

October 19, 2023

VIA EMAIL

Food Safety and Inspection Service
1400 Independence Avenue, SW
Washington, D.C. 20250
fsispetitions@usda.gov

**Re: Comment in Support of Petition #23-07, Submitted by Animal Partisan,
Requesting Notice Clarifying the Limits of Federal Preemption and FSIS' Role in the
Enforcement of State Anti-Cruelty Laws**

We are writing on behalf of Animal Outlook,¹ a 501(c)(3) non-profit organization that works to end exploitation of farmed animals through investigations, legal advocacy, and outreach. Since 1995, Animal Outlook has assisted state law enforcement officers and prosecutors to enforce state anti-cruelty laws. Unfortunately, our organization has encountered resistance from many others, often because they wrongly believed that federal law preempted enforcement. Our experience highlights the importance of the demands in Animal Partisan's petition dated September 2, 2023 (the "Petition").

The Petition requests that the USDA's Food Safety and Inspection Service ("FSIS") issue a notice clarifying the following: (1) federal statutes pertaining to farmed animals do not preempt state prosecutors from enforcing state anti-cruelty laws, and (2) FSIS personnel should work with state law enforcement and prosecutors to facilitate their enforcement efforts.

We fully endorse these requests and the legal bases articulated in the Petition. We write, in addition, to emphasize the importance of enforcing state laws in protecting farmed animals, and to elaborate on our relevant experience as an organization. Animal Outlook, despite conducting investigations and reporting iron-clad evidence of animal cruelty, is met with frequent unwillingness of law enforcement officials and prosecutors to enforce state anti-cruelty statutes in the face of perceived preemption concerns — effectively nullifying these important laws. But when state prosecutors *do* fulfill their duties to enforce state anti-cruelty laws, they are often successful in protecting farmed animals — and FSIS can make a nationwide impact by supporting these efforts.

In light of our experience, the requested notice is necessary to reduce confusion about well-settled legal doctrine, empower state prosecutors and law enforcement officials to enforce state anti-cruelty laws, and enable states to serve their constitutional role in protecting farmed animals.

¹ *About Us*, ANIMAL OUTLOOK, <https://animaloutlook.org/about/>.

I. State laws are critical to protecting animals in agriculture.

FSIS should prioritize the requested notice because state anti-cruelty laws are the front line — and often only line — of farmed-animal protection in the United States. In states where law enforcement officers and prosecutors are confused about their powers to enforce anti-cruelty laws, billions of animals are left without any form of protection.

State laws are uniquely “sensitive to the diverse needs of a heterogeneous society.”² Therefore, a pillar of our Constitutional structure is that state laws should fill the gaps of federal legislation and grant rights and avenues for relief where federal law is insufficient.³ States play a central role, in particular, in regulating private activities to promote public order, health, safety, morals, and general welfare because, unlike the federal government, they have general police powers.⁴ Enforcing anti-cruelty laws falls within this core power.⁵

State powers are especially important in the context of animal welfare because minimal federal laws exist to protect farmed animals; the responsibility for ensuring their humane treatment has therefore been left to state lawmakers.⁶ Congress has passed only two federal statutes designed to protect farmed animals: the Twenty-Eight Hour Law⁷ (which sets protocols for certain animals transported long distances) and the Humane Methods of Slaughter Act⁸ (which regulates how certain animals can be killed for food). However, there are no federal animal welfare laws regulating the treatment of farmed animals prior to transportation or slaughter, and even the two enumerated statutes do not protect birds or fish.⁹

² *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991); see also *New State Ice Co. v. Liebmann* (Brandeis J. dissenting) (coining the idea that states are laboratories of democracy).

³ See *Seales v. City of Detroit, Michigan*, 959 F.3d 235, 243 (6th Cir. 2020) (Sutton, J.) (noting that “[t]he upside of federalism is that it offers litigants two shots at relief”).

⁴ See *United States v. Morrison*, 529 U.S. 598, 619, 120 S. Ct. 1740, 1754, 146 L. Ed. 2d 658 (2000) (noting that the “[c]onstitution reserves the general police power to the States.”); see also *California v. LaRue*, 409 U.S. 109, 114, 93 S. Ct. 390, 395, 34 L. Ed. 2d 342 (1972) (noting that states are vested with “general police power” and “require no specific grant of authority in the Federal Constitution to legislate with respect to matters traditionally within the scope of the police power”).

