



# Legal Protections for Farm Animals at Slaughter

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## INTRODUCTION

The meat-packing industry in the United States grew dramatically during the first half of the 20<sup>th</sup> century. However, as packing houses expanded to take in more and more animals, they retained primitive methods of handling and stunning animals in preparation for slaughter. An editorial entitled “Still the Jungle” in the June 18, 1956, issue of the *New Republic* described the slaughtering procedure:

Cattle, like horses, are slugged on the head with iron mallets. The first blow frequently fails to stun them—as they stumble, electric shocks force them to their knees so that they may be struck again and again. Calves, hogs, and

lams are strung up (conscious) by chains tied to their hind legs. When the chains slip or legs are disjointed and broken, they crash from high conveyor lines to slaughter house floors. The throats of the calves are severed by sawing motions; lambs are knifed behind an ear and slowly bleed to death; hogs with slit throats frequently pass still squealing into scalding vats.<sup>1</sup>

As cruel methods of slaughter continued to be regularly used in meat-packing houses in the United States, other parts of the world made progress—enacting humane handling laws and incorporating humane stunning equipment.

## THE FEDERAL HUMANE SLAUGHTER LAW

### *Humane Methods of Slaughter Act of 1958*

Eventually, humane slaughter legislation came to the United States. The first humane slaughter bill was introduced in the US Senate on April 11, 1955, by Sen. Hubert Humphrey of Minnesota and in the House of Representatives on May 9, 1955, by Rep. Martha Griffiths of Michigan.<sup>2</sup> The specific aim of these bills was to outlaw the shackling and hoisting of conscious animals and the use of manually operated sledgehammers for stunning. The US Department of Agriculture (USDA) denied these bills a favorable report, on the grounds that American industry could provide better humane slaughter than legislation could. The American Meat Institute (now the North American Meat Institute, NAMI) called the legislation “premature”—despite being introduced 82 years after a humane slaughter law was enacted in Switzerland and at least 20 years after such laws were enacted in other countries.

These first bills were tabled without a hearing, but similar legislation was introduced in 1956. Hearings were held on the Senate bill in the subcommittee chaired by Humphrey on May 9 and 10. The bill was reported favorably to the full Senate committee. In the House, Rep. W. R. Poage of Texas led his subcommittee on an inspection tour of slaughterhouses to study humane and inhumane methods. Their observations more than confirmed complaints of unnecessary suffering. At the same time, public pressure was mounting for a humane slaughter law.

The bills were reintroduced in the 85<sup>th</sup> Congress. Poage called a hearing on April 2, 1957, at which humane societies from all parts of the country were represented. The Animal Welfare Institute (AWI) exhibited four of the humane stunning instruments then on the market and testified in favor of the bill, along with the Amalgamated Meat Cutters and Butcher Workmen of North America, the American Humane Association, the General Federation of Women's Clubs, The Humane Society of the United States, the National Farmers' Union, and many state and local humane organizations and church groups.<sup>3</sup> Opponents included the USDA, NAMI, the Farm Bureau, the National Cattlemen's Association, the National Grange, and the Union of Orthodox Rabbis. The bill cleared the House Agriculture Committee on June 29, 1957, and was overwhelmingly passed by the full House on February 4, 1958.

In the Senate, at a third set of hearings held from April 28 through May 1, 1958, powerful opposition by meat packers resulted in a June 18 amendment to the House humane slaughter bill by the Senate Agriculture Committee, deleting all the effective sections and turning the legislation into a mere study bill. A storm of disapproval followed this action. Editorials in leading newspapers throughout the country expressed outrage. Humphrey and 17 cosponsors offered an amendment on the Senate floor to restore the language of the bill, as passed by the House.

On July 29, Humphrey waged a seven-hour fight to defeat the weak study bill reported to the Senate by its Agriculture Committee. The first order of business was a vote on the study bill. Against the protests of the bill sponsors, Senate Majority Leader Lyndon Johnson scheduled the debate. The bill was voted down 43 to 40—an unusual instance of the Senate reversing one of its own committees.

Next came a vote on the compulsory bill. Amendment after amendment was put forward in an attempt to weaken it. Only one—the Case-Javits Amendment to exempt the pre-slaughter handling of kosher-killed animals from the bill's humane requirements—was accepted. Thus amended, the bill passed by a vote of 72 to 9. Recognizing that disagreements in conference might result in a loss of the entire humane slaughter bill through delays at the end of the congressional session, the House conference decided to accept the Senate version of the bill, and the full House passed it. On August 20, 1958, President Dwight Eisenhower signed it into law, effective June 30, 1960. This first federal Humane Methods of Slaughter Act (HMSA) covered 80 percent of US plants by requiring that all slaughter plants selling meat to the federal government use humane methods.<sup>4</sup>

Just as the bill was about to go into effect, however, there was an attempt to undermine it. The Military Subsistence Supply Agency, purchaser for all meat for the Armed Forces, announced it would require certification of compliance with the humane slaughter regulations only in contracts exceeding \$2,500.<sup>5</sup> At the time, the agency, through its Chicago headquarters and 10 regional buying offices, purchased about 500 million pounds of meat and meat products per year—a considerable portion in lots of \$2,500 or less.

Sponsors of the legislation, Senator Humphrey and Representatives Poage and Griffiths, pointed out that such an attempted exemption was illegal. On June 14, 1960, Humphrey received a statement from the Army that it would comply in full with the provisions of the HMSA.

### ***Humane Methods of Slaughter Act of 1978***

Sen. Robert Dole of Kansas and Rep. George Brown of California sponsored legislation enacted in 1978 to provide a more effective enforcement mechanism and to expand the coverage of the HMSA. The Dole-Brown amendment provides federal employees authority to withhold inspection of slaughter plants until any cruel practices are corrected.<sup>6</sup> Profits in the meat industry depend on speed in putting animals through “the line.”<sup>7</sup> Thus, the fear of having an inspector stop the flow for humane reasons is a powerful economic incentive to avoid cruelty.

The law also requires that any meat imported into the United States be derived from animals slaughtered in establishments with standards that meet those mandated by the HMSA.<sup>8</sup> Importation of meat from inhumanely slaughtered animals is

prohibited.<sup>9</sup> Thus, both US importers and foreign exporters of meat and meat products must ensure that humane slaughter methods are used in plants supplying them with meat.<sup>10</sup> USDA personnel had long inspected foreign plants that export to the United States in order to assure that sanitary standards were adhered to; as such, inspection for humane standards could be conducted by the same officials.

Despite the eminently sound and sensible provisions of the bill, meat industry lobbyists worked persistently behind the scenes to delay action on it. The turning point came when Dole chaired hearings in the Senate Agriculture Committee that led directly to passage of the legislation by Congress. President Jimmy Carter signed the amended Federal Meat Inspection Act (which incorporates the HMSA) on October 10, 1978.<sup>11</sup>

### **Regulations Implementing the Federal Law**

Final regulations implementing the 1978 amendments to the HMSA were published in the *Federal Register* on November 30, 1979.<sup>12</sup> Commenting on complaints from the industry about the loss of funds that a plant could suffer when operations are suspended under the law, the administrator of the USDA's Food Safety and Inspection Service (FSIS) stated:

The principal purpose of the Act is to deter and prevent inhumane treatment, not to punish for violations. Furthermore, the temporary suspension of inspection for inhumane handling or slaughter would be done in the same manner as the temporary suspension of inspection because of sanitation deficiencies. The use of the "U.S. Rejected" tag would similarly have the same function and meaning as when used on insanitary equipment. It may be removed by the inspector in charge when the cause is corrected or satisfactory assurances are given.<sup>13</sup>

The new regulations were the subject of a bulletin to USDA regional directors and supervisors that summarized stunning and humane handling requirements, including the treatment of downed animals, use of electric prods, and maintenance of pens, driveways, and ramps.<sup>14</sup>

The federal humane slaughter regulations have been modified only twice since the 1979 amendments were adopted. In 1994, the FSIS amended the regulations to permit use of carbon dioxide to stun and kill pigs, in response to a request from the pork industry.<sup>15</sup> In 2004, the FSIS amended the

regulations to prohibit the use of captive bolt stunners that inject compressed air into the heads of cattle as a measure to help prevent bovine spongiform encephalopathy (mad cow disease).<sup>16</sup> Neither of these amendments were made for the purpose of decreasing animal suffering.

