST FOR RULEMAKING

Petitioners request that, in order to promote and ensure the wholesomeness of the poultry product for human consumption, and that poultry are rendered unconscious at the beginning of the slaughter process, USDA promulgate regulations under the PPIA that require the humane slaughter of poultry. This is especially true as the inhumane slaughter of poultry causes the resulting poultry product to be unwholesome and "injurious to health." 21 U.S.C. § 453 (g)(4).

The Food Safety and Inspection Service Meat and Poultry Inspection Regulations, 9 CFR 300-381, include a provision for the Humane Slaughter of Livestock, 9 CFR 313.1, 313.2, 313.5, 313.15, 313.16, 313.30, 313.50, 313.90 [Reserved]. We seek a comparable insertion in the PPIA providing for the

Humane Slaughter of Poultry. This would appear to be between 9 CFR 381.95 (L), Handling and Disposal of Condemned or Other Inedible Products at Official Establishments, and 9 CFR 381.96(M), Official Marks, Devices, and Certificates; Export Certificates; Certification Procedures.

IV. THE REGULATORY CHANGE SOUGHT WOULD FURTHER THE PURPOSE OF THE PPIA

Congress has authorized the Secretary of Agriculture to "promulgate such other rules and regulations as are necessary to carry out the provisions of this chapter," 21 U.S.C. § 463.

The purpose of the PPIA is to ensure the wholesomeness of the poultry product for human consumption. The PPIA lists the numerous ways that poultry can be deemed to have become "adulterated" under the Act. The term "adulterated" shall apply to any poultry product under one or more of the following circumstances: (3) if it 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 or (4) if it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. 21 U.S.C. § 453 (g)(3)-(4). The promulgation of humane slaughter regulations is consistent with the language of the statute.

Moreover, all poultry regulated under the PPIA are

either in interstate or foreign commerce or substantially affect such commerce. Regulation is contemplated by the Act as appropriate to prevent and eliminate burdens upon such commerce, to regulate such commerce effectively, and to protect the health and welfare of consumers. 21 U.S.C. 451; 9 C.F.R. 381.3(c). Additional regulations are being requested by the Petitioners as appropriate to protect the interest of consumers and the general public by assuring them that the poultry thus regulated are being slaughtered and handled humanely.

V. THE REGULATORY CHANGE SOUGHT IS IN THE PUBLIC INTEREST

Regulations ensuring the humane treatment of poultry at slaughter are appropriate to protect and ensure the public interest by assuring the public that poultry are handled, stunned, and slaughtered humanely while producing a wholesome product as that term is defined under the PPFA.

VI. CONCLUSION

In essence, the Poultry Products Inspection Act, 21 U.S.C. § 451 et seq. is based on the premise that, "it is essential in the public interest that the health and welfare of consumers be protected by assuring that poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled and packaged," 21 U.S.C. § 451. According to the USDA, some of the primary reasons for condemnation of birds are tuberculosis, leukosis, septicemia

and toxemia, synovitis, tumors, airsacculitis, bruises, cadavers, contamination, and overscald. USDA "Guidelines for Establishing and Operating Broiler Processing Plants" at 27. In order to promote the wholesomeness of the poultry product and to eliminate some of these problems, regulations requiring humane slaughter must be promulgated. Humane slaughter not only prevents cruelty to animals but also prevents redskins, prevents birds from inhaling contaminated water, and it would promote a decrease in fecal splatter. In order to ensure that poultry are fit for consumption, effective stunning must be employed.

American processing plants have the capability to increase their amperages to ensure adequate stunning. European plants increased their stunning amperages years ago. It is in the best interest of society and the national and international economy to amend inspection regulations under the Poultry Products Inspection Act to ensure the humane slaughter of poultry in federally-inspected establishments. Most Americans are under the impression that poultry already receive the same humane statutory and regulatory protection in federally-inspected facilities as do livestock. Since the advent of mass production farming, concerns about the humane treatment of animals have increased. There is no reason not to require that all poultry are rendered completely unconscious or dead prior to slaughter. Effective stunning eliminates cruelty, ensures

wholesome carcasses, and meets the expectations of the American public. For these reasons, this petition seeks regulations which are necessary to assure a wholesome product, are consistent with USDA's statutory authority, and are in the public interest.

