

THE FORGOTTEN ANIMALS WHO FEED THE NATION: WHY THE PPIA IS NOT EFFECTIVE AT PROTECTING THE WELFARE OF POULTRY FARMED IN THE U.S.

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INTRODUCTION

The United States Department of Agriculture reported that the United States produced eight hundred twenty-two million broiler chickens in one month alone.¹ In comparison, the United States produced ninety-nine million beef cows in one month.² Both the eight hundred twenty-two million chickens and ninety-nine million cows all went to slaughter, yet the United States only requires that the cows be rendered insensible to pain before slaughter.

The United States Legislature passed the Humane Methods of Slaughter Act (HMSA) in 1958.³ This statute claims to ensure the humane slaughter of livestock in the United States, but poultry are not listed in this statute.⁴ The HMSA is the only United States statute which attempts to treat farmed animals humanely at slaughter, and is one of the only statutes to protect the interests of farmed animals at all.⁵ Yet, the vast majority of farmed animals, poultry, are unprotected by this statute.⁶ The United States Department of Agriculture (USDA) is in charge of regulating the Humane

1. Nat'l Agric. Stats. Serv., *Chickens and Eggs*, U.S. DEP'T AGRIC., (May 20, 2022), <https://downloads.usda.library.cornell.edu/usda-esmis/files/fb494842n/6682z901p/00001523h/ckeg0522.pdf> [<https://perma.cc/E3DH-468Y>].

2. Nat'l Agric. Stats. Serv., *Cattle*, U.S. DEP'T AGRIC., (July 22, 2022), https://www.nass.usda.gov/Publications/Todays_Reports/reports/catl0722.pdf [<https://perma.cc/MY4U-SMCV>].

3. 7 U.S.C. § 1901.

4. *Id.*

5. ANIMAL LEGAL DEF. FUND, *Laws that Protect Animals*, <https://aldf.org/article/laws-that-protect-animals/> [<https://perma.cc/2YEX-RVKA>].

6. *Humane Methods of Slaughter Act*, U.S. DEP'T AGRIC., NAT'L AGRIC. LIBR., <https://www.nal.usda.gov/animal-health-and-welfare/humane-methods-slaughter-act> [<https://perma.cc/7WKP-D9ND>].

Methods of Slaughter Act and has stated that this statute specifically does not apply to poultry.⁷ The USDA purports that the Poultry Product Inspection Act (PPIA) ensures the humane slaughter of birds instead.⁸ However, the PPIA does not ensure the humane slaughter of birds, and the interests of farmed birds would be better protected if poultry were included under the HMSA as well.⁹

In support of this conclusion, this Note begins in the Background Section by introducing the topic and explaining the background of the federal protections for animals, most specifically, the Humane Methods of Slaughter Act and the Poultry Product Inspection Act. The Background Section will also address state statutes that might purport to cover the gaps in which the federal government has left open for farm animal protection. The Problem Section covers the main issues arising from the exclusion of poultry from the HMSA. Next, the Argument Section describes the claim that the USDA has made regarding the PPIA and how this claim is false. It will compare the HMSA and the PPIA as well as their coordinating regulations. The Solution Section will then propose multiple options that could help solve the problem presented in this Note.

I. BACKGROUND

Animal rights have been present in the United States, in one form or another, since the country's inception.¹⁰ The early Puritans created laws against the inhumane treatment of animals.¹¹ Back when the Puritans first came to North America, animal husbandry was a profession that a large portion of the population took part in.¹² Of course, the Puritans did not have access to the technological advancements that we have today, so a Puritan farmer had to work hard to keep his or her animals alive until they were ready to be consumed. Therefore, it was logical for the Puritans to enact laws that prevented the inhumane treatment of farmed animals to protect an important source of food.¹³ However, with the rise in industrial farming, these agrarian farmers turned into large, centralized animal feeding operations that produce millions of animals every month, and the conditions for animals began to change.

A. The Rise of Animal Law

As the United States developed and the population grew, the courts found more opportunities to make laws regarding animals. One famous

7. *Id.*

8. *Id.*

9. *See infra* pp. 13–29.

10. Susan Adams, *Legal Rights of Farm Animals*, 40 MD. BAR J. 19 (2007).

11. *Id.*

12. *See generally id.*

13. *See generally id.*

case, *Pierson v. Post*, is an early American case discussing how wild animals may become property.¹⁴ The court distinguished wild animals from domestic animals because, while wild animals could be captured and become someone's property, domestic animals were almost always the property of humans.¹⁵ Other cases from early America were criminal cases prosecuting animals.¹⁶ In these cases, there was an idea that an animal could be guilty of a crime, yet the animal did not get the normal protections in court that a human would have gotten.¹⁷ While punishments were given to animals, human-like rights have never been afforded to them.

Animal rights as a concept came into being in the late 1900s.¹⁸ One of the first cases in which an animal rights lawyer advocated on the behalf of animals in front of the Supreme Court was *Jones v. Butz*.¹⁹ In this case, the animal rights advocates argued that the HMSA violated the Establishment Clause because it carved out an exception for ritual slaughter.²⁰ While this was one of the first cases where animal rights law became a topic of interest for more lawyers, it was not necessarily a win for animal rights advocates.²¹ The Judge ruled that "humane" slaughter was defined by Congress under the statute; therefore, Congress must have determined that ritual slaughter was a humane form of slaughter, and not an exception to it.²²

Animal rights gained more attention in the 1970s when Peter Singer, an Australian philosopher, wrote his book, *Animal Liberation*, which gave more attention to the term, "speciesism."²³ Coined by another animal rights advocate, Richard Ryder, speciesism is the act of preferring one's own species in a way that is arbitrary or causes unnecessary harm to another species.²⁴ He also brought more attention to an important quote by English philosopher Jeremy Bentham regarding the treatment of animals: "The question is not can they reason? nor can they talk? but can they suffer?"²⁵ As the American people's concern over the treatment of laboratory animals and companion animals grew, concern for farmed

14. *Pierson v. Post*, 3 Cai. R. 175 (N.Y. Sup. Ct. 1805).

15. *Id.*

16. See e.g., Jen Girgen, *The Historical and Contemporary Prosecution and Punishment of Animals*, 9 ANIMAL L. 97, 108 (2003).

17. See *id.* at 122 (discussing case where dog did not have assistance of counsel).

18. Gary L. Francione, *Animal Rights and Animal Welfare*, 48 RUTGERS L. REV. 397, 397 (1996).

19. *Jones v. Butz*, 374 F. Supp. 1284, 1291 (S.D.N.Y.), *aff'd*, 419 U.S. 806 (1974).

20. *Id.*

21. *Id.*

22. *Id.*

23. Joyce Tischler, *The History of Animal Law, Part I* (1972-1987), 1 STAN. J. ANIMAL L. & POL'Y 1, 9-10 (2008).

24. PETER SINGER, *ANIMAL LIBERATION* (3rd ed. 2002).

25. See *id.*

animals still seemed to lag behind, both in public perception, and evidenced through the legislation passed at the time.²⁶

Chickens and other poultry are one kind of animal that are presently factory farmed in the United States and across the world. Chickens are the most frequently farmed animals in the United States with around 9.2 billion broiler chickens produced in the United States every year.²⁷ Chickens outnumber the number of cows and pigs produced in the United States combined, and this is not even taking into account the number of turkeys, ducks, quails, and other birds that are slaughtered in the U.S. Further, even when accounting for the difference in size between cows and chickens, there are more pounds of chicken produced every year than there are of cows.²⁸ While chickens make up 5.8 billion pounds of meat per month, cows only make up 2.45 billion pounds per month and pigs make up 2.26 billion pounds per month.²⁹

With so many animals produced every year, every month, and every day, the United States Legislature has created some laws that relate to the treatment of animals, including the Animal Welfare Act.³⁰ This Act is meant to do what the title says: protect animal welfare; however, a large portion of animals are excluded from these laws.³¹ While animals used for research are covered by this law, all farmed animals are excluded.³² All birds used for research are also excluded from this law as well.³³

Additionally, the “28 Hour Law” is a law created by the federal government stating that livestock should not be transported for over 28 hours without adequate rest and food.³⁴ There are some exceptions if there is available food and adequate water on the transportation truck.³⁵ The statute provides basic protection of the needs of these animals who are being transported. However, the statute defines livestock as cattle, sheep, goats, pigs, and other animals.³⁶ As of now, “other animals” has only been interpreted to include horses and mules.³⁷ Therefore, chickens (and other

26. See generally 7 U.S.C. §§ 2131-60.

27. Nat’l Agric. Stats. Serv., *Poultry - Production and Value: 2020 Summary*, U.S. DEP’T AGRIC., (April 2021), https://www.nass.usda.gov/Publications/Todays_Reports/reports/plva0421.pdf [<https://perma.cc/JEW2-MMD8>].

28. Nat’l Agric. Stats. Serv., *Livestock Slaughter*, U.S. DEP’T AGRIC., (Sept. 23, 2021) https://www.nass.usda.gov/Publications/Todays_Reports/reports/lstk0921.pdf [<https://perma.cc/Y6LF-RXZ3>]; Nat’l Agric. Stats. Serv., U.S. DEP’T AGRIC., *Poultry Slaughter* (Aug. 24, 2022), https://www.nass.usda.gov/Publications/Todays_Reports/reports/psla0822.pdf [<https://perma.cc/8XG5-3BS>].