Apparently in response to reports of animal cruelty at slaughter, between the late 1990s and late 2000s the FSIS also issued a dozen notices and directives related to humane slaughter and handling.<sup>17</sup> They address such subjects as ritual slaughter procedures, assessment of stunning effectiveness, and the treatment of nonambulatory (downed) animals.<sup>18</sup> Although the livestock antemortem regulations are not part of the HMSA regulations, the FSIS has also amended them to prohibit the slaughter of nonambulatory veal calves.<sup>19</sup>

Since 1978, Congress has acted on the issue of humane slaughter on three occasions. In 1996, Congress approved legislation to allow the USDA to issue guidelines for the regulation of the commercial transportation of equines for slaughter.<sup>20</sup> Legislation was added in 2002 to address practices involving nonambulatory animals.<sup>21</sup> This amendment directed the secretary of agriculture to investigate and submit a report to Congress on the scope, causes, and treatment of nonambulatory animals.<sup>22</sup> If determined to be necessary, the secretary is to "promulgate regulations to provide for the humane treatment, handling, and disposition of nonambulatory livestock by stockyards, market agencies, and dealers."<sup>23</sup> In 2002, as a result of concerns about the adequacy of USDA enforcement of the HMSA, Congress passed a resolution expressing the desire that the secretary of agriculture fully enforce the humane slaughter law, continue tracking violations, and make a report to Congress.<sup>24</sup>

### **Species Covered by the Federal Law**

The 1958 HMSA requires pre-slaughter stunning of "cattle, calves, horses, mules, sheep, swine, and *other livestock*" (emphasis added).<sup>25</sup> However, the 1978 amendments to the HMSA reference "cattle, sheep, swine, goats, horses, mules, or other equine," with no mention of other livestock.<sup>26</sup> The USDA has not promulgated regulations to cover any additional species, with the exception of exotic animals—defined as reindeer, elk, deer, antelope, bison, and water buffalo.<sup>27</sup> Stunning of these animals must be performed in accordance with the federal humane slaughter regulations, but only if the slaughter establishment wishes to market its products as being

government (federal or state) inspected. At present, federal food inspection is not required for the slaughter of exotic animals, except under a voluntary program.<sup>28</sup>

In 2000, Congress stipulated that the slaughter of ratites (e.g., ostrich) and squabs are henceforth subject to the antemortem and postmortem requirements of the Poultry Products Inspection Act.<sup>29</sup> While extending USDA inspection to these species does not place the animals under the protection of the humane slaughter law, it allows for an enforcement mechanism should Congress or the USDA decide to amend the law or its regulations to cover these bird species.

Because Congress and/or the USDA have not applied the federal law to birds, US humane slaughter laws currently ignore 98 percent of all animals killed for food. Animal advocates have made several attempts—including the introduction of federal legislation—to promote the protection of chickens, turkeys, and other birds at slaughter.<sup>30</sup> In 1995, AWI and the Animal Legal Defense Fund submitted a rulemaking petition, requesting that the FSIS promulgate regulations for the humane treatment of birds at slaughter. In November 2005, The Humane Society of the United States, joined by East Bay Animal Advocates and several individual consumers, filed a complaint in the US District Court, Northern District of California, under the Administrative Procedure Act, seeking humane slaughter coverage for birds.<sup>31</sup> That lawsuit and a similar one filed around the same time by the Humane Farming Association were dismissed by the courts.<sup>32</sup>

In 2005, the FSIS published a notice in the *Federal Register* on the treatment of live poultry before slaughter. The notice reminded poultry slaughter establishments that “under the Poultry Products Inspection Act (PPIA) and agency regulations, live poultry must be handled in a manner that is consistent with good commercial practices, which means they should be treated humanely.”<sup>33</sup> Around this time, FSIS inspection personnel began citing poultry slaughter plants for violations of “good commercial practices” (GCP),<sup>34</sup> and district veterinary medical specialists began conducting “good commercial practices verification visits” in poultry plants.<sup>35</sup>

According to FSIS enforcement records obtained by the advocacy organization Farm Sanctuary, during an 18-month period, FSIS in-plant inspection personnel cited 120 poultry plants—40 percent of all such plants—for GCP violations.<sup>36</sup> Violations were documented on noncompliance records and memorandums

of interview.<sup>37</sup> The most commonly cited violations included birds drowning in the scald tank, inadequate bleeding, and improper handling—such as use of excessive force and placing live birds in the dead-on-arrival bin.<sup>38</sup> In December 2013, Farm Sanctuary and AWI petitioned the USDA to write regulations under the Poultry Products Inspection Act to regulate practices and actions that result in adulterated poultry products through inhumane handling of birds.<sup>39</sup>

In 2016, AWI published a report on the welfare of birds at slaughter in the United States.<sup>40</sup> The report analyzed more than 1,300 GCP records obtained from the FSIS through the Freedom of Information Act.<sup>41</sup> The analysis revealed that nearly 40 percent of federal poultry plants were issued no GCP records by the FSIS for the four-year period 2011–2014.<sup>42</sup> Contained in the records were incidents where hundreds, and even thousands, of birds suffered greatly, including many examples of intentional cruelty to birds by plant employees.<sup>43</sup> The records also showed that some poultry plants were cited repeatedly for the same or similar GCP violations.<sup>44</sup> The FSIS has little recourse in these cases, as no formal regulations have been written, and compliance with GCP remains merely voluntary.<sup>45</sup>

AWI’s 2017 update on poultry slaughter noted that, based on USDA records received by AWI, the department cited more poultry handling violations in 2016 (approximately 500) than in any previous year since the GCP program was initiated.<sup>46</sup> Unfortunately, AWI has also observed a troubling trend in the most recent government documents. Between January 2016 and May 2018, more than 50 situations occurred in which birds were knowingly neglected or abandoned during transport or at the slaughterhouse.<sup>47</sup> Examples of mistreatment included birds loaded in high temperatures without the use of fans or misters, birds transported in low temperatures without covers on the trucks, birds held at the slaughterhouse without protection from extreme heat or cold, and birds held for slaughter for extended periods without food, water, and adequate shelter. Many of the incidents resulted in the deaths of hundreds, and sometimes thousands, of birds. AWI has requested that the USDA take action to address this problem.<sup>48</sup>

In late 2017, the National Chicken Council petitioned the USDA to allow chicken slaughter plants to operate without any line speed limits whatsoever.<sup>49</sup> While the department ultimately denied the petition for unlimited speeds, it decided to provide waivers to individual plants wanting to operate at increased

speeds.<sup>50</sup> Animal advocacy organization were successful in lobbying the USDA to require compliance with good commercial practices as a criterion for the granting of waivers. All slaughter plants applying to operate under higher speeds, as well as those already permitted to do so, are required to demonstrate a history of GCP compliance. According to the USDA, failure to maintain compliance with humane handling practices may result in a slaughter plant losing its line speed waiver.<sup>51</sup>

## ENFORCEMENT OF THE FEDERAL LAW

In response to evidence of inhumane handling or slaughter of livestock (not including poultry), the FSIS may take several regulatory actions, including the issuance of noncompliance records, reject tags, notices of intended enforcement (NOIE), notices of suspension (NOS), letters of concern, letters of warning, and withdrawal of inspection.<sup>52</sup> In terms of suspensions, the FSIS may impose a suspension without providing the establishment prior notice if the establishment is found to be handling or slaughtering livestock inhumanely.<sup>53</sup>

In 2001, following exposure of inhumane slaughter at an IBP (now Tyson Foods) plant in Wallula, Washington, Congress appropriated \$1 million to the USDA for humane slaughter enforcement.<sup>54</sup> The USDA used that money in 2002 to create 17 veterinary positions, originally called “humane handling verification experts/liasons.” The position title was eventually changed to “district veterinary medical specialist” (DVMS).<sup>55</sup> Approximately 15 DVMSs assist with humane slaughter enforcement through assignment to 10 FSIS district offices.<sup>56</sup>

To evaluate the level of humane law enforcement at federal slaughter plants, AWI conducted a review in 2008 of public records relating to humane slaughter.<sup>57</sup> Approximately 500 humane handling and humane slaughter noncompliance records issued at federal slaughterhouses during an 18-month period were obtained and analyzed. The most common types of humane deficiencies were failure to provide water to animals in pens; failure to maintain pens and other facilities in good repair; and shackling, hoisting, and/or cutting of conscious animals.<sup>58</sup>