Respectfully submitted,

Valerie J. Stanley
Staff Attorney
Animal Legal Defense Fund, Inc.
401 E. Jefferson Street
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Rockville, Md. 20850
(301) 294-1617



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Washington, D.C.
20250

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MAY 31 1996

Valerie J. Stanley, Staff Attorney
Animal Legal Defense Fund
401 East Jefferson Street
Suite 206
Rockville, MD 20850

Dear Ms. Stanley:

We have reviewed your petition dated November 21, 1996, requesting that the Food Safety and Inspection Service (FSIS) amend the Federal poultry products inspection regulations to require humane standards of slaughter for poultry. We are denying your request.

Under the Poultry Products Inspection Act (PPIA), FSIS promulgates regulations to prevent the movement or sale of adulterated or misbranded poultry products in interstate or foreign commerce. The PPIA does not grant FSIS authority to promulgate regulations concerning the humane handling or slaughter of poultry. Further, it is the Agency's opinion that the promulgation of humane handling and slaughter regulations would not serve to prevent the movement or sale of adulterated or misbranded poultry products in interstate or foreign commerce.

The Federal Meat Inspection Act (FMIA) originally did not contain provisions regarding the humane handling and slaughter of livestock. Only after the FMIA was amended by the Humane Methods of Slaughter Act of 1978 did the Agency develop regulations requiring the humane handling and slaughter of livestock. Until the PPIA is amended to include similar provisions, FSIS will not have the authority to promulgate humane handling and slaughter regulations for poultry.

You may contact Victoria Levine, Petition Manager, Regulations Development, at (202) 720-7163, if you have any further questions.

Sincerely,

147 Paula M. Cohen, Director
Regulations Development
Policy, Evaluation and Planning Staff

District	EstNbr	EstName	MOI#	Date	Status	Description
35	P550	Simmons Prepared Foods, Inc.	XWN4820085711G	2016-08-11	Finalized	Est. P550 Simmons's Food Inc., August 10, 2016, 20:30 hours. In attendance: (b)(6), an (b)(6). The following is a synopsis of the events regarding severely bruised carcasses presenting to inspection personnel: On August 8, 2016, at approximately 21:00 hours while performing veterinary dispositions on carcasses on Line 1 and 2, (b)(6) and (b)(6) retained nine carcasses in which half of the carcass had dark-red to purple bruising. Upon examination, the femoral head was dislocated from the acetabulum and there was a large amount of pooled blood between the skin and the breast. When the skin was ripped over the breast, approximately 20-30 mL of blood drained out. All the carcasses were shown to establishment management. On August 9, 2016, between approximately 20:00 and 22:00 hours while performing veterinary dispositions on carcasses on Line 2 and (b)(6) and (b)(6) had retained approximately nine carcasses in which half of the carcass had dark-red to purple bruising. Upon examination, the femoral head was dislocated from the acetabulum and there was a large amount of pooled blood between the skin and the breast. When the skin was ripped over the breast, approximately 20-30 mL of blood drained out. All the carcasses were shown to establishment management. Establishment elected to save the carcasses and take photographs for live haul management. On August 10, 2016, between 19:45 hours and 21:00 hours, thirteen carcasses were retained for veterinary disposition by (b)(6), (b)(6), and (b)(6). One carcass had dark red to purple bruising affecting a quarter of the carcass with no dislocation of the femoral head. Another carcass had a compound fracture of the femur. The ulna bone of the wing was also fractured and accompanied by dark red bruising but the ulna bone had not punctured through the skin. The other eleven carcasses had dark red to purple bruising. Upon further examination in nine of the eleven carcasses, the femoral head was dislocated from the acetabulum and a large amount of pooled blood between the skin and breast. When the skin was ripped over the breast, approximately