29. See generally *id.*

30. 7 U.S.C. § 2131.

31. *Id.*

32. *Id.*

33. *Id.*

34. 49 U.S.C. § 80502.

35. *Id.*

36. *Id.*

37. *U.S. v. Louisville & Nashville R. Co.*, 18 Fed. 480 (1883).

poultry) are exempt from even this law, which provides basic care for animals in long stretches of transportation.

B. The Humane Methods of Slaughter Act

In 1958, Congress passed the HMSA, which provides that livestock should not have to endure “needless suffering,” and that their humane slaughter will ensure “safer and better working conditions,” and “improve[] products and economies.”³⁸ The Act provides for two methods of humane slaughter: a single blow, rendering the animal unconscious before being hoisted or cut, or ritualistic slaughter.³⁹ During the discussion over this statute, Congress debated whether to include poultry in the provision and decided not to include the term “poultry” specifically.⁴⁰ However, it is unclear whether Congress thought that the term “livestock” would include poultry as well.⁴¹ Nevertheless, the HMSA left the definition of “livestock” to be interpreted by the USDA. The USDA has since defined livestock, as is referred to in the statute, as cows, pigs, and goats.⁴²

Since its inception, there has been litigation and debate over the issue of whether or not chickens and other poultry should be included in this act, and as of now, poultry are not included.⁴³ In *LeVine v. Vilsack*, animal rights groups advocated that poultry should be included, but the court vacated the case for lack of redressability.⁴⁴ The Ninth Circuit Court of Appeals also determined that the Congressional intent of the HMSA was to let the USDA decide how to define livestock as used in the statute.⁴⁵ The court found it significant that there were considerations to add poultry to the statute in the 1950s but none of those proposals became law.⁴⁶ The USDA’s website for the HMSA specifically states that the HMSA does not include poultry, but claims that the PPIA adequately covers the protection of poultry.⁴⁷

38. 7 U.S.C. § 1901.

39. *Id.*

40. Bruce Friedrich, *Ritual Slaughter, Federal Preemption, and Protection for Poultry: What Legislative History Tells Us about the USDA Enforcement of the Humane Slaughter Act*, 24 ANIMAL L. 137, 163 (2018).

41. *Id.*

42. *Humane Methods of Slaughter Act*, U.S. DEP’T AGRIC.: NAT’L AGRIC. LIBR., <https://www.nal.usda.gov/animal-health-and-welfare/humane-methods-slaughter-act> [<https://perma.cc/7WKP-D9ND>].

43. *See id.*

44. *LeVine v. Vilsack*, 587 F.3d 986, 987 (9th Cir. 2009).

45. *Id.*

46. *See generally id.*

47. *Humane Methods of Slaughter Act*, *supra* note 42.

C. The Poultry Product Inspection Act

The PPIA does not mirror the HMSA directly nor does it relate in content or intent of the legislature.⁴⁸ The PPIA focuses mostly on the prevention of adulterated products (products unfit for human consumption) in the process of poultry farming.⁴⁹ None of the provisions ensure that poultry are slaughtered humanely, and the USDA itself points out that there is no federal law requiring the stunning of chickens or other poultry before slaughter.⁵⁰ The PPIA mostly focuses on conditions of the slaughter line and procedures to follow when too many “poultry products” become adulterated.⁵¹ While the USDA contends that the PPIA covers the humane slaughter of poultry just as the HMSA covers the humane slaughter of other livestock, the statutes are inherently different in their purposes and applications.⁵²

Where the federal government has not created laws, states may create their own laws to fill in the gaps. It would be logical to think that states do the majority of regulating when it comes to the humane treatment of poultry, and while the majority of regulations do come from the states, they do not necessarily prevent the inhumane treatment and slaughter of poultry.⁵³ There are different types of common statutes enacted in the states for the treatment of animals, and every year the Animal Legal Defense Fund conducts research on the laws that states have in place and ranks them based on animal rights in each state.⁵⁴

Care standards for farmed animals are one type of statute that has been enacted in state legislatures.⁵⁵ Some states try to combat inhumane treatment of farmed animals, including poultry, by requiring a minimum amount of space in which animals may be confined.⁵⁶ However, a large majority of states have not adopted any standards of care for farmed animals.⁵⁷

48. 21 U.S.C. §§ 451–73.

49. *Id.*

50. See FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices 3 (U.S.D.A. 2018) (“Stunning is not a requirement in poultry slaughter.”).

51. 21 U.S.C. §§ 451–73.

52. *Humane Methods of Slaughter Act*, *supra* note 42.

53. 2021 U.S. State Animal Protection Laws Rankings, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/us-state-rankings> [<https://perma.cc/HA6U-AJ35>].

54. *Id.*

55. *Enforcement of State Farm Animal Welfare Laws*, ANIMAL WELFARE INST. (March 2020), <https://awionline.org/sites/default/files/uploads/documents/20StateEnforcementReport.pdf> [<https://perma.cc/2SYS-JFQF>].

56. *Upgrading Welfare Standards for Hens Used by the Egg Industry (Colorado)*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/us-state-rankings> [<https://perma.cc/HA6U-AJ35>].

57. *Enforcement of State Farm Animal Welfare Laws*, ANIMAL WELFARE INST. (March 2020), <https://awionline.org/sites/default/files/uploads/documents/20StateEnforcementReport.pdf> [<https://perma.cc/2SYS-JFQF>].

Another type of state animal law is an Ag-gag law.⁵⁸ These laws allow people to be prosecuted for attempting to speak out against animal cruelty in Agricultural practices.⁵⁹ Alabama and North Carolina are just two of the states that have Ag-gag laws.⁶⁰ Of course, these laws do not promote animal welfare and encourage people to remain quiet when witnessing the mistreatment of animals in agriculture.⁶¹

Another way in which states' laws regulate farmed animals is through definitions and exemptions in their anti-cruelty laws.⁶² Most state-based animal cruelty laws require that cruelty to an animal must be "unjustifiable" for the statute to apply.⁶³ However, the argument can be made that the justification for harming farmed animals is that they are to be used as food for human consumption. Other states exempt farmed animals from their anti-cruelty laws explicitly or their laws are too unspecific to include farmed animals.⁶⁴ A lot of statutes only apply to companion animals and/or specifically exclude chickens and other poultry.⁶⁵ Thus, state laws do not replace or compensate for the federal laws when it comes to the protection of farmed animals.

II. PROBLEM

The issue at hand is that the PPIA is insufficient when it comes to the protection of poultry at slaughter. The purported legislative intent behind the HMSA was to ensure the humane slaughter of farmed animals, yet poultry have been excluded from even this meager protection.⁶⁶ The USDA has refused to include poultry in its interpretation of the HMSA and

58. *Ag-Gag Laws*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/issue/ag-gag> [<https://perma.cc/H2G4-H2KS>].

59. *Id.*

60. *Id.*

61. *Id.*

62. See *Legal Protections for Animals on Farms*, ANIMAL WELFARE INST. 1, 2 (Oct. 2018), <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-Legal-Protections-AnimalsonFarms-110714.pdf> [<https://perma.cc/6VRL-8QXY>] (discussing varying state definitions of "animal," as well as exemptions in state animal cruelty codes).

63. See HELENA SILVERSTEIN, UNLEASHING RIGHTS: LAW, MEANING AND THE ANIMAL RIGHTS MOVEMENT 265 n.18 (1996) ("Most states have anti-cruelty statutes that prohibit the infliction of unnecessary or unjustified pain on animals.").

64. See generally David J. Wolfson & Mariann Sullivan, *Foxes in the Hen House: Animals, Agribusiness, and the Law: A Modern American Fable*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 205, 209–19 (Cass. R. Sunstein & Martha C. Nussbaum eds., 2004) (discussing state anti-cruelty statutes and customary farming exemptions).

65. See Sonia Weil, *Big-Ag Exceptionalism: Ending the Special Protection of the Agricultural Industry*, 10 DREXEL L. REV. 188, 213–16 (2017) (discussing state statutes applying exclusively to "pets," and specific state statutes excluding poultry).

66. 7 U.S.C. § 1901.

has stated that the PPIA is sufficient to protect the interests of farmed chickens and other birds.⁶⁷ However, the PPIA is not sufficient.

Nine billion chickens were produced and slaughtered in the United States in 2021 alone.⁶⁸ During the same year, thirty million beef cows were produced and slaughtered in the United States.⁶⁹ While this difference may seem to some as attributable to the difference in size between chickens and cows, 5.8 billion pounds of chicken are produced every month, whereas only 2.45 billion pounds of beef are produced each month.⁷⁰ Therefore, the extreme difference in animals produced cannot be attributed to the size of animals alone.⁷¹ This begs the question then as to why chickens would not be included in the HMSA if the intention of the statute was to protect farmed animals. Poultry make up the majority of all farmed animals in the United States, yet they remain the most unprotected animal in our legal system.⁷²

It may be argued that due to the large number of chickens produced, poultry need their own statute to protect their interests and the HMSA alone would not be enough. The USDA has itself promoted a form of this argument by saying that the PPIA protects chickens in the same way that the HMSA would.⁷³ However, the PPIA does not offer the same level of protection to poultry as the HMSA, despite what the USDA claims.⁷⁴ Also, while a separate humane slaughter act for poultry could be beneficial, the U.S. should ensure that poultry share the same benefits as “livestock” under the HMSA.