For the year 2007, less than 1 percent of all citations for violations of federal food safety laws were issued for humane handling and slaughter. Over a 10-year period, from January 1998 through December 2007, the FSIS issued just 71 plant suspensions for

humane handling and slaughter violations—an average of seven per year. In most cases, the suspension lasted a day or less.<sup>59</sup>

AWI’s review of humane slaughter enforcement uncovered several serious problems in the USDA’s oversight of the federal humane slaughter law: incomplete and inconsistent record keeping, inadequate reporting of noncompliances, failure to take appropriate action to stop inhumane practices, and inconsistent actions by FSIS district offices. Striking inconsistencies were found in the manner in which violations were handled between inspection personnel at individual plants and between FSIS districts. In some cases, slaughterhouse operations were halted for relatively minor offenses, such as failure to provide water to animals in pens, while in other cases, USDA officials took no action when plant workers were repeatedly observed butchering fully conscious animals.<sup>60</sup>

The findings of AWI’s study are similar to those of two reviews conducted by the US Government Accountability Office (GAO) in 2004<sup>61</sup> and 2008.<sup>62</sup> The GAO reported on problems with the food safety inspection system, including inconsistent oversight, ineffective coordination, and inefficient use of resources. These deficiencies were illustrated in early 2008 when evidence of extreme cruelty at the Westland-Hallmark cattle slaughter plant in Chino, California, was publicized. That incident resulted in the largest beef recall in US history.<sup>63</sup>

A subsequent investigation by the USDA Office of Inspector General (OIG) concluded that humane slaughter and handling problems are not systemic in the US food safety program, even though half of the 10 “cull” cattle plants reviewed failed to get a passing grade.<sup>64</sup> Animal and consumer advocates point out that the situation is likely far worse than reflected in the OIG audit, given that companies have advance notice of inspections, which allows workers the opportunity to alter their practices.<sup>65</sup>

AWI conducted a follow-up review in early 2010 of federal humane slaughter enforcement and found that enforcement was up dramatically in the aftermath of the Westland-Hallmark incident.<sup>66</sup> The number of federal suspensions for humane slaughter increased sevenfold between 2006–07 and 2008–09.<sup>67</sup> However, the number of noncompliance records written for humane slaughter violations remained constant following Westland-Hallmark, suggesting that the amount of time being devoted to humane handling activities had not

increased.<sup>68</sup> The length of suspensions remained low, and again it was observed that enforcement rates varied significantly by district office.<sup>69</sup> Moreover, it was noted that the resources devoted to humane handling at the federal level continued to constitute a very low percentage of total funding for food safety inspection.<sup>70</sup> A GAO report released in March 2010 reinforced AWI's findings.<sup>71</sup>

In 2011, the FSIS revised its directive on humane slaughter (6900.2) to allow the issuance of NOIEs for egregious violations, despite the lack of any provision in the FSIS Rules of Practice allowing the use of advance notices of administrative actions in cases of inhumane slaughter.<sup>72</sup> The revision allows the use of NOIEs in cases where the slaughter establishment commits an egregious violation while operating under a "robust systematic approach" to animal handling, and the establishment does not have any recent enforcement actions related to humane handling.<sup>73</sup> In a 2009 letter to the FSIS, Tyson Foods requested that the use of notices of suspension be reduced in situations where the slaughter establishment uses a systematic approach to humane handling.<sup>74</sup>

In 2012, the FSIS created the position of humane handling ombudsman.<sup>75</sup> The position was established to serve as an additional resource available to FSIS employees, industry stakeholders, and the general public and was created specifically for hearing concerns and addressing complaints related to humane handling. The humane handling ombudsman can issue both formal and informal recommendations, which may identify individual or systemic improvements in humane slaughter enforcement. The position reports directly to the Office of Food Safety.<sup>76</sup>

AWI conducted a third review in 2012 of federal humane slaughter enforcement. The findings were similar to those for the review conducted in 2010. Combining enforcement records from the 2010 and 2012 reviews, AWI attempted to determine the cause(s) of more than 1,000 inhumane handling/slaughter violations, and was able to identify the following contributing factors involved in approximately half of the incidents: (1) lack of employee training in humane handling, (2) use of improper stunning device, (3) improper placement of stun (often in connection with inadequate restraint), (4) lack of backup stunning equipment, and (5) lack of routine testing and maintenance of stunning equipment.<sup>77</sup>

In May 2013, AWI petitioned the FSIS to amend the current HMSA regulations to address these causes of inhumane slaughter and to require that all slaughter establishments develop and keep updated a comprehensive, written animal handling plan.<sup>78</sup>

In December 2016, AWI filed a federal lawsuit in response to the FSIS's failure to respond in a timely fashion to the 2013 petition for rulemaking.<sup>79</sup> In February 2017, two months after AWI filed its lawsuit, the USDA responded, denying AWI's petition.<sup>80</sup> The denial acknowledged that the USDA has the authority to write regulations to improve handling and slaughter practices, but indicated that the department elects to pursue voluntary compliance programs instead. In particular, the department referenced the positive impact of agency notices, directives, and a compliance guide for slaughter establishments, which the USDA noted was scheduled for updating in the near future.<sup>81</sup> (As of December 2018, an updated compliance guide had not been released.) In its denial letter, the USDA encouraged AWI to consider resubmitting the petition at a later point should voluntary measures fail to adequately address the organization's concerns.<sup>82</sup> Because the USDA's response addressed the delay, AWI withdrew its complaint.

Despite numerous steps taken by the FSIS over the past decade to improve the humaneness of slaughter, enforcement of the federal law remains inadequate, in terms of both the level and consistency of enforcement. A report by the USDA OIG, issued in May 2013, noted that FSIS inspectors did not always take appropriate enforcement actions at 8 of 30 pig slaughter plants audited.<sup>83</sup> Specifically, in 10 instances inspectors did not suspend plants after observing egregious humane handling violations.<sup>84</sup> In response, in October 2013 the FSIS published new guidance for industry compliance with humane handling and slaughter regulations.<sup>85</sup> In February 2014, the FSIS Office of Field Operations implemented an action plan that includes increasing humane handling verifications during odd hours and hiring additional permanent staff to oversee humane handling in high-risk establishments (including plants slaughtering "cull" sows and veal calves). The FSIS also said it planned to hire additional DVMSs to increase oversight.<sup>86</sup>

The USDA OIG undertook another assessment of agency compliance with humane handling requirements after Sen.

Diane Feinstein of California sent a letter in February 2014 outlining concerns regarding specific incidents at livestock slaughter plants.<sup>87</sup> The OIG subsequently reviewed how the USDA has responded to 47 individual recommendations made following audits issued in 2007 and 2008. The OIG found that for 14 of the recommendations, the USDA did not always follow corrective actions it had outlined to prevent inhumane slaughter incidents from recurring. The report states: “FSIS officials were either not effectively monitoring or did not hold its staff accountable when these action did not correct the problems identified. As a result, the deficiencies identified for these 14 recommendations continue to exist.” Consequently, the OIG recommended that the FSIS implement a process to ensure that it is completing required humane handling verification tasks at slaughter establishments.<sup>88</sup>

AWI conducted another review of federal enforcement in 2017.<sup>89</sup> It revealed that the FSIS was continuing to regularly issue notices of suspension or notices of intended enforcement for egregious violations (128 NOSs and NOIEs in 2015).<sup>90</sup> Comparing the types of violations cited during 2010–2015 with those cited 2007–2009, AWI found that the proportion of violations for failure to provide water and/or feed, failure to provide adequate maintenance, and improper handling of animals remained relatively stable. However, the percentage of violations for ineffective stunning nearly tripled, from 13 percent to 38 percent. While this may be interpreted as a disturbing development, it is also possible that the finding reflects more aggressive enforcement by the USDA, especially concerning stunning effectiveness, one of the most serious humane slaughter violations. At the same time, the percentage of violations for shackling, hoisting, or cutting a conscious animal decreased significantly, from 15 percent to 4 percent, possibly as a result of inspection personnel intervening earlier in the process at the stunning stage. The percentage of violations for improper handling of disabled (or “downed”) animals also decreased significantly, a likely result of a prohibition on slaughtering of downed cattle.<sup>91</sup>

FSIS records also reveal that repeated violations by individual slaughter plants of all sizes remain a significant problem. For example, a large Tyson Fresh Meat plant in Logansport, Indiana, was suspended a total of five times in 2015. That same year, one small plant, Kleemeyer & Merkel Inc., was suspended four times within a four-month period, and a very small plant, C & F Meat, was suspended three times within four months.<sup>92</sup>

### **Federal Nutrition Assistance Programs**

The USDA’s Agricultural Marketing Service (AMS) purchases meat for federal nutrition assistance programs, including the National School Lunch Program. In 2008—after the incident at Westland–Hallmark—the AMS issued animal handling and welfare technical requirements for suppliers to such programs.<sup>93</sup> A written quality management plan, addressing the provisions of the NAMI’s Recommended Animal Handling Guidelines and Audit Guide, is a requirement of participation.

