



United States Department of Agriculture

Food Safety and
Inspection Service

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Washington, D.C.
20250

Ms. Vandhana Bala
General Counsel
Mercy for Animals
8033 Sunset Blvd. Ste. 864
Los Angeles, CA 90046

MAR 14 2018

Dear Ms. Bala:

The Food Safety and Inspection Service (FSIS) has completed its review of Mercy for Animals' November 15, 2017, petition requesting that FSIS initiate rulemaking to include poultry as "livestock" under the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901-1907) and as "amenable species" under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) for the purpose of humane slaughter provisions (21 U.S.C. 601(w)(3) and 603). The petition also requests that FSIS determine methods of slaughter for poultry species that comply with requirements under the HMSA and issue directives, notices, and other policy and guidance documents for enforcement of the humane slaughter provisions at official poultry slaughter establishments.

We have decided to deny your petition. In regard to initiating rulemaking to include poultry as "livestock" under the HMSA and as "amenable species" under the FMIA for the purpose of humane slaughter provisions, the Agency previously has determined that the HMSA does not include poultry as "livestock" for the purposes of the Act. In 2005, through a notice in the *Federal Register* (70 FR 56,624; Sept. 28, 2005), FSIS stated that the HMSA does not include provisions concerning the handling and slaughter of poultry. In the notice, the Agency recognized Congressional and public interest in humane treatment of animals, including poultry. Furthermore, FSIS reminded all poultry slaughter establishments that, under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) and Agency regulations, live poultry must be handled in a manner that is consistent with good commercial practices, which means they should be treated humanely. FSIS stated, however, that there was no specific federal humane handling and slaughter statute for poultry.

Both legislative history and principles of statutory interpretation demonstrate that the 2005 *Federal Register* statement that the HMSA does not cover poultry reflects the original Congressional intent for the meaning of "livestock" under the HMSA. In August 1957, Congress passed the PPIA to provide a system for the inspection, processing, and regulation of poultry and poultry products. Under the PPIA, "poultry" is defined as "any domesticated bird, whether live or dead" (21 U.S.C. 451). One year later, in August 1958, the same Congress passed the HMSA, which prescribes methods of handling and slaughtering cattle, sheep, swine, and other livestock. Although the HMSA does not define the term "other livestock", the enactment of the PPIA and the HMSA by the same 85th Congress suggest that Congress understood there to be a distinction between livestock and poultry. Further indication that the 85th Congress intended a

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limited definition of “livestock” under the HMSA is the fact that the HMSA, as originally enacted, did not address the PPIA, but did expressly include provisions of the FMIA, as originally enacted in 1907. If Congress intended the HMSA to cover poultry, it could have expressly included PPIA provisions in its text.

The 85th Congress’ consideration of draft HMSA bills further demonstrates Congressional intent to exclude poultry from the definition of “livestock” under the HMSA. Several introduced humane handling bills expressly made a distinction between poultry and livestock (See H.R. 6509, 85th Cong. (1st Sess. 1957); S. 1497, 85th Cong. (1st Sess. 1957)). However, the text of the final bill leading to the HMSA that Congress approved, H.R. 8308, included livestock only and did not address poultry. Thus, the plain language of the final bill indicates that Congress intended to exclude poultry from the HMSA. Finally, the text of the 1978 amendment to the FMIA demonstrates continuing Congressional intent to exclude poultry from the HMSA. The amendment, which incorporated HMSA humane slaughter provisions into meat inspection requirements, imposed such requirements only for an enumerated list of animals, “cattle, sheep, swine, goats, horses, mules, and other equines” (21 U.S.C. 603(a)). As legislative history and principles of statutory interpretation demonstrate, Congress did not intend the HMSA to include poultry as “livestock” for the purposes of the Act. The 2005 amendments to the FMIA that replaced all references to “cattle, sheep, swine, goats, horses, mules, and other equines” with “amenable species” do not evidence a Congressional intent to the contrary. While this 2005 amendment broadened FSIS’s authority under the FMIA to cover “any additional species of livestock that the Secretary considers appropriate[,]” FSIS does not consider it broad enough to bestow authority to regulate poultry under the HMSA. The Secretary of Agriculture regulates poultry products inspection under the PPIA, not the FMIA, and adding poultry to the FMIA would not be logical without an amendment or repeal of the PPIA.

We note that you support your request that FSIS regulate poultry under the HMSA, in part, with statements about changes in the U.S. poultry industry and new scientific understanding related to poultry intelligence, ethology, and capacity for pain. However, as the HMSA does not cover poultry, FSIS does not have the authority to address these issues under the HMSA.

Although the HMSA does not cover poultry, the PPIA grants FSIS authority to regulate certain poultry slaughter practices. The PPIA sets forth that a poultry product is adulterated if, among other circumstances, it is in whole, or in part, the product of any poultry which has died otherwise than by slaughter (21 U.S.C. 453(g)(5)). Accordingly, under FSIS regulations at 9 CFR 381.65(b), poultry must be slaughtered in accordance with good commercial practices (GCP), 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. In the 2005 *Federal Register* notice, the Agency described poultry handling practices that are consistent with GCP and reminded poultry slaughter establishments that under the PPIA and Agency regulations, live poultry must be handled in a manner that is consistent with GCP, which means they should be treated

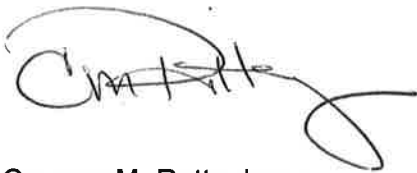
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humanely. The notice also provided a voluntary "systematic approach" model for poultry establishments to use to ensure that poultry is handled and slaughtered in a manner that is consistent with GCP.

FSIS verifies that establishments meet GCP regulatory requirements for poultry through directives and other Agency policy and guidance. For example, FSIS Directive 6100.3, *Ante-Mortem and Post-Mortem Poultry Inspection*, directs inspection personnel on procedures for performing GCP verification activities. The Agency also verifies GCP for poultry handling and slaughtering through inspection tasks assigned through the Public Health Information System (PHIS). One PHIS module, Humane Handling Verification for Livestock and Good Commercial Practices for Poultry, details procedures for inspectors to verify that an establishment is handling poultry in a manner that is consistent with GCP. The module directs inspection personnel to perform a daily, per shift poultry GCP verification task. FSIS provides further clarification on poultry GCP in the Humane Interactive Knowledge Exchange, a tool available to all FSIS Field Operations employees to help them maintain GCP verification compliance. Through such directives and other Agency policy and guidance, FSIS works within its scope of statutory authority to ensure that poultry are handled in a manner that is consistent with GCP, which means they should be treated humanely.

Consistent with FSIS's regulations on petitions (9 CFR 392.6), we have made your petition available to the public. We also have made public several letters submitted in support of your petition. We will publish this letter as well.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carmen M. Rottenberg', with a large, stylized flourish extending to the right.

Carmen M. Rottenberg
Acting Deputy Under Secretary
Office of Food Safety