The solution to this problem may be addressed in different ways which may vary in effectiveness and feasibility. First, the USDA could interpret the HMSA to include poultry. Second, the USDA could change its regulations of the PPIA to better protect the interests of poultry at slaughter. Third, and perhaps the best solution, would be for the legislature to add poultry to the list of protected animals under the HMSA. If the PPIA cannot address the problem of the welfare of poultry, then the USDA should not claim otherwise, and poultry should at least be added to the HMSA.

67. *Humane Methods of Slaughter Act*, *supra* note 42.

68. See Nat'l Agric. Stats. Serv., *Poultry - Production and Value: 2021 Summary*, U.S. DEP'T AGRIC. 1, 5 (April 2022), <https://www.uspoultry.org/economic-data/docs/broiler-production-and-value-2021.pdf> [<https://perma.cc/T72B-QHHH>].

69. Nat'l Agric. Stats. Serv., *Livestock Slaughter 2021 Summary*, U.S. DEP'T AGRIC. 1, 6 (April 2022), <https://downloads.usda.library.cornell.edu/usda-esmis/files/r207tp32d/pg15cj85z/hd76t466z/lsan0422.pdf> [<https://perma.cc/A3JA-SYFG>].

70. See *id.*; *Poultry - Production and Value: 2021 Summary*, *supra* note 68.

71. See *Poultry - Production and Value: 2021 Summary*, *supra* note 68; *Livestock Slaughter 2021 Summary*, *supra* note 69.

72. *How Factory Farming Hurts Animals*, ASPCA, <https://www.aspc.org/protecting-farm-animals/animals-factory-farms> [<https://perma.cc/4WDQ-NTPN>].

73. *Humane Methods of Slaughter Act*, *supra* note 42.

74. See *infra* pp. 13–29.

III. ARGUMENT

The PPIA is insufficient to protect poultry at slaughter, thus poultry should be added to the HMSA along with the rest of farmed animals. First, as the name suggests, the Poultry Product Inspection Act does not take into account, nor does it focus on the issue of, the humane treatment of poultry at slaughter.⁷⁵ The name itself suggests that the purpose of the Act is to ensure the proper inspection of poultry “products” and not living chickens, turkeys, ducks, and other fowl that are farmed every day. As true to the name, the provisions of the PPIA mostly focus on the process from slaughter to consumer and not on the welfare of chickens during the slaughter process itself.⁷⁶

Most of the provisions in the PPIA focus on making sure poultry products do not become adulterated, or unfit for human consumption.⁷⁷ The intent behind this legislation is not to ensure the humane death of chickens, turkeys, and other fowl but to ensure the profitability of the industry.⁷⁸ In the places where the PPIA does discuss the slaughter of poultry, it is written in such a way as to make clear that the correct slaughter of poultry is for the benefit of the industry and not for the individual chicken going to slaughter.⁷⁹

The USDA claims that the PPIA ensures the humane slaughter of poultry.⁸⁰ It makes two main arguments in support of this assertion.⁸¹ First, it states that the PPIA requires live birds be handled consistent with good commercial practices, and second, that birds do not die from causes other than slaughter.⁸² The USDA asserts that these main requirements of the PPIA ensure that poultry are slaughtered humanely, thus poultry do not need to be added to the HMSA.⁸³

A. Following Good Commercial Practices Does Not Ensure Humane Slaughter of Poultry

Following Good Commercial Practices (GCP) does not ensure poultry are slaughtered humanely and does not justify their exclusion under the HMSA. GCP are promulgated in a Directive written by the Food Safety and Inspection Service (FSIS), which is an agency within the USDA. While the PPIA does require that poultry are handled consistent with GCP, this

75. 21 U.S.C. § 453.

76. *Id.* §§ 451–72.

77. *Id.*

78. *Id.* § 452.

79. *See, e.g., id.* § 451 (discussing industry and consumer interests in “wholesome, not adulterated, and properly marked, labeled, and packaged” poultry products).

80. *Humane Methods of Slaughter Act, supra* note 42.

81. *Id.*

82. *Id.*

83. *Id.*

requirement does not mean that GCP is, in itself, humane, or lead to humane slaughter of poultry.⁸⁴ In fact, there are multiple ways in which GCP does not ensure humane treatment. First, the word “humane” is not defined anywhere in the PPIA or in the FSIS directive on poultry, leaving the term up to interpretation.⁸⁵ Second, GCP and the PPIA do not even intend to protect poultry at slaughter, while this is the main goal of the HMSA.⁸⁶ Third, poultry suffer treatment that would not be allowed under the HMSA.⁸⁷

1. *The Good Commercial Practices Do Not Adequately Define What Is Humane*

First, the word “humane” is not defined anywhere in the USDA’s assertion of GCP, nor in the text in which the USDA gets its authority, the PPIA.⁸⁸ The FSIS directive for 2018, which establishes GCP for the year, uses the word “humane” and “humanely,” but it does not further define the term.⁸⁹ The PPIA also does not define “humane,” and the regulations use the term sparingly.⁹⁰ In the PPIA’s Congressional declaration of policy, Congress makes no mention that this law is for the benefit of poultry themselves, but notes that the purpose of the law is to protect human consumers.⁹¹ The Poultry Products Inspection Regulations are the regulatory counterpart of the PPIA and also do not define “humane.”⁹²

On the other hand, the HMSA defines what is humane by describing two options that it deems to be the humane treatment of livestock.⁹³ While this definition is not ideal for animal activists, it at least creates a starting point for defining what is actually the humane treatment of animals at slaughter. By leaving the term “humane” up for interpretation, the PPIA and GCP leave room for companies to treat poultry in a manner that most animal activists, and likely most Americans, would find inhumane. It is unrealistic to assume that a corporation would choose to define humane treatment in such a way that provides more protection for the poultry than the HMSA if given the freedom to choose. What is more likely is that corporations will use the lack of definition to validate treatment which most would agree is not humane.

84. 9 C.F.R. § 381.65(b) (2023).

85. 21 U.S.C. §§ 451–73; FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

86. *See infra* pp. 16–18.

87. *See infra* pp. 18–22.

88. 21 U.S.C. §§ 451–73; FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

89. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

90. 21 U.S.C. §§ 451–73.

91. *Id.* § 451.

92. 9 C.F.R. § 381.1 (2023)

93. 7 U.S.C. § 1901.

There is another fundamental problem with the word “humane.” While not a definition of the word “humane,” GCP mention that poultry should be handled in a way that “prevents needless injury and suffering.”⁹⁴ This may be what the FSIS, who promulgates GCP, sees as “humane.” However, the problem with this assertion is that it is easy to come up with a justification for injuring birds during the process of slaughter, making the injuries and suffering not “needless.” For example, it is easy to see how some may argue that the poultry must be slaughtered to provide food for humans, even if some birds are hurt or suffer in the process. But when it comes to “needless” suffering, it is problematic that humans are writing the definition while also determining when suffering has a justification.

2. *The Intention Behind the Law Does Not Guarantee Adequate Protection*

GCP does not ensure that poultry are slaughtered in a humane way as the HMSA does. The USDA has asserted that compliance with GCP will ensure that poultry are slaughtered in a humane way.⁹⁵ They base this assertion on the fact that GCP and the PPIA attempt to decrease the number of poultry that are adulterated and not fit for human consumption.⁹⁶ The USDA claims that the interests in having unadulterated poultry products are the same as humanely slaughtering chickens, turkeys, geese, and ducks.⁹⁷ However, this argument is flawed in multiple ways.

First, the USDA does not pretend that the intent behind the PPIA or GCP was to protect the interests of poultry at slaughter. In fact, just by the name itself, it is clear that the Poultry Product Inspection Act is meant to protect poultry “products” from becoming adulterated and unprofitable.⁹⁸ This is strikingly different from the Humane Methods of Slaughter Act, in which the name of the Act itself implies that the purpose behind it is to promote the humane slaughter of farmed animals.⁹⁹ Within the Acts themselves, the PPIA states in its Congressional Statement of Findings that adulterated poultry products “impair effective regulation of poultry products in interstate commerce . . . destroy markets . . . result in sundry losses to poultry producers . . . [and cause] injury to consumers.”¹⁰⁰ The section labeled as the “Congressional Declaration of Policy” states that the policy behind the PPIA is to prevent the movement and sale through

94. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

95. *Humane Methods of Slaughter Act*, *supra* note 42.

96. Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. 56624, 56624–25 (Sept. 28, 2005).

97. *See id.*

98. 21 U.S.C. § 451.

99. 7 U.S.C. § 1901.