The AMS has revised its technical requirements for suppliers four times since animal welfare requirements were first initiated in 2008. In 2013, requirements were added for suppliers to establish an animal handling and welfare steering committee and for individuals facilitating a vendor’s animal handling and welfare training program to be certified.<sup>94</sup> In 2014, the AMS again changed its federal supplier requirements, this time requiring 100 percent compliance for stunning accuracy, with any missed stuns that are documented by the FSIS resulting in an immediate for-cause animal handling and welfare audit by the AMS.<sup>95</sup> (The previous standard was 95 percent.) In addition, a requirement was added that companies must immediately notify the AMS when any animal handling enforcement action is issued by the FSIS.<sup>96</sup> In 2015, the AMS revised its animal welfare specifications to require that backup stunning devices be available in all facilities that slaughter bovine, porcine, and ovine species.<sup>97</sup> The AMS again updated its specifications in August 2017; however, no substantive changes from the 2015 version were made at this time.<sup>98</sup>

In the case of the federal nutrition assistance programs, the federal government is functioning as a commodity purchaser, rather than a regulator. The AMS supplier requirements have a significant impact on the welfare of farm animals in the United States, as a large number of animals are raised and slaughtered to provide meat for federal nutrition assistance programs.

### **STATE HUMANE SLAUGHTER LAWS**

At one time, states needed to pass humane slaughter legislation in order to cover animals slaughtered at plants that were not federally inspected. However, all states conducting their own meat inspection programs have now adopted by reference the federal food safety regulations, including those related to humane handling and slaughter. Therefore, the humane

slaughter provisions of the federal law cover all animals slaughtered under the authority of state food inspection laws.

The vast majority of farm animals in the United States are killed at federally inspected plants, and state laws cannot effectively address issues of humane slaughter for these animals. Deficiencies in federal law must be remedied through amendments to the HMSA and its regulations. Nonetheless, state laws are important, as they can provide humane coverage to animals not under federal jurisdiction, such as those killed on the farm by the farm owner/operator, or by a mobile custom slaughterer. State-level laws can also prohibit additional methods of stunning, limit the federal exemption for ritual slaughter, and assess additional penalties for violations.

To date, 30 states<sup>99</sup> have passed humane slaughter laws (see table at right). Most were enacted shortly after passage of the original federal humane slaughter law. All are based on the language of the federal law, and many specifically reference that law. With the exception of New Hampshire and Wisconsin, all state humane slaughter statutes and regulations address only the slaughter process itself, and do not cover the handling of animals prior to slaughter. A number of state humane slaughter laws prohibit the use of a sledgehammer or ax to stun an animal for slaughter, methods not specifically banned in the federal law.<sup>100</sup> Connecticut law, for example, states, “Use of a manually-operated sledge, hammer or poleax to render an animal insensible to pain is prohibited.”

Another difference between the federal and state laws is that several states apply their humane slaughter codes to stockyard operations, while the scope of the federal law is limited to slaughter plants. This application, however, has little practical effect, since animals are not typically slaughtered for food at stockyards. The federal humane slaughter law also does not cover farmers killing animals for their personal use, and although custom slaughterers are expected to comply with federal food safety regulations, they are not routinely inspected for compliance. For the most part, state laws do not provide much additional protection for animals killed for custom or personal use. Exceptions include Oregon, Utah, and Washington; all three cover custom and farm (mobile) custom slaughter operations.

Generally, penalties for violation of state humane slaughter laws are minor. For example, Washington’s law assesses the following penalty: “Any person violating any provision

<i>State</i>	<i>Section No.</i>
Arizona	3-2016 – 3-2017
California	19501 – 19503
Connecticut	22-272a
Florida	828.22 – 828.26
Georgia	26-2-102, 26-2-110.1
Hawaii	159-21
Illinois	510 ILL. COMP. STAT. 75/0.01 – 75/0.08
Indiana	15-17-5-1
Iowa	189A.18
Kansas	47-1401 – 47-1405
Louisiana	3:4203
Maine	tit. 22, ch. 562-a § 2521
Maryland	MD. CODE ANN. AGRIC. § 4-123.1
Massachusetts	Ch. 94 §§ 139C – 94-139F
Michigan	287.551 – 287.556
Minnesota	31.59
Mississippi	75-35-8
New Hampshire	427:33 – 427:37
North Carolina	106-549.17
Ohio	945.01 – 945.03
Oklahoma	2-6-183, 2-6-195
Oregon	603.065
Pennsylvania	2361 – 2362
Rhode Island	4-17-1 – 4-17-7
South Dakota	39-5-23.1 – 39-5-23.2
Utah	4-32-105 – 4-32-106
Vermont	3131 – 3134
Washington	16.50.100 – 16.50.170
West Virginia	19-2E
Wisconsin	95.80

of this chapter or of any rule adopted hereunder is guilty of a misdemeanor and subject to a fine of not more than two hundred fifty dollars or confinement in the county jail for not more than ninety days.<sup>101</sup> Several states also allow for the filing of injunctions or the suspension of state inspection procedures of slaughter operations found to be in violation of the state humane slaughter code.

Following repeated incidents of inhumane handling at a federally inspected plant in Grand Isle, Vermont, the state passed legislation in 2010 enhancing penalties for violation of its humane slaughter law.<sup>102</sup> Monetary fines are increased: up to \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for third and subsequent violations.<sup>103</sup> In addition, the state agriculture department may seek an injunction against any slaughter establishment found to be violating the humane slaughter law and may refer humane slaughter violations to the attorney general for criminal prosecution.<sup>104</sup> Federally inspected slaughter plants must submit to the state, within five days of receipt, any documents received from the USDA related to humane slaughter violations.<sup>105</sup>

Vermont Packinghouse—a small slaughter facility in Springfield, Vermont—received four federal suspensions for humane slaughter violations occurring between October 2016 and April 2017.<sup>106</sup> The plant, which operates under both federal and state inspection, was issued the suspensions after committing several egregious violations, such as ineffective stunning that resulted in animals regaining consciousness during slaughter. The state eventually took action against the plant by assessing penalties totaling \$1,500.<sup>107</sup> The state also placed a condition on Vermont Packinghouse’s license to operate. The slaughter plant was required to have a qualified, independent third party conduct an audit of the plant’s humane handling program and plan. The plant was also required to prepare a response to the audit and update its written humane handling plan to include recommendations made in the audit.<sup>108</sup> To date, this is the only instance of Vermont imposing penalties under its humane slaughter law.

### **Slaughter and State Anti-cruelty Laws**

Animal advocates have also looked to state anti-cruelty laws as a possible means of applying stronger penalties to incidents of inhumane slaughter. Although all 50 states have enacted anti-cruelty laws, 37 exempt accepted agricultural practices

#### **State laws exempting accepted agricultural practices (37 states)**

Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming

#### **State laws exempting slaughter by approved methods (5 states)**

Connecticut, Delaware, Idaho, Oregon, South Dakota

#### **State laws exempting slaughter generally (5 states)**

Georgia, Illinois, Kentucky, North Carolina, Rhode Island

(see table above).<sup>109</sup> These exemptions do not necessarily preclude prosecution of inhumane slaughter cases, since the meat industry has established clear standards for the humane handling and slaughter of livestock.<sup>110</sup> Three of the states that exempt agricultural practices under anti-cruelty laws, as well as two additional ones, exempt slaughter by “approved methods” (see table above). Again, this limitation should not automatically rule out prosecution of inhumane slaughter under the law. However, under the anti-cruelty laws of five states that exempt slaughter in general, prosecution could be precluded.