⁵ See *C. E. Am., Inc. v. Antinori*, 210 So. 2d 443, 444 (Fla. 1968) (“it is now generally recognized that legislation which has for its purpose the protection of animals from harassment and ill-treatment is a valid exercise of the police power”); see also *Just Puppies, Inc. v. Frosh*, 457 F. Supp. 3d 497, 506 (D. Md. 2020) (holding that Maryland’s “No More Puppy-Mills Act” prohibiting retail pet stores from selling puppies was “an exercise of Maryland’s core police powers”); *Humane Soc. of Rochester & Monroe Cnty. for Prevention of Cruelty To Animals, Inc. v. Lyng*, 633 F. Supp. 480, 486 (W.D.N.Y. 1986) (noting that “[i]t has long been the public policy of this country to avoid unnecessary cruelty to animals” and that “all 50 states and the District of Columbia had adopted anti-cruelty laws by the year 1913”).

⁶ *Animal Welfare Act*, NATIONAL AGRICULTURAL LIBRARY (“[t]ypically, state and local laws govern the treatment of farm animals”).

⁷ See 49 U.S.C. 80502

⁸ See 7 U.S.C. 1901

⁹ See *Farm animal protection FAQ*, THE HUMANE SOCIETY OF THE UNITED STATES, <https://www.humanesociety.org/resources/farm-animal-protection-faq> (last visited Sep. 24, 2023). (“[t]here are no federal animal welfare laws regulating the treatment of the billions of ‘food animals’ while they’re on the farm”).

In light of this federal regulatory void, state laws provide the only protections for the billions of farmed animals throughout the United States for a majority of their lives. Unfortunately, in many circumstances, misconceptions surrounding federal preemption of these laws, highlighted in Animal Partisan’s Petition, are quashing even these last lines of defense. Animal Outlook’s work, however, proves that when state law enforcement officers fulfill their constitutional roles by enforcing state anti-cruelty laws, they find success in using the law to protect farmed animals — successes that FSIS, by taking the requested actions, could multiply.

II. Confusion surrounding federal preemption obstructs state enforcement of anti-cruelty laws.

For nearly 30 years, Animal Outlook has worked to end cruelty to farmed animals, and in doing so has enabled and encouraged state prosecutors to enforce state anti-cruelty laws. Specifically, Animal Outlook’s investigation team works to uncover cruelty to farmed animals, and our legal team drafts detailed memoranda to help law enforcement prosecute this cruelty.

Often, however, we are met with state law enforcement officers who do not understand their authority and responsibility to prosecute animal cruelty. Therefore, after Animal Outlook expends significant resources to expose inhumane practices, state officials refuse to enforce their own anti-cruelty law and penalize wrongdoers.

In one example, as detailed in the Petition, Animal Outlook conducted an undercover investigation at Case Farms chicken hatchery in Morganton, North Carolina and documented cruel practices including the use of dangerous machinery that maims, dismembers, and pulverizes baby chickens.¹⁰ Animal Outlook notified local law enforcement and requested criminal charges be brought against the Case Farms corporation for violation of North Carolina’s anti-cruelty and neglect laws.¹¹ Despite extensive video evidence showing that Case Farms had violated these laws, local officials refused to prosecute, claiming that any remedy must be sought through the USDA. Animal Outlook also filed a complaint before Burke County Magistrate C.L. Webb, who also believed that USDA jurisdiction prevented any further action and therefore dismissed the case.¹²

The Animal Welfare Act, 7 U.S.C. 2131, which provides the broadest federal protections for animals in the United States, does not apply to farmed animals. *See Animal Welfare Act*, NATIONAL AGRICULTURAL LIBRARY, (“[w]hile USDA considers the humane treatment of animals to be important, the USDA’s regulatory authority does not extend to farm animals”).

¹⁰ Case Farms Hatchery, ANIMAL OUTLOOK, <https://animaloutlook.org/investigations/case-farms-hatchery/> (last visited Sep. 26, 2023).

¹¹ *Id.*

¹² This conversation occurred in person at the Burke County Magistrate’s Office. While no written record exists, the author of the Petition was party to the conversation and will attest to its accuracy.

Because state prosecutors are refusing to enforce their states' anti-cruelty laws despite clear evidence of cruelty to farmed animals, FSIS should clarify that preemption is not an obstacle and encourage state enforcement.¹³

III. Proper enforcement of state anti-cruelty laws leads to positive outcomes for farmed animals.

If FSIS provides the requested notice and works to help state prosecutors, successful enforcement of anti-cruelty laws is likely to increase substantially. As evidence, Animal Outlook has facilitated a number of important prosecution efforts when state attorneys understood that their state law was not preempted by federal law.