100. 21 U.S.C. § 451.

interstate commerce of adulterated poultry products.¹⁰¹ There is no mention of the welfare of poultry or their humane treatment.¹⁰²

In contrast, the HMSA starts off with a very different section labeled the “Findings and Declaration of Policy.”¹⁰³ The first line reads, “The Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering.”¹⁰⁴ The last line reads, “It is therefore declared the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods.”¹⁰⁵ Of course, the HMSA also states some more anthropocentric goals such as slaughterhouse working conditions, better products, and faster shipments.¹⁰⁶ However, at the forefront of this human-centered ideal is the notion that the slaughter of animals must be humane, and that Congress, and therefore the people they represent, do care about the suffering of animals, even if it is only “needless” suffering.¹⁰⁷

When looking at the Congressional policy statements of the PPIA and HMSA, it is clear that there is a stark difference between the two. This difference matters. The HMSA makes public the notion that the United States cares about the welfare of all animals, even those that are eaten by a majority of citizens in the country.¹⁰⁸ For the USDA to claim that poultry do not need to be included in the HMSA because the PPIA equally protects their interests is an unpersuasive argument. Nowhere in the PPIA declaration of policy is the concept of humane treatment or slaughter mentioned.¹⁰⁹ The only thing that is mentioned is the intention to create poultry “products” that are not adulterated or misbranded.¹¹⁰ As the HMSA demonstrates, there can be human-centered goals in an animal welfare act, and these goals are not mutually exclusive from the goals of animal welfare.¹¹¹

3. *GCP Allows Treatment of Poultry That Would Lead to Noncompliance Under the HMSA*

Next, the Good Commercial Practices do not ensure the humane treatment of poultry at slaughter. The USDA’s FSIS Directive 6110.1 is a “Verification of Poultry Good Commercial Practices,” and acts as a

101. *Id.*

102. *Id.* § 452.

103. 7 U.S.C. § 1901.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. 21 U.S.C. § 451.

110. *Id.*

111. 7 U.S.C. § 1901.

consolidation of information on GCP for poultry.¹¹² The FSIS directive for poultry notes that, “adherence to GCP is a process control issue and not a bird-by-bird performance standard issue.”¹¹³ The establishments are only not in compliance with GCP when there is a loss of process control in the establishment or an ongoing pattern.¹¹⁴ This compliance provision for GCP represents the laws in regards to poultry. There is no national standard of care for poultry.¹¹⁵ There is no federal protection ensuring their humane slaughter. The only protection poultry has is in connection with the production of unadulterated poultry products.¹¹⁶ This means that the poultry establishment may still be complying with GCP when the suffering of birds does not amount to a total loss in process control.¹¹⁷

Again, the HMSA contrasts with the PPIA and GCP. The HMSA provides that slaughtering is only humane when “all animals” are insensible to pain or when the “animal” is killed by ritual slaughter.¹¹⁸ There is no mention of a “process” or a “system” that has to be malfunctioning in order for an establishment to not be in compliance with the HMSA.¹¹⁹ The HMSA is written in a way that provides for the humane slaughter of all animals, as individuals.¹²⁰ They are not described as a product that is at threat of being adulterated, but as individual animals who must be handled in a way that the HMSA describes as “humane” and without “needless suffering.”¹²¹ To say that the PPIA and GCP of poultry slaughter are equivalent to the HMSA completely ignores the language employed in each Act.¹²² It is clear that Congress wrote the HMSA with the individual animal in mind, whereas the PPIA is not regulated on a “bird-by-bird” basis.¹²³

While GCP for poultry do not require the humane slaughter of individual birds, the inspection program personnel (IPP) may write a Memorandum of Interview (MOI) if they witness the mistreatment of individual birds.¹²⁴ This, however, is not enough to warrant the exclusion of poultry from the HMSA. An MOI can be written for a number of reasons

112. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

113. *Id.*

114. *Id.*

115. *Id.*

116. 21 U.S.C. § 451.

117. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

118. 7 U.S.C. § 1902.

119. *Id.*

120. *Id.*

121. *Id.*

122. *See* 21 U.S.C. § 451; FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

123. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

124. *Id.*

and only some of those involve the welfare of poultry.¹²⁵ For example, an MOI may be written when individual birds are involved in abuses.¹²⁶ If so, the MOI does not act as a reprimand and only serves as a way to inform the slaughterhouse that the abuse of individual birds is more likely to lead to adulterated products.¹²⁷ Receiving an MOI is not automatically an act of noncompliance with GCP, meaning that the abuse of individual birds can still be within the compliance of GCP as long as the problem does not become an issue with the establishment's process.¹²⁸

In stark contrast to the FSIS Directive for poultry is the FSIS Directive concerning the Humane Handling and Slaughter of Livestock.¹²⁹ Unlike the Directive for poultry, the Directive for humane handling of livestock at slaughter does not mention the commercial aspect of producing meat that is unadulterated.¹³⁰ Instead, this directive focuses on creating a slaughter process that is the most humane for livestock as is technologically and economically feasible.¹³¹ Another difference is that the IPP for livestock slaughter must document when there is egregious inhumane treatment, meaning "an act or condition that results in severe harm to animals."¹³² Unlike poultry slaughter, a showing of egregious inhumane treatment to a livestock animal results in an issuance of a Noncompliance Record, a departure from the MOI that is issued for the mistreatment of individual birds.¹³³ Therefore, if individual livestock are harmed, the facility is not in compliance with federal laws, whereas a poultry slaughter establishment is only noncompliant with the PPIA when there is systematic failure leading to multiple adulterated poultry products.

The livestock Directive mentions that an example of egregious inhumane treatment of an animal is to stun the animal and allow the animal to regain consciousness.¹³⁴ However, for poultry, stunning is not a federal requirement, and poultry may be sent straight to the cutting blade fully conscious.¹³⁵ Multiple ineffective stun attempts are another way in which a livestock slaughter establishment may be in noncompliance with the

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. FSIS Directive 6900.2, Revision 3, Humane Handling and Slaughter of Livestock (U.S.D.A. 2020).

130. *Id.*

131. *Id.*

132. *Id.*

133. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018); FSIS Directive 6900.2, Revision 3, Humane Handling and Slaughter of Livestock (U.S.D.A. 2020).

134. FSIS Directive 6900.2, Revision 3, Humane Handling and Slaughter of Livestock (U.S.D.A. 2020).

135. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

HMSA.¹³⁶ In contrast, an individual chicken may be legally subjected to an ineffective electric bath stunning, an incomplete cutting of the neck, or a subsequent drowning in the scald tank, so long as the non-compliance is not due to a systematic failure.¹³⁷ The Directive for livestock slaughter notes that the HMSA requires “the animal” be insensible to pain throughout the slaughter process and that it should not regain consciousness.¹³⁸ There is no note in the livestock slaughter Directive that requires a noncompliance report only where system failures lead to conscious animals being slaughtered.¹³⁹

The MOIs that the IPP wrote in response to incidents connected with poultry and livestock establishments are also telling.¹⁴⁰ One MOI for a poultry plant discusses an observation of “a significant number of chickens smothered to death due to an excessive number of birds being dumped onto the belt.”¹⁴¹ Another MOI reported that at least nine thousand chickens died in delivery trucks when left outside for an entire day in the warm weather.¹⁴² The MOI stated that the trucks of chickens were meant to stay overnight in the storage shed and not in the hot sun.¹⁴³ Neither MOI mentioned that a noncompliance report was filed, but they did note that the facility managers were informed that this activity leads to more adulterated products.¹⁴⁴

In contrast, MOIs from livestock establishments demonstrate the difference between reporting according to methods under the HMSA and the PPIA. One livestock MOI describes the ineffective stun attempt for an individual cow.¹⁴⁵ When these multiple stun attempts were not effective, the IPP cited the establishment for noncompliance with the standards of humane handling of livestock.¹⁴⁶ However, GCP for poultry makes clear

136. FSIS Directive 6900.2, Revision 3, Humane Handling and Slaughter of Livestock (U.S.D.A. 2020).

137. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

138. FSIS Directive 6900.2, Revision 3, Humane Handling and Slaughter of Livestock (U.S.D.A. 2020).

139. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

140. FSIS Released Records, Table: MOIs in Response to FOIA 2020–435 (U.S.D.A. 2021); FSIS Released Records, Table: MOIs in Response to FOIA 2021–108 (U.S.D.A. 2021).

141. FSIS Released Records, Table: MOIs in Response to FOIA 2020–435 (U.S.D.A. 2021).

142. FSIS Released Records, Table: MOIs in Response to FOIA 2021–108 (U.S.D.A. 2021).

143. *Id.*

144. *See* FSIS Released Records, Table: MOIs in Response to FOIA 2020–435 (U.S.D.A. 2021); FSIS Released Records, Table: MOIs in Response to FOIA 2021–108 (U.S.D.A. 2021).