To date, attempts to pressure state officials to prosecute inhumane slaughter under state animal cruelty codes have been largely unsuccessful.<sup>111</sup> Individuals have been prosecuted for neglect/abuse of animals on the premises of a slaughterhouse in several cases, but there are very few recorded cases of successful prosecution of inhumane treatment during the slaughter process itself.<sup>112</sup> In declining to prosecute under anti-cruelty statutes, state and local officials have cited either lack of evidence or deference to federal jurisdiction over slaughter establishments.<sup>113</sup>

### Species Covered by State Laws

Over half of the 30 states with humane slaughter laws extend protection to species not covered under the federal law (see below). Ungulates (hooved animals) are the most commonly added species. Four states cover ratites, and seven cover bison. The laws of three states—California,<sup>114</sup> New Hampshire,<sup>115</sup> and Utah<sup>116</sup>—include poultry; however, only California has enacted regulations to implement the humane slaughter of birds. Although Maine’s humane slaughter law refers only to “livestock,”<sup>117</sup> a related section defines livestock to include “other designated animals.”<sup>118</sup> It was the opinion of the former state veterinarian, Henrietta Beaufait, in 2007 that the absence

Species	States
Aquatic Animals	Kansas
Bison, Buffalo	Georgia, Indiana, New Hampshire, North Carolina, Oklahoma, Vermont
Cervidae (deer, elk, reindeer)	California (fallow deer), Georgia (non-traditional livestock, farm-raised deer), Indiana (farm-raised deer), Iowa (farm-raised deer), Kansas (domesticated deer), Maine (domestic deer), New Hampshire (elk, fallow deer, red deer, reindeer), North Carolina (fallow deer, red deer), South Dakota (captive), Utah (domestic elk), Vermont (fallow deer), Wisconsin (farm-raised deer)
Camelids (llama, alpaca, yak)	New Hampshire
Poultry	California, New Hampshire, Utah
Rabbits	Georgia, Maine, Mississippi, New Hampshire
Ratites (ostriches, rheas, emus)	Florida, Georgia, Indiana, Mississippi, Kansas, New Hampshire, South Dakota
“Other” (In these states, various catchall provisions are included.)	Arizona, Connecticut, Florida (domestic animals except poultry and aquatic species), Illinois (any meat or meat product animal; excludes horses for human consumption), Kansas, Maryland (except poultry or fowl), Massachusetts (except poultry), Michigan, New Hampshire, Ohio, Rhode Island, South Dakota, Vermont, Wisconsin

of a description of acceptable slaughter methods for poultry does not exclude poultry from a general requirement that livestock be slaughtered humanely.

The federal slaughter law is silent on poultry. Some state laws, however, specifically exempt poultry, and/or are written to limit coverage to listed species only. For example, Oregon’s law is limited to “cattle, equines, sheep or swine,”<sup>119</sup> and Washington’s lists only “cattle, calves, sheep, swine, horses, mules and goats.”<sup>120</sup> On the other hand, some states include coverage for other animal species that may be slaughtered for meat. For example, Maryland’s humane slaughter statute defines livestock as “cattle, calves, sheep, swine, horses, mules, goats, or other animals that may be used in the preparation of a meat product” (emphasis added).<sup>121</sup> New Hampshire includes “other species of animals susceptible of use in the production of meat and meat products.”<sup>122</sup>

### ENFORCEMENT OF STATE LAWS

Although a vast majority of animals slaughtered for food in the United States are killed at federally inspected plants, the treatment of animals at nonfederal plants is important and should be addressed in any attempt to improve humane slaughter practices in this country. There are approximately 2,000 slaughter plants in the United States that are not federally inspected.<sup>123</sup> In most cases, these plants are inspected for compliance with food safety regulations, including those pertaining to humane handling and slaughter, by state agricultural inspectors.

To evaluate the level of humane law enforcement at nonfederal slaughter plants, AWI has conducted five reviews of public records provided by state meat inspection programs—in 2008, 2010, 2012, 2015, and 2016.

In the initial review, all records relating to humane slaughter at state-inspected plants were requested for a three-year period from January 1, 2002, through December 31, 2004.<sup>124</sup> States provided relatively few documents in response to the request. Of the 30 states accredited to administer humane slaughter programs at the time of the review,<sup>125</sup> 20 provided no humane enforcement records whatsoever. Four states provided records indicating they had issued at least one noncompliance record, but took no further actions, during the period.<sup>126</sup> The

records of another six states—California, Kansas, Minnesota, Ohio, South Carolina, and Wisconsin—show that they took at least one action for inhumane slaughter beyond issuance of a noncompliance record.<sup>127</sup>

AWI resurveyed state meat inspection programs in early 2010 and found humane slaughter enforcement to be significantly increased in many states.<sup>128</sup> For the period 2007–2009, states issued a total of 410 noncompliance records (versus 72 for the period 2002–2004) and 12 suspensions (versus 4 for 2002–2004).<sup>129</sup> Some states took a significantly greater number of enforcement actions than others. South Carolina, Wisconsin, and Wyoming issued the most noncompliance records per plant inspected. No enforcement records were provided by six states (Arizona, Louisiana, South Dakota, Utah, Vermont, and Virginia).<sup>130</sup>

In its review of state enforcement for the period 2010–2012, AWI found that enforcement agencies were issuing a similar number of noncompliance records, but the number of suspensions imposed for humane slaughter violations was increased over the previously studied period.<sup>131</sup> No enforcement records were provided by four states; Indiana and Louisiana indicated they had no records, and Alabama and South Carolina refused to provide their records. The most frequently cited violations at state plants were failure to provide feed and/or water, ineffective stunning (multiple attempts), and plant pens or grounds in a state of disrepair.<sup>132</sup>

In its 2015 and 2016 surveys of state inspection, AWI found that state programs were continuing to improve their humane slaughter oversight and close the gap with federal inspection. In particular, the issuance of suspensions continues to increase.<sup>133</sup> However, as with previous surveys, wide disparity was found among the state programs in terms of the thoroughness and effectiveness of humane slaughter enforcement. While AWI assessed 5 of the 25 state programs as being roughly equivalent to federal inspection, the remainder were shown to possess significant deficiencies, and AWI assigned a failing grade to 8 of the programs.<sup>134</sup>

In all of its reviews, AWI has noted that state inspection personnel were far less likely than federal inspectors to take a strong enforcement action, such as imposing a suspension, in response to egregious incidents of inhumane handling or slaughter.

## RITUAL SLAUGHTER

The method of killing animals for Jewish and Islamic ritual slaughter has been a subject of intense controversy in connection with humane slaughter laws. It is generally agreed that killing with prior stunning is more humane than killing without stunning, which is not allowed under some religious authorities. Moreover, the pre-slaughter handling of animals in kosher slaughter is unquestionably inhumane when conscious animals, particularly adult cattle, are shackled and hoisted before the killing cut is administered.

The process of shackling and hoisting is not part of the ritual of kosher slaughter.<sup>135</sup> However, it has become standard practice because USDA sanitary regulations prohibit contact of the cut surface of the animal's neck with the slaughterhouse floor. This might occur with the traditional kosher method of casting the animal to the floor before the ritual cut. Ritual slaughter requires that the animal be uninjured, so prior stunning has been deemed unacceptable in the United States, although rabbinical authorities in certain other countries have approved pre-slaughter stunning. Thus, to perform the ritual throat cutting, a shackle is typically attached to one leg of the animal, which is then hoisted so that the animal hangs upside-down by his shackled leg. The animal is then conveyed to the killing floor, struggling and sometimes suffering from a broken leg or split pelvis.

A ritual slaughter amendment was added to the original HMSA of 1958 due to a lack of availability of humane restraining devices at the time.<sup>136</sup> In the early 1960s, Cross Brothers in Philadelphia patented a holding pen that held adult cattle in a standing, upright position before and during kosher slaughter.<sup>137</sup> The patents to this pen were purchased by the American Society for the Prevention of Cruelty to Animals (ASPCA), and it was made available royalty-free to the meat industry.