District	EstNbr	EstName	MOI#	Date	Status	Description
						20-30 mL of blood drained out. The other two carcasses had fractures of the femur that appeared to be the cause of the bruising in my professional opinion. Establishment elected to save the carcasses and take photographs for live haul management. Between approximately 22:30 hours and 00:00 hours, additional six carcasses were retained by (b)(6) and (b)(6) for severe bruising. Five of the carcasses had dark red to purple bruising affecting half of the carcass with varying degrees of dislocation of the femoral head. Three of the carcasses had a complete dislocation of the femoral head from the acetabulum. One carcass had a fractured femoral head. One carcass only had partially dislocated femoral head from the acetabulum. The sixth carcass had bruising affecting a quarter of the carcass with no dislocation of the femoral head but the dark-red to purple bruising was primarily located over the femoral head and humeral head. Establishment elected to save the carcasses and take photographs for live haul management. At approximately 02:00 hours, an additional two carcasses were retained by (b)(6) and (b)(6) for severe bruising. Both carcasses had dark red to purple bruising affecting half of the carcass. Both carcasses had dislocation of the femoral head from the acetabulum and approximately 20-30 mL of blood pooled between the skin and the breast. Establishment elected to save the carcasses and take photographs for live haul management. At approximately 02:30 hours, a live bird was also visualized on the live hang floor. The bird was reluctant to move, left leg was extended (when attempting to move), outwardly rotated, and had swelling and inflammation of the left leg. In my professional opinion, the bird most likely had a dislocation of the femoral head from the acetabulum. The bird was shown to (b)(6) and (b)(6) before being euthanized by establishment management. At approximately 04:40 hours, an additional five carcasses were retained by Food Inspectors on Line 1, Line 2, and Line 3 for severe bruising. All five carcasses had dark red to purple bruising affecting half of the carcass. All five carcasses had dislocation of the femoral head from the acetabulum and approximately 20-30 mL of blood pooled

District	EstNbr	EstName	MOI#	Date	Status	Description
						between the skin and the breast. A total of 44 carcasses were retained over the last three night shifts due to severe bruising with 26 carcasses retained during the shift beginning on August 10th. Approximately 41 of the carcasses had some degree of dislocation of the femoral head from the acetabulum. The following is a synopsis of the discussion regarding the nine carcasses presented with approximately half of the carcass severely bruised: (b)(6) informed (b)(6) that these carcasses continue to be an issue due to severe bruising. This is the third straight day of nearly double digit carcasses with dark-red to purple bruising affecting half the carcass. (b)(6) informed USDA that he was discussing the issue with upper management including live haul management to identify and resolve the problem. (b)(6) informed (b)(6) that severe bruising is not consistent with good commercial practices and IPP are instructed to issue MOIs for excessive amount of bruising according to notice 44-16. The meeting was adjourned at approximately 20:35 hours. A previous MOI, XWN4300074011G, with the same cause was documented on July 11.

District	EstNbr	EstName	MOI#	Date	Status	Description
35	P550	Simmons Prepared Foods, Inc.	XWN15200 83016G	2016-08-16	Finalized	Est. P550 Simmon's Food Inc., August 15, 2016, 04:15 hours. In attendance: (b)(6) and (b)(6) The following is a synopsis of the events regarding severely bruised carcasses presenting to inspection personnel: On August 14, 2016 at approximately 19:50 hours, inspection personnel retained a carcass due to severe bruising. A quarter of the carcass was bruised due to dislocation of the femoral head and fracture of the wing. At approximately 20:30 hours, four carcasses were retained by inspection personnel due to severe bruising. Half of the carcass was bruised on all four carcasses with approximately 20-30 mL of pooled blood upon opening the skin. The most apparent injuries on the four carcasses respectively were dislocation of the femoral head, dislocation of the femoral head with a puncture through the ribs into the coelom, dislocation of the femoral head and fractured wing, and partial dislocation of the femoral head. At approximately 23:00 hours, inspection personnel had retained five more carcasses for severe bruising of approximately half the carcass. These carcasses also had pooled blood with the most apparent injuries respectively of dislocation of the femoral head, dislocation of the femoral head and fractured wing, partial dislocation of the femoral head, dislocation of the femoral head, and fractured tibia. At approximately 23:10 hours, two more carcasses were retained by inspection personnel for severe bruising of approximately half the carcass with approximately 20-30 mL of pooled blood upon opening the skin. The most apparent injuries in these carcasses are fractured wing and dislocation of the femoral head. While administering relief breaks, I had to take a regulatory control action on Line 2 at approximately 23:32 hours as there were not any available shackles designated for veterinary disposition on Station 1. The line was restarted at 23:33 hours. At approximately 23:35 hours, another regulatory control action of stopping the line was required due to no available shackles designated for veterinary disposition on Station 1. The line was restarted at approximately 23:36 hours. After finishing relief breaks, a total of six carcasses had been retained for severe bruising of approximately half the carcass with approximately 20-30 mL of pooled blood. The most