145. FSIS Released Records, Table: MOIs in Response to FOIA 2020–435 (U.S.D.A. 2021).

146. *Id.*

that inhumane treatment of individual birds is not noncompliance.¹⁴⁷ In another MOI for livestock, the IPP noted that cattle were not given water for the first thirty minutes after they arrived at the establishment; however, chickens are meant to stay in a storage shed overnight with no food or water.¹⁴⁸ On one hand, a livestock establishment may be cited for noncompliance for even one instance of ineffective stunning of cattle, whereas GCP makes clear that inhumane treatment of individual birds is not noncompliance.¹⁴⁹ These MOIs exemplify the differences between the regulations arising out of the two statutes.¹⁵⁰

B. The Requirement that Poultry Die Only by Slaughter Does Not Ensure that Poultry Receive Humane Treatment Under the PPIA

The USDA also claims that the PPIA adequately protects poultry at slaughter because the regulations not only require that GCP be followed but also require that poultry die only by slaughter.¹⁵¹ However, while the requirement that poultry die only by slaughter ensures that poultry are fit for human consumption, this requirement alone does not protect poultry's interest in humane slaughter like they would be protected under the HMSA. First, ensuring that the poultry only die by official slaughter does not mean that the slaughter process is humane.¹⁵² Second, by contrast, the HMSA allows for animals only to die by slaughter while insensible to pain, which the PPIA does not require.¹⁵³ Third, dying only by slaughter protects poultry from some forms of inhumane treatment but not others.¹⁵⁴

This section of the argument is similar to the previous argument that poultry processors need to follow GCP, but it also has distinctions. First, the PPIA regulations have two main requirements that the USDA has claimed ensure that poultry are slaughtered humanely. The first requirement

147. See FSIS Released Records, Table: MOIs in Response to FOIA 2020–435 (U.S.D.A. 2021); FSIS Released Records, Table: MOIs in Response to FOIA 2021–108 (U.S.D.A. 2021).

148. See FSIS Released Records, Table: MOIs in Response to FOIA 2020–435 (U.S.D.A. 2021); FSIS Released Records, Table: MOIs in Response to FOIA 2021–108 (U.S.D.A. 2021).

149. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

150. Compare FSIS Released Records, Table: MOIs in Response to FOIA 2020–435 (U.S.D.A. 2021) with FSIS Released Records, Table: MOIs in Response to FOIA 2021–108 (U.S.D.A. 2021).

151. *Humane Methods of Slaughter Act*, *supra* note 42.

152. 7 U.S.C. § 1902.

153. See *id.*; 21 U.S.C. § 451.

154. PETA, PILGRIM'S PRIDE CORPORATION (Aug. 17, 2021), <https://www.peta.org/wp-content/uploads/2022/01/pilgrims-pride-fsis-reports.pdf> [<https://perma.cc/WNG2-ZZE2>].

is that establishments follow the Good Commercial Practices.¹⁵⁵ The second requirement is that poultry that die other than by slaughter are deemed adulterated products.¹⁵⁶ Thus, the USDA believes that because poultry that die other than by slaughter are no longer profitable, the establishment will ensure that poultry are only dying by slaughter.¹⁵⁷ This creates some overlap in the arguments, because it is a part of GCP that poultry are slaughtered before entering the scald tank, for example. However, the USDA distinguishes between the two requirements as the GCP determine whether the establishment will receive an MOI or the poultry product will be deemed adulterated and unfit for human consumption.¹⁵⁸ While GCP shed light on the stunning process of poultry and treatment that may result in an MOI, the requirement that poultry die only by slaughter focuses on the death of the bird.

1. Dying Only by Slaughter Does Not Ensure a Humane Means of Slaughter

As the HMSA makes clear, Congress determined that it is inhumane to shackle and hoist an animal into the air before it is rendered unconscious and insensible to pain.¹⁵⁹ Further, the HMSA provides that slaughtering an animal before it is insensible to pain is inhumane, and that rendering an animal insensible to pain must be quick or done in “a single blow.”¹⁶⁰ Following the HMSA guidelines for slaughter would necessarily lead to a much more humane process than one in which an animal experiences the pain and fear associated with hanging upside down by the feet or suffers from multiple unsuccessful blows.

To argue that requiring poultry to die only by means of slaughter necessarily means that the death is humane is not a logical conclusion. The slaughter process itself must be humane for this argument to make sense, and the slaughter process for poultry is not humane, as this word has been defined in the only federal statute for the humane treatment of farmed animals.¹⁶¹ The PPIA does not require that poultry are unconscious before they are hung upside down or before they are cut by the blade.¹⁶² This

155. Cynthia, F. Hodges, *Detailed Discussion of the Humane Methods of Slaughter Act*, ANIMAL LEGAL & HIST. CTR. (2010), <https://www.animallaw.info/article/detailed-discussion-humane-methods-slaughter-act> [<https://perma.cc/4CJV-LFBL>].

156. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

157. *See* 21 U.S.C. § 451.

158. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

159. 7 U.S.C. § 1902.

160. *Id.*

161. *Id.*

162. 21 U.S.C. §§ 451–73.

would be defined as inhumane according to the HMSA.¹⁶³ Most people would not see this as a humane way in which to treat a living animal.¹⁶⁴

2. *The Humane Slaughter Act Requires That Animals are Insensible to Pain*

The HMSA requires that, for a slaughter to be humane, the animal must be rendered insensible to pain.¹⁶⁵ However, the PPIA does not have this requirement.¹⁶⁶ Therefore, just because a bird dies by slaughter does not mean that it died humanely. The USDA notes in its GCP that poultry do not need to be insensible to pain before being slaughtered.¹⁶⁷ Although a lot of slaughter establishments do pass poultry through an electric bath, it is noted by scientists that the poultry may only be immobilized and not rendered insensible to pain.¹⁶⁸

On the other hand, the HMSA makes it clear that in order for the process to be humane, the animals need to be rendered insensible to pain, a benefit purely for the animals and not the company.¹⁶⁹ Even if a livestock slaughter establishment found that it would be more financially beneficial to not render livestock insensible to pain before slaughter, federal law dictates that they must consider the experience of the animals during the time of slaughter and render the animals insensible to pain.¹⁷⁰ There is currently no incentive or requirement that poultry slaughter establishments do the same.¹⁷¹ Therefore, the process of slaughter can continue to legally incite immense fear and pain in the birds that are slaughtered.

3. *Some, But Not All, Inhumane Deaths May be Protected by This Requirement*

The requirement that poultry only die from slaughter may protect poultry from some types of inhumane deaths, but it would not protect poultry from all inhumane deaths. For example, the requirement that

163. 7 U.S.C. § 1901.

164. *Public Opinion Surveys on Farm Animal Welfare*, ASPCA, <https://www.aspc.org/protecting-farm-animals/aspc-surveys> [<https://perma.cc/2C5X-U8AZ>].

165. 7 U.S.C. § 1902.

166. U.S. DEP'T AGRIC., *HUMANE HANDLING OF VERIFICATION FOR LIVESTOCK AND GOOD COM. PRACS. FOR POULTRY* (Oct. 1, 2021), https://www.fsis.usda.gov/sites/default/files/media_file/2021-11/21_IM_Humane-Handling-GCP-10012021.pdf [<https://perma.cc/2EZG-W427>].

167. FSIS Directive 6110.1, *Verification of Poultry Good Commercial Practices* (U.S.D.A. 2018).

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

169. 7 U.S.C. § 1901.

170. *Id.*

171. *Id.*

poultry die only by slaughter would protect poultry from inhumane deaths that occur at the slaughter facility before slaughter. This could include the bird dying from disease, hunger, inclement weather, or abuse from a worker. Therefore, there are still ways that a bird could die from slaughter that would still end up being inhumane according to the definition under the HMSA.¹⁷²

As a comparison, a bird may die by reason other than by slaughter when it succumbs to disease that was already plaguing it before it reached the slaughter facility. In fact, poultry worker MOIs have pointed out that birds frequently arrive to facilities predeceased.¹⁷³ This would be an example of a bird dying other than by slaughter, and of course, this bird would be considered adulterated by the facility operator and unfit for human consumption. Another way in which a bird may die other than by slaughter is by exposure to inclement weather. As another MOI points out, this may happen when poultry are left in a truck during the night at the slaughter facility.¹⁷⁴ Again, these birds would be considered adulterated and unfit to be consumed by humans.

In contrast, a bird dies by slaughter when it has its throat cut by a blade and loses enough blood before entering a scald tank. Often, a bird may be shackled into the conveyor belt by its feet, but as the bird approaches the electric bath, the bird may lift its head up.¹⁷⁵ As the bird struggles, it is not uncommon for them to miss the electric bath altogether, avoiding paralysis, and remaining conscious.¹⁷⁶ Then, the bird arrives at the blade machine to be cut.¹⁷⁷ If the blade still hits the target then the bird may bleed out, though often slower and with more pain.¹⁷⁸ The movement of the bird early in the process makes it more likely that its two main arteries in the neck are missed.¹⁷⁹

On the other hand, if the reports about the frequency of the electric baths are true and the birds are still conscious when they arrive at the cutting blade, then many birds, whether by slaughter or not, are dying while fully conscious.¹⁸⁰ Even if a bird cannot feel as much as usual due to the stunning of the electric current,¹⁸¹ it is still logical to conclude that a bird probably experienced great trauma from undergoing this process while

172. *See id.*

173. PETA, PILGRIM'S PRIDE CORPORATION (Aug. 17, 2021), <https://www.peta.org/wp-content/uploads/2022/01/pilgrims-pride-fsis-reports.pdf> [<https://perma.cc/KY7P-XKL8>].