In 1980, Spencer Foods in Spencer, Iowa, installed the first conveyORIZED, high-speed, upright restraint system for kosher slaughter. In 1986, Utica Veal in Marcy, New York, installed the first humane restraint system for kosher calves and sheep. Dr. Temple Grandin and researchers at the University of Connecticut, with a grant from the Council for Livestock Protection, designed the restraint system.

Now that practical restraint equipment is available, the cruel practice of shackling and hoisting without prior stunning

should be abolished. Shackling and hoisting as a method of restraint is not permitted in a number of countries, including Australia, Canada, the Netherlands, the United Kingdom, and several other European nations. The elimination of conscious shackling and hoisting has the added advantage of improving employee safety. Many kosher slaughter plants have voluntarily converted to humane restraint devices for large cattle but, unfortunately, some smaller plants continue to use the shackle-hoist. For veal calves, however, only about half are slaughtered using humane restraining equipment, and nearly all kosher-killed sheep and lambs are still shackled and hoisted prior to ritual slaughter in the United States.<sup>138</sup> Simple, economical devices now available for even the smallest plants that slaughter calves and sheep make the necessary change readily attainable.<sup>139</sup> Federal legislation is needed to require humane restraint devices to be used for all animals.

The HMSA not only identifies slaughtering in accordance with ritual requirements of the Jewish or other religious faiths as humane, it also spells out that “the handling or other preparation of livestock for ritual slaughter are exempted” from the law’s requirements.<sup>140</sup> All states with humane slaughter laws have included a similar exemption for ritual slaughter. However, while the federal law includes language that covers handling for ritual slaughter, state laws typically refer to slaughter only.

A few states have attempted to encourage, if not require, the use of holding pens for ritual slaughter in order to avoid shackling and hoisting of conscious animals. Connecticut was the first state to require use of holding pens that allow animals not previously stunned to be cut while upright.<sup>141</sup> However, a general exception to the law for ritual slaughter makes use of the pens voluntary.<sup>142</sup> Indiana<sup>143</sup> and Michigan<sup>144</sup> require that animals killed in accordance with requirements of a religious faith be cut “immediately following total suspension from the floor.” Pennsylvania currently allows an exemption for ritual slaughter.<sup>145</sup> The exemption is to remain in place until acceptable alternatives are available, at which point the exemption would end.<sup>146</sup> New Hampshire’s law allows conscious shackling “provided that the method used in bringing the animal into position for slaughter causes no injury or pain which can be avoided without interfering with the requirements of ritualistic slaughter or without imposing unreasonable economic hardship.”<sup>147</sup>

The ritual exclusion does not exempt ritual slaughter establishments from complying with all humane handling requirements, only handling that is in conjunction with preparation for ritual slaughter.<sup>148</sup> Prior to 2003, the FSIS and state departments of agriculture cited slaughter plants if they failed to produce unconsciousness “by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.”<sup>149</sup> For example, the FSIS issued noncompliance records to slaughter establishments for using multiple cutting strokes before severing the arteries.<sup>150</sup> The inspector filing one such citation noted that, for a 10-animal sample, there was an average of more than five back-and-forth cutting strokes before severing the arteries.<sup>151</sup> In another case, the FSIS issued a noncompliance record to an Islamic establishment for stabbing conscious lambs directly in the heart.<sup>152</sup> In addition, the FSIS and the Texas Department of Health have cited plants for using ritual slaughter procedures in the absence of a Jewish or Muslim representative and for failure to have on file written ritual slaughter procedures from a religious authority.<sup>153</sup>

However, in 2003 the FSIS revised its humane slaughter directive (6900.2) to further limit the government’s oversight of ritual slaughter practices.<sup>154</sup> The directive notes: “Inspection personnel are not to interfere in any manner with the preparation of the animal for ritual slaughter, including the positioning of the animal, or the ritual slaughter cut and any additional cut to facilitate bleeding.”<sup>155</sup> The change was in response to a letter to the USDA from Jewish religious authorities arguing that the department had no role to play whatsoever in “determinations regarding questions of ‘humaneness.’”<sup>156</sup>

## INDUSTRY STANDARDS

As mentioned above, the North American Meat Institute publishes animal handling guidelines and an audit guide for the livestock slaughter industry.<sup>157</sup> Authored by animal handling expert Dr. Temple Grandin, the guidelines were first released in 1991 and are updated on a regular basis. The red meat industry was the first sector in animal agriculture to develop slaughter guidelines and to promote a self-audit program.<sup>158</sup> The National Chicken Council<sup>159</sup> and Nation Turkey Federation<sup>160</sup> also cover slaughter practices in the industries’ animal care guidelines. In addition, most third-party food certification programs address slaughter in their species-specific animal welfare standards.<sup>161</sup>

In 2016, the American Veterinary Medical Association (AVMA) released comprehensive guidelines addressing the slaughter of animals to supplement its previously published guidelines on the euthanasia of animals.<sup>162</sup> According to the AVMA: “The guidelines address humane slaughter of animal species that are included in the Humane Methods of Slaughter Act (HMSA) or the Poultry Products Inspection Act (PPIA)—such as cattle, sheep, swine, equines, and poultry. They also address animal species not covered by the HMSA—such as fish, rabbits, ratites and alligators among others—as well as the aspects of ritual (kosher and halal) slaughter that are exempt from the HMSA.”<sup>163</sup>

## INTERNATIONAL STANDARDS

In 1979, the European Convention for the Protection of Animals for Slaughter was drafted, which by 2016 had been signed and ratified by 25 nations.<sup>164</sup> The European Union in 1993 also adopted a directive on the Protection of Animals at the Time of Killing, replacing the previous Directive on Stunning of Animals before Slaughter.<sup>165</sup> In 2005, the World Organization for Animal Health (OIE), now with 182 member countries and territories, adopted international Guidelines for the Slaughter of Animals for Human Consumption.<sup>166</sup> Guidelines for the slaughter of farmed fish were added by the OIE in 2016.<sup>167</sup>

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[Legal Protections for Farm Animals on Farms](#)

[Legal Protections for Nonambulatory \(or “Downed”\) Farm Animals](#)

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<sup>1</sup> Emily Stewart Leavitt, *Humane Slaughter Laws*, in *ANIMALS AND THEIR LEGAL RIGHTS: A SURVEY OF ANIMAL LAWS FROM 1641 TO 1990* 52, 52 (Diane Halverson ed., 4th ed. 1990).

<sup>2</sup> *Id.* at 53.

<sup>3</sup> *Id.* at 54.

<sup>4</sup> *See id.*; *see also* 7 U.S.C. § 1902–1906 (1958).

<sup>5</sup> Leavitt, *supra* note 1, at 55.

<sup>6</sup> *Id.* at 56; *see also* 21 U.S.C. § 603 (1982).

<sup>7</sup> Leavitt, *supra* note 1, at 56.

<sup>8</sup> 21 U.S.C. § 620.

<sup>9</sup> *Id.*

<sup>10</sup> Leavitt, *supra* note 1, at 56.

<sup>11</sup> *Id.* at 57.

<sup>12</sup> *Id.* at 56; *see also* 9 C.F.R. pt. 313 (1980).

<sup>13</sup> Leavitt, *supra* note 1, at 57.

<sup>14</sup> *Id.* at 56.

<sup>15</sup> The amendment was prompted by a petition filed by the Danish and Swedish Meat Research Institute on behalf of Danish pork companies wanting to import into the United States products from animals killed with carbon dioxide gas. *See Use of Carbon Dioxide in the Humane Slaughter of Swine*, 59 Fed. Reg. 21,638–40 (Apr. 26, 1994) (to be codified at 9 C.F.R. pt. 313).

<sup>16</sup> *Prohibition of the Use of Certain Stunning Devices Used to Immobilize Cattle During Slaughter*, 69 Fed. Reg. 1885 (Jan. 12, 2004) (to be codified at 9 C.F.R. pt. 310, 331).

<sup>17</sup> *See* Food Safety & Inspection Serv., *6,000 Series: Slaughter Inspection*, <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/directives/6000-series> (last visited Dec. 18, 2018) (listing the FSIS’s directives pertaining to slaughter inspections); *see also* Food Safety & Inspection Serv., *FSIS Notices*, <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/fsis-notices> (last visited Dec. 18, 2018) (listing the FSIS’s active notices).