Most recently, on August 1, 2023, the Virginia Office of the Attorney General used Animal Outlook's investigation evidence to charge the owner and manager of a facility — which for years raised chickens for Tyson Foods — with a combined 17 counts of animal cruelty.¹⁴ Other criminal actions prompted by our investigations include: prosecution of the owner of Bravo Packing, Inc. in New Jersey resulting in a guilty plea;¹⁵ prosecutions based on an investigation of Mason Dixon Farms in Pennsylvania, which documented violent abuse of mother cows throughout the massive dairy facility;¹⁶ convictions for a total of 22 counts of animal cruelty across Virginia Tyson facilities;¹⁷ and convictions based on an investigation of Quannah Cattle Company.¹⁸

¹³ Encouraging state enforcement will also encourage prosecutors who are reluctant to take action for reasons aside from perceived preemption concerns. Unfortunately, these instances are also widespread. For example, in a widely publicized example, Animal Outlook conducted a four-month undercover investigation at Holden Farms in Utica, Minnesota, which breeds pigs to supply pork to some of the largest pork companies in the United States, and recorded hours of footage of pigs and piglets subjected to abuse, torture, and abysmal living conditions. Holden Farms: The Problem With Pork, ANIMAL OUTLOOK, <https://animaloutlook.org/investigations/holden-farms-the-problem-with-pork/> (last visited Sept. 27, 2023). Animal Outlook's investigation was featured in the New York Times, which called the footage "striking," "graphic," and "hard to watch," as well as in Vox, which described the practices depicted as "stomach-churning" and "malicious." Nicholas Kristof, *The Truth About Your Bacon*, NEW YORK TIMES (Aug. 5, 2023), <https://www.nytimes.com/2023/08/05/opinion/hog-farming-secret-video.html>; Kenny Torella, *A new investigation exposes the stomach-churning practice that goes into making your bacon*, VOX (Aug. 14, 2023) <https://www.vox.com/future-perfect/23817808/pig-farm-investigation-feedback-immunity-feces-intestines>. Still, in the face of these clear violations of the Minnesota anti-cruelty law, Minnesota law enforcement refused to bring charges against Holden Farms or any of its employees, in part because of confusion about which state officers or agencies should investigate.

¹⁴ *Undercover audio of a Tyson employee reveals "free-range" chicken is meaningless*, VOX (Aug. 2, 2023), <https://www.vox.com/future-perfect/23724740/tyson-chicken-free-range-humanewashing-investigation-animal-cruelty>

¹⁵ *PRESS RELEASE: Owner of Slaughterhouse Pleads Guilty Following Undercover Investigation*, ANIMAL OUTLOOK (Feb. 22, 2023), <https://animaloutlook.org/press-release-owner-of-slaughterhouse-pleads-guilty-following-undercover-investigation/>.

¹⁶ Mason Dixon Dairy Prosecution, ANIMAL OUTLOOK, <https://animaloutlook.org/legal-advocacy/#masondixon> (last visited Sep. 26, 2023).

¹⁷ Tyson Foods Prosecutions (Case 1), ANIMAL OUTLOOK, <https://animaloutlook.org/legal-advocacy/#tyson-prosecutions> (last visited Sep. 26, 2023).

¹⁸ Quannah Cattle Company Prosecutions, ANIMAL OUTLOOK, <https://animaloutlook.org/legal-advocacy/#quannah> (last visited Sep. 26, 2023).

These examples illustrate the success of properly executed state enforcement actions. They showcase that (1) states are permitted to, and should, enforce anti-cruelty laws to protect farmed animals, and (2) enforcement of these laws can have a large nationwide impact if, as the Petition requests, FSIS makes clear that federal law does not preempt state enforcement, and FSIS personnel work to aid state prosecutors in these important efforts.

IV. Conclusion

Given state officials' inconsistent understanding of their authority to enforce anti-cruelty laws, they require, and would benefit substantially from, a clear statement that federal statutes pertaining to farmed animals do not preempt state prosecutors from enforcing state laws. FSIS personnel's support of state enforcement would likewise help states to carry out their responsibilities to prevent farmed-animal cruelty. In short, the requested notice offers a simple solution to improve nationwide, systemic deficiencies in animal protection. If we can provide any additional information, please contact me at jgleckel@animaloutlook.org.

Thank you for considering our comment.

Respectfully,



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