174. FSIS Released Records, Table: MOIs in Response to FOIA 2021-108 (U.S.D.A. 2021).

175. *Id.*

176. Karen Davis, *The Need for Legislation and Elimination of Electrical Immobilization*, UNITED POULTRY CONCERNS (2001), <https://www.upc-online.org/slaughter/report.html> [<https://perma.cc/HML7-5D2Q>].

177. *Id.*

178. *Id.*

179. *Id.*

180. Shields & Raj, *supra* note 168, at 281.

181. *Id.*

mentally conscious. Therefore, dying by slaughter is not a guarantee that an animal has died humanely. The PPIA does not adequately prevent all methods of inhumane slaughter, and, thus, it would be in the best interest of poultry to be included under the HMSA.

C. The Humane Slaughter Act Provides a Better Forum for Protecting the Interests of Poultry at Slaughter

The differences between the treatment of livestock and poultry are arbitrary. Though enforcement of humane treatment of livestock is far from perfect, there are people who must inspect livestock establishments with the sole purpose of determining if livestock are being treated humanely during slaughter.¹⁸² Comparing this to poultry, it is clear to see that the main concern of the PPIA, and its regulations, are to ensure good quality poultry products, in which humane treatment is a factor, but not the main goal of the legislation.¹⁸³ There are no valid reasons for the different treatment between these animal species when it comes to their slaughter.¹⁸⁴ Chickens, turkeys, ducks, and other fowl are individuals as much as cows, pigs, and sheep are individuals. If the HMSA is to mean anything, then poultry should be added. Even if adding poultry would require the humane treatment of another nine billion animals per year, the reasoning behind the statutes demands including poultry, if it is to mean anything at all.

1. *Poultry Suffer in the Same Way as Mammals and Deserve Protection*

Chickens, and other poultry, exhibit similar cognitive behaviors as cows and pigs.¹⁸⁵ Chickens can feel pain, fear, boredom, and pleasure.¹⁸⁶ Scientists have long recognized that animals have a form of sentience, and there is an understanding among most of the U.S. population that animals are not devoid of feeling.¹⁸⁷ As an example, dogs feel pain if kicked, and cats feel hunger when deprived of food.¹⁸⁸ This cognition, while slower to be acknowledged when it comes to animals slaughtered for food, has developed in the population and is what has led to laws such as the Animal

182. FSIS Directive 6900.2, Revision 3, Humane Handling and Slaughter of Livestock 1, 1 (U.S.D.A. 2020).

183. 21 U.S.C. § 451.

184. See Lori Marino, *Thinking Chickens: A Review of Cognition, Emotion, and Behavior in the Domestic Chicken*, 20 ANIMAL COGNITION 127 (2017).

185. *Id.*

186. *Id.*

187. *Animal Sentience*, RSPCA, <https://science.rspca.org.uk/sciencegroup/sentience#:~:text=Evidence%20from%20multiple%20scientific%20studies,that%20matter%20to%20the%20individual> [https://perma.cc/VE68-84K6].

188. *Id.*

Welfare Act and the Humane Methods of Slaughter Act.¹⁸⁹ There is no reason to believe that chickens, as individual animals, do not feel the pain and fear of being hung upside down by the feet or being deprived of food and water up until slaughter.

Chickens have been found to experience pain and pleasure just as all living creatures do.¹⁹⁰ Living things require food to stay alive; they require avoiding being killed to stay alive. If animals could not feel hunger and pain, then staying alive would be much harder, and species of animals would die out much more quickly and easily.¹⁹¹ Animals feel hunger when they are hungry; it is what tells the animal that it is time to eat, thus giving the animal incentive to eat something to stay alive.¹⁹² As we all know, being hungry is sometimes an uncomfortable feeling, and there is little reason to believe that humans are the only animals who experience this sensation, especially one that is so vital to survival.¹⁹³ Animals feel pain when they are hurt; it is what tells animals to get away from something that is causing them pain as it may lead to death.¹⁹⁴ Without pain and fear, animals would have little reason to avoid predators or injuring themselves and would not survive or evolve.¹⁹⁵ However, animals' lives are not so devoid of happiness or constantly filled with fear or pain, and studies have shown that birds experience a wide array of positive emotions as well.¹⁹⁶

The fact that animals are sentient then presents the question of why chickens and other birds would not be included in the HMSA, when it is clear from the language of the statute it is meant to protect the welfare of animals who are slaughtered for food.¹⁹⁷ While there may be an argument that fewer people care about the welfare of birds, perhaps because they are inherently more different from humans than other mammals, there is more likely a logical explanation. Birds are smaller, there are a lot more of them than other mammals, and it would take additional resources to ensure that each bird is stunned before being shackled and hung, especially when each individual chicken only yields about 4 pounds of useable meat.¹⁹⁸ However, this is not a reason to exclude birds from the HMSA, especially when there are advances in technology that could make the process of stunning birds simpler than it might have been before.

189. Marino, *supra* note 184.

190. *Id.*

191. Young-Jai You & Leon Avery, *Appetite Control: worm's-eye-view*, 16 ANIMAL CELLS SYS. 351 (2012).

192. Marino, *supra* note 184.

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. 7 U.S.C. § 1901.

198. Food Safety and Inspection Serv., *Chicken from Farm to Table*, U.S. DEP'T AGRIC.: FOOD SAFETY & INSPECTION SERV., <https://www.fsis.usda.gov/food-safety/safe-food-handling-and-preparation/poultry/chicken-farm-table> [<https://perma.cc/P5B4-H2JY>].

IV. SOLUTION

The solution to the problem that poultry are not included under the HMSA could be accomplished in multiple ways. First, the USDA could interpret the HMSA to include poultry, thus requiring poultry producers to follow the requirements under the HMSA. Second, the USDA could add humane treatment requirements to the humane slaughter regulations or the poultry product inspection regulations. Third, and perhaps the most ideal solution for the welfare of poultry would be to add poultry to the HMSA either alongside livestock or within the definition of livestock. There are advantages and disadvantages to each of these solutions, and some may be more beneficial and feasible than others.

A. The USDA Could Interpret the HMSA to Include Poultry

The HMSA has left open the interpretation of the term “livestock” in the language of the statute.¹⁹⁹ Thus, the Secretary of the USDA is able to interpret which animals are included in the language.²⁰⁰ The USDA has refused to include chickens and other poultry as “livestock” under the language of the HMSA.²⁰¹ In 2009, the Ninth Circuit Court of Appeals heard the case *Levine v. Vilsack*.²⁰² In this case, animal advocates argued that the USDA’s exclusion of poultry in its regulations of the HMSA should be changed to include poultry and that the USDA needed to do so to reflect Congress’s intent when creating the HMSA.²⁰³ The District Court ruled in favor of the USDA, and the Court of Appeals ended up dismissing the case because the animal advocate plaintiffs lacked standing.²⁰⁴

It is clear that the USDA is not yet willing to interpret the HMSA as including poultry. With *Levine v. Vilsack*, there was an attempt to force the USDA to do so. The Ninth Circuit Court of Appeals noted that it was not obvious what the legislature’s true intention was regarding poultry when the HMSA was first created in 1958,²⁰⁵ however, perhaps there is still an opportunity to prove that the writers of the HMSA did intend for poultry to be included under the language of the HMSA.²⁰⁶ If *Levine v. Vilsack* was retried with plaintiffs that do have standing, it is possible, but unlikely, that a judge may find that the USDA acted arbitrarily by not including poultry in its interpretation of the HMSA, and that poultry should be included.

However, given the strong opposition by the USDA towards including poultry in this definition, this may not be a very feasible option.

199. 7 U.S.C. § 1902.

200. *Id.*

201. *Humane Methods of Slaughter Act*, *supra* note 42.

202. *Levine v. Vilsack*, 587 F.3d 986 (9th Cir. 2009).

203. *Id.*

204. *Id.*; *Levine v. Connor*, 540 F. Supp. 2d 1113 (N.D. Cal., 2008).

205. *Vilsack*, 587 F.3d at 986.

206. *Id.*

The legislative history regarding the HMSA is ambiguous at best.²⁰⁷ While some of the legislature thought that poultry would be included in the definition of “livestock,” others thought that the language would need to specify that both livestock and poultry are included.²⁰⁸ Perhaps the most telling is that previous versions of the HMSA included poultry either in the title of the Act or within the definition of livestock, but the final version of the bill was silent as to poultry.²⁰⁹ Given the known confusion among the legislators as to whether poultry is included, it seems odd that the language of the HMSA did not directly include or exclude poultry. The omission makes it seem likely that a judge would find that the USDA’s interpretation is proper.