<sup>18</sup> The FSIS has also developed and distributed several Humane Interactive Knowledge Exchange (HIKE) scenarios designed to educate inspectors on proper handling of potential humane handling and slaughter situations. *See* Food Safety & Inspection Serv., *Humane Interactive Knowledge Exchange (HIKE) Scenarios*, <https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/workforce-training/hike/hike-scenarios> (last visited Dec. 18, 2018) (providing a list of scenarios “to help employees keep current, and correlated, on regulatory requirements, directives, notices, etc.”).

<sup>19</sup> *Requirements for the Disposition of Non-Ambulatory Disabled Veal Calves*, 81 Fed. Reg. 46,570 (July 18, 2016) (to be codified at 9 C.F.R. pt. 309).

<sup>20</sup> Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104–127, 110 Stat. 1184.

<sup>21</sup> *See* Farm Security and Rural Investment Act of 2002, Pub. L. No. 107–171, 116 Stat. 532.

<sup>22</sup> *Id.*

<sup>23</sup> Following the discovery of a cow with bovine spongiform encephalopathy (mad cow disease) in the United States in 2004, the USDA published regulations prohibiting the slaughter of nonambulatory disabled cattle. However, the rule allowed slaughter plant inspectors to determine the disposition of cattle that became nonambulatory after passing antemortem inspection on a case-by-case basis. The USDA proposed to close the loophole in August 2008, following exposure of incidents of inhumane treatment of downed cattle at a California slaughter plant. The rule was finalized in 2009. *Requirements for the Disposition of Cattle that Become Non-Ambulatory Disabled Following Ante-Mortem Inspection*, 74 Fed. Reg. 11,463 (March 18, 2009) (to be codified at 9 C.F.R. pt. 309).

<sup>24</sup> Despite Congress urging the USDA to report annually on trends in compliance with humane slaughter methods, between 2002 and 2009, the USDA provided only two reports to Congress and these were based on incomplete data, according to the US Government Accountability Office (GAO). *See* U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-10-487T, *HUMANE METHOD OF SLAUGHTER ACT: WEAKNESSES IN USDA ENFORCEMENT* 5 (2010) [hereinafter 2010 GAO Report].

<sup>25</sup> Humane Methods of Slaughter Act of 1958, Pub. L. No. 85-765, 72 Stat. 862-864.

<sup>26</sup> Humane Methods of Slaughter Act of 1978, Pub. L. No. 95-445, 92 Stat. 1069.

<sup>27</sup> See 9 C.F.R. § 1.1 (excluding “exotic animals” from the definition of “animals” as well as “farm animals”).

<sup>28</sup> 9 C.F.R. § 352.2.

<sup>29</sup> See Pub. L. No. 106-387, 114 Stat. 1549A-41 (2000); see also 21 U.S.C. § 455 (2000).

<sup>30</sup> The Humane Methods of Poultry Slaughter Act was introduced in the US House of Representatives in 1992 (H.R. 264), 1993 (H.R. 649), and 1995 (H.R. 4124).

<sup>31</sup> Complaint at 86, *Levine v. Johanns*, 540 F.Supp.2d 1113 (N.D. Cal. Nov. 21, 2005) (No. 05-04764).

<sup>32</sup> In March 2008, a federal district judge found that chickens are not “livestock” and are therefore not subject to the HMSA. *Levine v. Conner*, 540 F.Supp.2d 1113, 1121 (N.D. Cal. 2008). In late 2009, the Ninth Circuit Court of Appeals ruled that The Humane Society of the United States did not have standing to pursue the lawsuit. The court said the animal advocacy organization could not show that the alleged injury to poultry by continued omission from the act would be redressed by a favorable ruling and handed the case back to the district court to be dismissed. *Levine v. Vilsack*, 587 F.3d 986, 991 (9th Cir. 2009).

<sup>33</sup> *Treatment of Live Poultry Before Slaughter*, 70 Fed. Reg. 56,624 (Sept. 28, 2005).

<sup>34</sup> FOOD SAFETY INSPECTION SERV., U.S. DEP’T OF AGRIC., DIRECTIVE NO. 6100.3, REV. 1. ANTE-MORTEM AND POST-MORTEM POULTRY INSPECTION (2009).

<sup>35</sup> FOOD SAFETY INSPECTION SERV., U.S. DEP’T OF AGRIC., DIRECTIVE NO.6910.1, REV. 1 DISTRICT VETERINARY MEDICAL SPECIALIST: WORK METHODS (2009).

<sup>36</sup> See FARM SANCTUARY, PETITION FOR RULEMAKING TO ISSUE REGULATIONS UNDER THE POULTRY PRODUCTS INSPECTION ACT TO REGULATE PRACTICES AND ACTIONS THAT RESULT IN ADULTERATED POULTRY PRODUCTS (Dec. 17, 2013).

<sup>37</sup> *Id.* at 8.

<sup>38</sup> *Id.* at 9.

<sup>39</sup> See generally *id.*

<sup>40</sup> See DENA JONES, ANIMAL WELFARE INST., THE WELFARE OF BIRDS AT SLAUGHTER IN THE UNITED STATES: THE NEED FOR GOVERNMENT REGULATION (2016).

<sup>41</sup> *Id.* at 6.

<sup>42</sup> *Id.* at 6-7.

<sup>43</sup> *Id.* at 6.

<sup>44</sup> *Id.* at 16-17.

<sup>45</sup> *Id.* at 6.

<sup>46</sup> ANIMAL WELFARE INST., THE WELFARE OF BIRDS AT SLAUGHTER IN THE UNITED STATES, 2017 UPDATE 4 (2017).

<sup>47</sup> Animal Welfare Inst., *Report: USDA Fails To Protect Birds Who Are Neglected, Abandoned During Transport And At Slaughterhouse* (Press Release), (Aug. 9, 2018) <https://awionline.org/press-releases/report-usda-fails-protect-birds-who-are-neglected-abandoned-during-transport-and>.

<sup>48</sup> *Id.*

<sup>49</sup> NATIONAL CHICKEN COUNCIL, PETITION TO PERMIT WAIVERS OF THE MAXIMUM LINE SPEED RATES FOR YOUNG CHICKEN SLAUGHTER ESTABLISHMENTS UNDER THE NEW POULTRY INSPECTION SYSTEM AND SALMONELLA INITIATIVE PROGRAM (Sept. 1, 2017).

<sup>50</sup> *USDA Rejects NCC’s Petition to Lift Poultry Line Speed*, NAT’L L. REV., Jan. 31, 2018 <https://www.natlawreview.com/article/usda-rejects-ncc-s-petition-to-lift-poultry-line-speed> (last visited Dec. 18, 2018).

<sup>51</sup> *Petition to Permit Waivers of Maximum Line Speeds for Young Chicken Establishments Operating Under the New Poultry Inspection System*, 83 Fed. Reg. 49,048 (Sept. 28, 2018).

<sup>52</sup> FSIS Rules of Practice, 9 C.F.R. pt. 500.

<sup>53</sup> 9 C.F.R. § 500.3(b).

<sup>54</sup> Supplemental Appropriations Act, 2001, Pub. L. No. 107-20, 115 Stat. 164.

<sup>55</sup> ANIMAL WELFARE INST., THE ROLE OF DISTRICT VETERINARY MEDICAL SPECIALIST (DVMS) IN HUMANE SLAUGHTER ENFORCEMENT (Aug. 2011) (unpublished report) (on file with the Animal Welfare Institute).

<sup>56</sup> Letter from Daniel Englejohn, Assistant Adm’r, FSIS Office of Field Operations, to Dena Jones, Director of Farm Animal Program, Animal Welfare Institute (June 2014) (on file with the Animal Welfare Institute).

<sup>57</sup> See DENA JONES, ANIMAL WELFARE INST., CRIMES WITHOUT CONSEQUENCES: THE ENFORCEMENT OF HUMANE SLAUGHTER LAWS IN THE UNITED STATES (2008) [hereinafter CRIMES WITHOUT CONSEQUENCES].

<sup>58</sup> *Id.* at 40.

<sup>59</sup> *Id.* at 50.

<sup>60</sup> *Id.* at 93.

<sup>61</sup> See U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-04-247, HUMANE METHODS OF SLAUGHTER ACT: USDA HAS ADDRESSED SOME PROBLEMS BUT STILL FACES ENFORCEMENT CHALLENGES (2004).