District	EstNbr	EstName	MOI#	Date	Status	Description
						apparent injuries of the six carcasses respectively were four carcasses with dislocation of the femoral head and two carcasses with fractured femurs. At approximately 03:15 hours while administering relief breaks, (b)(6) requested me to stop Line 2 as (b)(6) had taken a regulatory control action on Line 1 Station 3. (b)(6) had retained four carcasses with severe bruising of approximately half the carcass with approximately 15-20 mL of pooled blood. The most apparent injuries of all four carcasses were dislocation of the femoral head. After finishing administering relief breaks at approximately 03:30 hours, a total of six carcasses were retained by inspection personnel. Four of the carcasses had bruising of approximately half the carcass while the other two carcasses had bruising of approximately one quarter of the carcass. The most apparent injuries in the carcasses with bruising of approximately half the carcass were dislocation of the femoral head, dislocation of the femoral head, and fracture of the femur. The most apparent injuries respectively in the carcasses with bruising of approximately quarter of the carcass were fractured femur and fractured tibia. At approximately 04:15 hours, another four carcasses had been retained by inspection personnel due to severe bruising of approximately half the carcass. The most apparent injuries in all four of these carcasses were dislocation of the femoral head. An additional two carcasses were retained between 04:15 hours and 04:30 hours in which inspection personnel notified me of at approximately 04:35 hours. (b)(6) performed veterinary dispositions on these carcasses. A total of approximately 32 carcasses were retained over the shift due to severe bruising with the most apparent injury in the majority of carcasses presented as dislocation of the femoral head from the acetabulum. The following is a synopsis of the discussion regarding approximately 25 carcasses presented with approximately half of the carcass severely bruised: (b)(6) discussed with (b)(6) that these carcasses continue to be an issue and the number presented to inspection personnel has increased significantly. There have been approximately 25 carcasses presented to inspection personnel involving half of the

District	EstNbr	EstName	MOI#	Date	Status	Description
						carcass with the vast majority having a dislocation of the femoral head from the acetabulum. Severe bruising is not consistent with good commercial practice and (b)(6) informed (b)(6) that an MOI would be documented. (b)(6) informed me that he was attempting to identify a cause. The establishment is documenting the number of carcasses and time to help identify the cause. The meeting was adjourned at approximately 04:20 hours. A previous MOI, XWN4820085711G, with the same cause was documented on August 11.
35	P550	Simmons Prepared Foods, Inc.	XWN54130 83329G	2016-08-29	Finalized	At approximately 1245 hours, I visited the live hang area to perform a good commercial practices check. I observed that the auger used to convey DOAs and paws to the offal trailer was not operating. The cover to the auger was open and there were numerous carcasses piled in the auger. I looked in the auger to confirm that all the birds in it were dead. I observed a live chicken in the auger with its head up looking around. The (b)(6) was in the area and I pointed out the live chicken to him. He removed the chicken from the auger and performed a cervical dislocation on it. Da (b)(6) came to the area and I discussed the issue with him. He said that they would retrain all the employees in the area as they were unsure who may have placed the live chicken in the auger.