B. The USDA Could Add Humane Treatment Requirements for the Slaughter of Poultry Under the Poultry Product Inspection Act’s Regulations

While the USDA seems opposed to interpreting the HMSA to include poultry, the USDA has claimed that the PPIA is sufficient to protect poultry at slaughter.²¹⁰ If the USDA is serious about this requirement, then there are multiple changes the USDA could make to the Poultry Product Inspection Regulations to make the slaughter of poultry more humane. The Poultry Product Inspection Regulations currently have two requirements that the USDA argues make the slaughter of poultry “humane.”²¹¹ First, poultry processors are supposed to follow the Good Commercial Practices Guidelines, and second, poultry are to die only by slaughter (bleeding out from the neck).²¹² However, the GCP note that poultry need not be stunned prior to slaughter, and although it is suggested and will result in a written reprimand when poultry are not properly stunned, it is not required.²¹³

If the USDA would rather regulate the slaughter of poultry solely through the PPIA and not through the HMSA, then it should amend the language to include the humane treatment of poultry before slaughter. The regulations could add this language: “In order to promote poultry dying only by slaughter, poultry should be rendered insensible to pain before being shackled, hung, or cut for slaughter. Poultry that are not stunned before slaughter are more likely to die from causes other than slaughter, such as by drowning in the scald tank.” This language would ensure that poultry are slaughtered by the same standard as other animals in the U.S.

207. Friedrich, *supra* note 40.

208. *Id.*

209. *Id.*

210. *Humane Methods of Slaughter Act, supra* note 42.

211. 9 C.F.R. § 381.

212. *Id.*

213. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices (U.S.D.A. 2018).

under the HMSA.²¹⁴ Adding this language to the Poultry Product Regulations would only require the USDA to make meager changes to the language of the regulations. Because the PPIA requires that poultry die only by slaughter, this language would be a permissible requirement to ensure that poultry were only dying by slaughter.²¹⁵

However, whether the USDA would adopt these changes is questionable. In 2013, the Animal Welfare Institute (AWI) and Farm Sanctuary petitioned the USDA to change its regulations regarding poultry slaughter.²¹⁶ The petition was based on the language of the PPIA that requires the USDA to promote methods of slaughter that lead to less adulterated birds.²¹⁷ AWI and Farm Sanctuary noted that large amounts of adulterated birds result from the current method of slaughter as carried out under GCP.²¹⁸ The petitioners argued that the USDA should codify GCP into its regulations and should add language that requires proper stunning of poultry prior to slaughter in order to fulfill its mandate of limiting adulterated products.²¹⁹ However, in 2019 the USDA denied the petition, stating that the GCP and PPIA are already sufficient at promoting the humane slaughter of poultry.²²⁰ Therefore, the best option may be to take the choice away from the USDA entirely and place it into the hands of legislators.

C. Congress Could Add Poultry to the HMSA

The best solution may be to go directly to the source of the problem and correct it from the top down. When left to interpret the HMSA as it is currently written, the USDA has made it clear that it opposes poultry's inclusion in the HMSA. Thus, the most straightforward solution may be to have Congress change the HMSA to include poultry. This would be an extremely simple amendment to the language. The only required change would be to change the language of § 1902(a) from "in the case of cattle, calves, horses, mules, sheep, swine, and other livestock," to "in the case of cattle, calves, horses, mules, sheep, swine, other livestock, and

214. 7 U.S.C. § 1902.

215. 21 U.S.C. § 451.

216. *Petition for Formal Rulemaking from AWI and Farm Sanctuary*, U.S. DEP'T AGRIC., FOOD SAFETY AND INSPECTION SERV. (Nov. 2, 2013), https://www.fsis.usda.gov/sites/default/files/media_file/2020-08/Petition-AWI-PPIA-121713.pdf (last visited July 29, 2023).

217. *Id.*

218. *Id.*

219. *Id.*

220. Letter from Terri Nintemann, Assistant Admin'r, U.S. Dep't Agric., to Dena Jones, Farm Animal Program Manager, Animal Welfare Institute (Nov. 25, 2019), https://www.fsis.usda.gov/sites/default/files/media_file/2020-08/16-05-fsis-final-response-112519.pdf [<https://perma.cc/CV7V-NJ9A>].

poultry...”²²¹ With the addition of two words, billions of animals would face an immensely more humane death than at present.

In 1993, Representative Andrew Jacobs introduced a proposal in the House of Representatives to add humane methods of poultry slaughter to the PPIA.²²² It did not pass in the legislature.²²³ While this is slightly different than trying to amend the HMSA, the result would be similar as the proposed amendment suggested adding the HMSA language to the PPIA as well.²²⁴ Even though this attempt at reform failed, there is still reason to keep trying. The original HMSA went through at least a dozen proposed bills until the final one was passed in 1958, and it was a step in the right direction for its time.²²⁵ The last attempt at amending the PPIA or HMSA to include humane slaughter for poultry was thirty years ago, so there is no reason to not keep trying to pass this important amendment.²²⁶ Unlike this proposed amendment, however, the best solution would likely be to amend the HMSA, as it would be simple and would afford the same protection to all farmed animals.

Crucially, to pass an amendment to the HMSA, the legislature will have to know the alternative options for poultry slaughter that would replace the current system. Without a logical solution to this problem, an amendment is unlikely to ever pass in Congress, especially because the legislature may be concerned with rising costs of poultry for their constituents. Luckily, multiple countries, especially in Europe, have begun to phase out the electric bath stunner in favor of methods that may be more humane.²²⁷ However, there is still some debate whether an electric bath method may be redeemable.

1. *Method One: Stronger Electric Current*

One such suggested approach for more humane poultry slaughter is to render the birds insensible to pain by making the electric current in the stun bath stronger.²²⁸ This presents a unique solution that also poses its own unique problems. First, there would still be the inhumane treatment of the bird when it is shackled and hung by its feet while still conscious. Next, there is the issue that this type of slaughter would deviate enough from the HMSA and would require an entirely new amendment to the language of the act rather than the mere addition of poultry to the interpretation of the

221. 7 U.S.C. § 1902.

222. Humane Methods of Poultry Slaughter Act, H.R. 649, 103rd Cong. (1993).

223. *Id.*

224. *Id.*

225. Friedrich, *supra* note 40.

226. Humane Methods of Poultry Slaughter Act, H.R. 649, 103rd Cong. (1993).

227. Charlotte Berg & Mohan Raj, *A Review of Different Stunning Methods for Poultry—Animal Welfare Aspects*, 5 ANIMALS 1207 (2015).

228. *Id.*

language. Third, there are some anthropocentric reasons that may prevent a poultry producer from wanting to adopt this method of slaughter.

First, poultry would still be treated inhumanely when they are shackled and hung before being taken to the electric bath. There is no doubt that this is a distressing experience for the birds and causes pain and fear. The HMSA points out that this is an inhumane way to treat farmed animals.²²⁹ However, requiring birds to be rendered completely insensible to pain by the time they get to the cutting blade would be a more humane decision than not requiring the birds to be insensible to pain at all. Being flipped upside down is most likely a harmful experience for any animal, as it is not a natural position for an animal to be in; thus, their fear responses kick in to try and get them to right themselves.²³⁰

Of course, if birds were to be required to be insensible to pain after being shackled and hung, this would deviate from the language of the HMSA enough to warrant an amendment to the statute. In this case, the statute may have to differentiate between the treatment of birds and other farmed animals.²³¹ However, as noted above, there is no logical explanation for why a chicken or duck should be treated any differently from a pig.²³² However, with poultry comes different logistical issues due to their size and the amount that are slaughtered every day.²³³ While amending the HMSA to provide for different treatment of poultry would not be ideal, it is better than poultry's exclusion from the statute altogether.

Finally, there are other logistical reasons that a poultry slaughter establishment might not favor a stronger electric current. While the electric current is not necessarily designed to render birds insensible to pain, it does have another practical use.²³⁴ It immobilizes the birds so it makes them easier to slaughter.²³⁵ Also, it has been noted that the low frequency electric bath gives the poultry a more appealing texture that increases customer satisfaction in the poultry industry.²³⁶ Thus, poultry slaughter establishments have an economic incentive to not increase the frequency of the electric bath. However, though costs may increase in some areas, this may decrease costs in other areas.²³⁷ Ensuring that all birds are rendered insensible to pain before slaughter will decrease the number of birds who

229. 7 U.S.C. § 1901.

230. Shields & Raj, *supra* note 168, at 281.

231. 7 U.S.C. § 1902.

232. Marino, *supra* note 184.

233. Nat'l Agric. Stats. Serv., *Chickens and Eggs*, U.S. DEP'T AGRIC. (May 20, 2022), <https://downloads.usda.library.cornell.edu/usda-esmis/files/fb494842n/6682z901p/00001523h/ckeg0522.pdf> [<https://perma.cc/E3DH-468Y>].

234. Berg & Raj, *supra* note 227, at 1209.

235. *Id.*

236. Cassiana Kissel et. al, *Electrical Water Bath Stunning of Broilers: Effects on Breast Meat Quality*, 52 JAPAN POULTRY SCI. ASSOCS. 74, 79 (2015).

237. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices 1, 2 (U.S.D.A. 2018).

survive through the cutting process. This will then decrease the number of “red skins” in the final stage of slaughter in which the birds are put in the scald tank.²³⁸ These red birds are considered adulterated and cannot be sold to consumers; so rendering all chickens insensible to pain, or unconscious, before slaughter may increase profits.²³⁹

2. *Method Two: The Gaseous Method*

An alternative method is to render birds insensible to pain before they are shackled and hung. This would be one of the most humane ways in which an animal could be slaughtered as defined in the HMSA. The animal should experience as minimal an amount of pain and fear as possible during the process, and this would necessarily mean that the bird is unconscious before the process truly starts.²⁴⁰ However, there are also logistical issues with this process. First, it must be determined how millions of birds could be rendered unconscious quickly and efficiently without having to individually knock out every bird. Second, this may lead to economic consequences that poultry slaughter establishments would be opposed to. Finally, this would at least allow the legislators to simply add poultry to the HMSA as it is now, which would make the process more simple.