Table: Noncompliance Records(NRs) for FOIA 2017-0086

EstNbr	EstName	NR#	Date	Task	Regs	Description
P325	Tyson Foods, Inc.	YDM30 100816 02N	08/02/2016	04C05	381.65(b)	At approximately 0835 on 8/2/16 while observing conditions at the rehang station the following non-compliance was observed: 12 bright red carcasses were seen on the rehang station, the overflow bin, and the condemned barrels at rehang. The majority of the carcasses still had their heads attached and with no neck cut. The carcasses that had their heads removed were very bloody at the neck stump. Given the appearances of the carcasses, those birds were alive when entering the scald tanks and as such died by means other than slaughter. The regulations require that poultry be slaughtered in accordance with good commercial practices, in a manner that results in thorough bleeding of the poultry carcass and ensures that breathing has stopped before scalding, so that the birds do not drown (9 CFR 381.65(b)). Note that live-hang was still tagged off from a concurrent issue with process control and as such regulatory control action was already in place. (b)(6) and (b)(6) were notified of the non-compliance. (b)(6) stated that the current issue with bird size was responsible for the cadavers. (b)(6) stated that they will place two extra back up cutters in the kill room until bird size is more manageable as a preventative action. The plant has also elected to run at (b)(4) birds per minute until bird size has returned to normal. (b)(6)
P325	Tyson Foods, Inc.	YDM28 210939 19N	09/19/2016	04C05	381.65(b)	At about 1450, a carcass that was very bloody at the neck stump was hung back. The bird had been cut through the middle of the head rather than the neck. I checked the condemn barrel at the rehang station and found 5 cadavers. I demonstrated the cadavers to Plant Manager Matt Sherman. At about 1748, I found 2 more cadavers in the condemn barrel at the rehang station. Given the appearance of the carcasses, the birds were alive when entering the scald tanks and as such died by means other than slaughter. This is not in accordance with good commercial practices. I informed Mr. Sherman this was a noncompliance according to 9 CFR 381.65(b). The plant condemned the cadavers, and I slowed the line speed by 10% to (b)(4) birds per min. Mr. Sherman discussed the cadavers and job performance with the back up neck cutters.

Table: Noncompliance Records(NRs) for FOIA 2017-0086

EstNbr	EstName	NR#	Date	Task	Regs	Description
M5842	Tyson Foods, Inc.	NPF191 909542 ON	09/08/2016	04C05	381.65(b)	September 08, 2016 At approximately 2011 hours in route to the establishment's FSIS office from the evisceration department I, (b)(6) observed the following: Two plant team members were observed removing numerous young chicken carcasses from the evisceration line 2, prior to the Line 2 (b)(4) machine and FSIS inspection. The team members were tossing each carcass into a yellow condemn barrel. After seeing, numerous carcasses removed from the line and that the condemn barrel was full, I elected to look into the situation. Upon closer observation, it was noted the drums of these carcasses were cut too short. I then walked over to the rehang area and immediately observed an accumulation of, approximately 30 carcasses on the floor. With the process still running at maximum line speed of (b)(4) carcasses per minute and without interruption of plant control, team members at the rehang area were struggling to hang the carcasses from the belt to the shackles and maintain control of carcasses falling off the belt due to the short drums and falling from the transfer point. At the time of these observations, no plant control efforts were being made to maintain process control at the rehang area. I requested a member of maintenance through the evisceration lead team member, who was still pulling carcasses from the line prior to Line 2 (b)(4). While waiting for maintenance to address the short drum issue, I observed carcasses entering into the rehang area with signs indicating improper kill or cadaver, which were, heads fully intact, no indication of a kill cut and pooled blood throughout the front half of the carcass. I removed a couple of the cadaver carcasses from the line and requested the rest be removed by a rehang team member. Upon returning from retrieving the key card to access the kill department, I noticed that production on kill Line 2 had been stopped. I had accumulated approximately 25 cadaver carcasses prior to the line stoppage. 13 of the carcasses pulled from the line were observed with a cut across the lower part of the head which does not allow for proper bleed out, thus resulting in pooled blood in the lower half of the bird. I requested a supervisor or member of management to the area. At approximately 2038 hours, (b)(6) was observed to be running toward the live dock area. Several minutes later, (b)(6) returned to the area where I was waiting and observed the carcasses with which FSIS had retained. According to (b)(6) the establishment had received a load of birds with an