The solution to slaughtering birds currently involves a motorized process in which millions of birds are placed onto conveyor belts which take the birds through the process of slaughter with little human intervention.²⁴¹ However, this process leads to countless errors in which numerous birds are suffering more than they would be if being slaughtered individually.²⁴² However, looking back to the old way of slaughtering birds originally will not be enough. On the one hand, this would be a time-consuming process, and on the other hand it would not always meet the definition of a “humane” death in the public’s eyes. Some processes previously employed to slaughter birds, either on individual farms or before animal slaughter became so industrialized, included chopping off the head of poultry with a sharp instrument or putting the head of the bird through a “killing cone.”²⁴³ While these would guarantee that each bird is rendered insensible to pain by killing it in one blow, it still causes distress to the animal, especially in a killing cone, as the bird must be hung upside down.²⁴⁴ This method would not be feasible if poultry producers want to continue processing birds at the same rate.²⁴⁵

238. *Id.*

239. *Id.*

240. *See* Berg & Raj, *supra* note 227, at 1214.

241. *Id.*

242. *Id.* at 1211.

243. *Killing Cone*, HUMANE SLAUGHTER ASSOC., <https://www.hsa.org.uk/neck-dislocation/killing-cone> [<https://perma.cc/ZD6B-WM8H>].

244. *Id.*

245. *Id.*

Therefore, if poultry are to be successfully added and protected under the HMSA, there will have to be a workable alternative to the way poultry are slaughtered now. There are alternatives out there that could protect poultry under the HMSA. One alternative that may be workable is rendering poultry insensible to pain through a gaseous method.²⁴⁶ This is a method that has become increasingly popular in England in which the birds are introduced into an apparatus that has been pre-filled with gas, or alternatively, the gas is introduced in an apparatus that already contains the birds.²⁴⁷ It is suggested that the gas include a mix of argon, nitrogen, or other noble gases.²⁴⁸ These are the most humane gases to be used on animals because they do not result in the feeling of suffocation but instead lead to a slow loss of consciousness if done in the right quantities.²⁴⁹ Although many gaseous methods in the U.S. use carbon dioxide, like in the pork industry, it is suggested that carbon dioxide not exceed thirty percent of the gaseous mix as it can create feelings of suffocation and cause great distress to animals.²⁵⁰

Of course, this method would also come with economic consequences that poultry establishments would probably be opposed to. The costs of setting up this gaseous method are significant, and this would most likely disadvantage smaller slaughter establishments.²⁵¹ However, the benefits may outweigh the costs associated with adopting this more humane method. Again, there may be less birds that are labeled as adulterated if they are rendered unconscious before going to slaughter.²⁵² This may benefit the slaughter establishment enough to justify the upfront costs of setting up this more humane slaughter method.

Finally, adopting this method of slaughter would allow the HMSA to remain the same without requiring an amendment to the language. If poultry were rendered unconscious prior to slaughter through the gaseous method they could be insensible to pain before being shackled, hung, or cut.²⁵³ This would comply with the definition of humane under the HMSA. This would also allow the process to transition much more smoothly without having to wait for Congress to amend the statute and could be enacted through the USDA recognizing poultry as protected under the HMSA.²⁵⁴ However, if the USDA is not willing to recognize poultry as a

246. Berg & Raj, *supra* note 227, at 1213.

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.* at 1213–14.

251. HUMANE SOC'Y U.S., THE ECONOMICS OF ADOPTING ALTERNATIVE PRODUCTION PRACTICES TO THE ELECTRICAL STUNNING SLAUGHTER OF POULTRY 2, <http://www.abolitionistapproach.com/media/links/p31/hsus-report-practices.pdf> [<https://perma.cc/2SVL-H3PW>].

252. *Id.*

253. 7 U.S.C. § 1902.

254. Friedrich, *supra* note 40, at 162.

protected animal, then it will be up to Congress to specifically add poultry to the language of the HMSA.²⁵⁵

Besides the method of slaughter that is to be used, one of the most important aspects of the HMSA that is lacking in the PPIA is the recognition of animals as individuals.²⁵⁶ Under the PPIA, humane treatment only becomes an issue if there is a process control issue in which multiple birds are dying by means other than slaughter.²⁵⁷ However, the HMSA ensures that animals are treated as individuals in which each must be rendered insensible to pain. While a workable solution to poultry slaughter is still unknown, the recognition of poultry as individual living beings would go a long way in making the slaughter process more humane for all poultry.²⁵⁸ This should be one of the main focuses of any slaughter process of animals and has been addressed in the HMSA.²⁵⁹ Unless the PPIA does the same, then it will always be inferior to the HMSA in terms of humanity.

D. Why the Benefits of Humane Slaughter Outweigh the Disadvantages

Poultry producing establishments could come up with countless reasons to exclude poultry from the HMSA. The USDA has already discussed one reason, which is that they believe the PPIA is sufficient to protect the interests of poultry at slaughter.²⁶⁰ However, GCP for poultry do not ensure the humane treatment of poultry at slaughter compared with livestock under the HMSA. Also, ensuring that a bird dies only by slaughter does not ensure the slaughter has been humane. Nevertheless, there are plenty of anthropocentric reasons to exclude poultry. A large majority of people consume poultry and include it as a large part of their diet and making the process of poultry slaughter more expensive would likely make the price of poultry increase.²⁶¹ Requiring the gaseous method may disadvantage smaller poultry establishments, and the consumer demand of people could be seen by some to be more important than the humane

255. *Id.*

256. 21 U.S.C. § 451.

257. FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices 1, 1–2 (U.S.D.A. 2018); FSIS Directive 6900.2, Revision 3, Humane Handling and Slaughter of Livestock 1, 1 (U.S.D.A. 2020).

258. FSIS Directive 6900.2, Revision 3, Humane Handling and Slaughter of Livestock 1, 2–3 (U.S.D.A. 2020).

259. *See id.*

260. *Humane Methods of Slaughter Act*, *supra* note 42.

261. Bruce Friedrich, *Still in the Jungle: Poultry Slaughter and the USDA*, 23 N.Y.U. ENV'T L.J. 245, 250 (2015); THE ECONOMICS OF ADOPTING ALTERNATIVE PRODUCTION PRACTICES TO THE ELECTRICAL STUNNING SLAUGHTER OF POULTRY, *supra* note 251.

treatment of poultry.²⁶² However, no matter the human-driven explanation, most people do care about the humane slaughter of animals.²⁶³

The proposition to add poultry to the HMSA may be viewed simply by looking at the HMSA and the legislative history behind it. Congress knew that the ethics of a group of people can be determined by how those people treat the animals they eat for food.²⁶⁴ Congressmen in the 1950s did not have to create the HMSA. It would have been very conducive to the thinking of the time to ignore the suffering of animals in favor of more human-centered laws.²⁶⁵ Yet, the HMSA came into being, as did the Twenty-Eight Hour Law and the Animal Welfare Act. The people representing the United States have made it clear that animals are deserving of at least some protection as individuals who can suffer and feel pain.²⁶⁶ If poultry are found to be excluded from these protections, then this statute is an empty promise, and the HMSA cannot mean what it says. If cows are to be individuals and chickens are to be a group subject to abuse, then the HMSA was only a hopeful aspiration and not a law to be taken seriously.

Despite the negative financial impacts, the HMSA requires that all livestock are slaughtered with as little pain as possible.²⁶⁷ Economic impacts should not stand in the way of protections for poultry. The consequences to these animals are too great for society to pick and choose which ones are to be put to death with respect. If the United States cannot do this for the sake of the most frequently slaughtered animal in the country, then the HMSA does not reflect the promises that it made to those animals who are most vulnerable.

CONCLUSION

In conclusion, although the USDA claims that the PPIA protects the interests of poultry by humane slaughter, the HMSA is better equipped to actually provide this protection. The Good Commercial Practices of Poultry Slaughter do not ensure that individual poultry die a humane death and ensuring that poultry only die by slaughter does not ensure slaughter is humane. While a larger number of poultry are slaughtered when compared to other livestock, there is no logical reason to treat poultry differently from other animals that are slaughtered for food. Thus, poultry should be added to the HMSA. Under the HMSA, there are multiple workable options that will result in more humane slaughter for poultry.

262. *Id.*

263. *Public Opinion Surveys on Farm Animal Welfare*, ASPCA, <https://www.aspc.org/protecting-farm-animals/aspc-surveys> [https://perma.cc/2C5X-U8AZ].

264. 104 CONG. REC. at 1652–54 (1958).

265. Pierre A. Chaloux & Max B. Heppner, *History and Development of Federal Animal Welfare Regulations*, WELLBEING INT’L STUD. REPOSITORY 287, 287–88, 292 (1980).

266. *Id.* at 291–93.

267. 7 U.S.C. § 1902.