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EstNbr	EstName	NR#	Date	Task	Regs	Description
						excessive amount of DOA's. I stated that DOA's cannot be hung on the line and if they were DOA's, the process should still have made the kill cut to allow a proper bleed out. (b)(6) explained that improper slaughter and/or hanging DOA's on the evisceration kill line is unacceptable. Approximately 30 minutes later, (b)(6) returned to the FSIS office to offer actual cause for the incident. It was stated that a shackle became stuck on the stunner on Line 2 causing the stunner to not function properly. According to (b)(4) production on Line 2 was stopped immediately until the corrections could be made. I stated that the line was not stopped immediately due to the fact that numerous cadavers entered into the rehang area and were retrieved by FSIS. Statements proffered to in-plant IPP by plant management on 9/9/2016 stated that the plant shift 2 Evisceration GPM observed a partially detached and hanging kill shackle drag link go through the kill line 2 live bird stunner at approximately 2012 on 9/8/2016 and at that point realized the stunner was not working. The plant back up killing person stopped kill line 2 moments later according to their plant statements. The establishment's young chicken killing process consists of 1 live bird stunner and 1 automatic, circular blade killing machine on both of the 2 establishment kill shackle lines and 1 back up killing person at a station located where the 2 kill shackle lines converge after going through the automatic killing machines. The stunned and cut young chickens then die of exsanguination on the moving kill shackle lines in the blood tunnel located immediately after the back up killing station. The back up killing person station has line stop/start buttons for both kill shackle lines. The back up killing person is instructed to stop either kill line if a bird on that kill line is about to pass the back up killing station that has not been properly stunned and/or cut as per plant policy. Apparently on 9/8/2016, this plant killing process was not under process control sometime before the plant back up killing person stopped the line at approximately 2012 as manifested by the approximately 25 cut and improperly cut bright red cadaver carcasses observed by (b)(6) in the plant rehang processing area at 2011. It should also be noted the concern with cadaver birds being presented into the evisceration process of Est. M5842 has been discussed during previous PHIS MOIs documenting weekly meetings with plant management and in previously issued PHIS GCP MOIs.

EstNbr	Date	MOI Agenda
P1655	06JAN2016	On Wednesday January 6, 2016 at approximately 1550 hours, I, (b) (6) was performing a Poultry Good Commercial task. While I was observing the stun/kill area I observed ten (10) birds hung by one leg; this was during a (b) (4) time span. Some of these improperly hung birds were not rendered insensible and had the dangling leg removed by the head removal saw. I immediately returned to the Government office and asked (b) (6) to accompany me to the kill/stun area. Upon our arrival, we observed ten (10) more birds hung by one leg in less than one minute. During our observations the line speed was (b) (4) BPM. (b) (6) notified (b) (6) of our observations and asked that the line speed be reduced by ten percent. (b) (6) slowed the lines to (b) (4) BPM also; (b) (6) was notified that an MOI would be issued for this poor commercial practice. At 1610 hours (b) (6) and I observed the kill/stun area and observed four (4) birds hung by one leg during a three (3) minute time span and the lines remained at (b) (4) BPM for the remainder of the shift. Proper treatment of poultry and adherence to good commercial practices is extremely important. The observations described above are not consistent with proper treatment and good commercial practices in the production of poultry. Please provide FSIS USDA with information and assurance that poultry will not be mistreated and that good commercial practices will be followed at this establishment. A MOI was issued to the establishment on 12/14/15 for the same cause; birds being hung by one leg. The preventative actions given by the establishment were ineffective in preventing this poor commercial practice. A copy of this MOI will be forwarded to the (b) (6) and a copy will be retained on file in the Government Office. Respectfully, (b) (6) P-1655 N/S
P1655	25JAN2016	On Monday January 25, 2016 at approximately 1605 hours, I, (b) (6) was performing a Poultry Good Commercial task. While I was observing both lines at the stun/kill area, I observed ten (10) birds hung by one leg; this was during a three (3) minute time span. Four (4) of the improperly hung birds were not rendered insensible and had the dangling leg removed by the head removal saw. I immediately returned to the Government office and informed (b) (6) of my findings. During my observations the line speed was (b) (4) BPM. I notified (b) (6) of my observations and asked that the line speed be reduced by ten percent. (b) (6) slowed the lines to (b) (4) BPM also; (b) (6) was notified that an MOI would be issued for this poor commercial practice. I revisited the kill/stun area with (b) (6) at 1745 hours and deemed the hanging of birds acceptable. The line speed was restored to (b) (4) BPM. Proper treatment of poultry and adherence to good commercial practices is extremely important. The observations described above are not consistent with proper treatment and good commercial practices in the production of poultry. Please provide FSIS USDA with information and assurance that poultry will not be mistreated and that good commercial practices will be followed at this establishment. A MOI was issued to the establishment on 1/06/16 for the same poor commercial practice; birds being hung by one leg. The preventative actions given by the establishment were ineffective in preventing this poor commercial practice. A copy of this MOI will be forwarded to the Springdale (b) (6) and a copy will be retained on file in the Government Office. Respectfully, (b) (6) P-1655 N/S