<sup>62</sup> See U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-08-686T, HUMANE METHODS OF HANDLING AND SLAUGHTER: PUBLIC REPORTING ON VIOLATIONS CAN IDENTIFY ENFORCEMENT CHALLENGES AND ENHANCE TRANSPARENCY (2008).

<sup>63</sup> David Brown, *USDA Orders Largest Meat Recall in U.S. History*, WASH. POST, Feb. 18, 2008.

<sup>64</sup> OFFICE OF INSPECTOR GEN., U.S. DEP’T OF AGRIC., REP. NO. 24601-0007-KC, EVALUATION OF FSIS MANAGEMENT CONTROLS OVER PRE-SLAUGHTER ACTIVITIES 5, 29-59 (2008).

<sup>65</sup> The Westland-Hallmark slaughter plant, where incidents of cruelty were captured on videotape, received high marks in two independent audits conducted days prior to the shooting of the undercover video.

<sup>66</sup> ANIMAL WELFARE INST., HUMANE SLAUGHTER UPDATE: COMPARING STATE AND FEDERAL ENFORCEMENT OF HUMANE SLAUGHTER LAWS (2010) [hereinafter HUMANE SLAUGHTER UPDATE 2010].

<sup>67</sup> *Id.* at 3.

<sup>68</sup> *Id.* at 18.

<sup>69</sup> *Id.* at 4, 13.

<sup>70</sup> *Id.* at 18.

<sup>71</sup> 2010 GAO Report, *supra* note 24, at 5.

<sup>72</sup> FOOD SAFETY & INSPECTION SERV., U.S. DEP’T OF AGRIC., DIRECTIVE 6900.2, HUMANE HANDLING AND SLAUGHTER OF LIVESTOCK (2011).

<sup>73</sup> *Id.* at 2.

<sup>74</sup> Letter from Dean Danielson, to Kenneth Peterson, FSIS Deputy Adm’r (Apr. 15, 2009).

<sup>75</sup> See Food Safety & Inspection Serv., *Humane Handling Ombudsman*, U.S. DEP’T AGRIC., <https://www.fsis.usda.gov/wps/portal/food-safety-topics/food-safety-education/get-answers/food-safety-fact-sheets/production-and-inspection/humane-handling-ombudsman/humane-handling-ombudsman> (last visited Dec. 18, 2018).

<sup>76</sup> *Id.* See also Food Safety & Inspection Serv., *FSIS Responds to Office of Inspector General Audit* (Press Release), (Apr. 30, 2012).

<sup>77</sup> See ANIMAL WELFARE INST., PETITION FOR RULEMAKING TO AMEND THE HUMANE METHODS OF SLAUGHTER ACT REGULATIONS 19 (MAY 2013) [hereinafter HMSA PETITION].

<sup>78</sup> See generally *id.*

<sup>79</sup> *Animal Welfare Inst. v. U.S. Dep’t of Agric.*, No. 16-cv-02436 (D.D.C. Dec. 13, 2016).

<sup>80</sup> Letter from Daniel Engeljohn, Assistant Admin’r, USDA Food Safety and Inspection Serv., to Dena Jones, Director of Farm Animal Program, Animal Welfare Institute (Feb. 20, 2017) (on file with the Animal Welfare Institute).

<sup>81</sup> *Id.* at 4.

<sup>82</sup> *Id.*

<sup>83</sup> USDA OFFICE OF INSPECTOR GENERAL, FOOD SAFETY AND INSPECTION SERV., INSPECTION AND ENFORCEMENT ACTIVITIES AT SWINE SLAUGHTER PLANTS, REP. NO. 24601-0001-41, 12 (2013).

<sup>84</sup> *Id.*

<sup>85</sup> FOOD SAFETY & INSPECTION SERV., U.S. DEP'T OF AGRIC., FSIS COMPLIANCE GUIDE FOR A SYSTEMIC APPROACH TO THE HUMANE HANDLING OF LIVESTOCK (2013).

<sup>86</sup> See Letter from Daniel Engeljohn, *supra* note 56.

<sup>87</sup> USDA OFFICE OF INSPECTOR GENERAL, FOOD SAFETY AND INSPECTION SERV., FOLLOWUP ON THE 2007 AND 2008 AUDIT INITIATIVES, REP. NO. 24016-0001-23 (June 2017).

<sup>88</sup> *Id.*

<sup>89</sup> DENA JONES, ANIMAL WELFARE INST., HUMANE SLAUGHTER UPDATE: FEDERAL AND STATE OVERSIGHT OF THE WELFARE OF FARM ANIMALS AT SLAUGHTER (2017) [hereinafter HUMANE SLAUGHTER UPDATE 2017].

<sup>90</sup> *Id.* at 6.

<sup>91</sup> *Id.* at 6–8.

<sup>92</sup> *Id.* at 8.

<sup>93</sup> AGRIC. MKTG. SERV., U.S. DEP'T. OF AGRIC., TRS-AHW-2010. TECHNICAL REQUIREMENTS SCHEDULE—ANIMAL HANDLING AND WELFARE (2010).

<sup>94</sup> AGRIC. MKTG. SERV., U.S. DEP'T. OF AGRIC., TRS-AHW-2013, TECHNICAL REQUIREMENTS SCHEDULE—ANIMAL HANDLING AND WELFARE (2013). AMS considered, but ultimately did not require, remote video auditing at slaughter facilities for the 2013 updates. See AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC., NOTICE TO THE TRADE: ANIMAL HANDLING AND WELFARE REQUIREMENT MODIFICATIONS FOR FEDERAL NUTRITION ASSISTANCE PROGRAMS (2012).

<sup>95</sup> AGRIC. MKTG. SERV., U.S. DEP'T. OF AGRIC., FPPS-AHW-2014, FEDERAL PURCHASE PROGRAM SPECIFICATION (FPPS) FOR ANIMAL HANDLING AND WELFARE (2014).

<sup>96</sup> *Id.*

<sup>97</sup> AGRIC. MKTG. SERV., U.S. DEP'T. OF AGRIC., FPPS-AHW-2015, FEDERAL PURCHASE PROGRAM SPECIFICATION (FPPS) FOR ANIMAL HANDLING AND WELFARE (2015).

<sup>98</sup> AGRIC. MKTG. SERV., U.S. DEP'T. OF AGRIC., FEDERAL PURCHASE PROGRAM SPECIFICATION (FPPS) FOR ANIMAL HANDLING AND WELFARE (2017).

<sup>99</sup> Not counting Idaho, which repealed its humane slaughter law in 2006.

<sup>100</sup> Although the federal law does not prohibit use of a hammer or ax, the FSIS does not consider these to be acceptable mechanical means of stunning.

<sup>101</sup> WASH. REV. CODE § 16.50.170.

<sup>102</sup> VT. STAT. ANN. tit. 6, § 3134.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* § 3306(i).

<sup>105</sup> *Id.*

<sup>106</sup> Dan D'Ambrosio, *VT Slaughterhouse Responds to USDA Suspensions*, BURLINGTON FREE PRESS, MAY 5, 2017.

<sup>107</sup> Dan D'Ambrosio, *State Charges VT Slaughterhouse with Violating Law*, BURLINGTON FREE PRESS, JUN. 23, 2017.

<sup>108</sup> *Id.*

<sup>109</sup> See ANIMAL WELFARE INST., LEGAL PROTECTIONS FOR ANIMALS ON FARMS 4 (2018).

<sup>110</sup> See Temple Grandin, NORTH AM. MEAT INST., *Recommended Animal Handling Guidelines and Audit Guide: A Systematic Approach to Animal Welfare*, (2017).

<sup>111</sup> CRIMES WITHOUT CONSEQUENCES, *supra* note 57, at 75.

<sup>112</sup> *Id.*

<sup>113</sup> See *id.* at 75–81 (describing attempts to apply animal cruelty laws to slaughterhouse practices).

<sup>114</sup> CAL. FOOD & AGRIC. CODE § 19501.

<sup>115</sup> IND. CODE § 15-17-5-11.

<sup>116</sup> UTAH CODE ANN. § 4-32.105.

<sup>117</sup> ME. REV. STAT. ANN. tit. 22, ch. 562-a § 2521.

<sup>118</sup> *Id.* § 2511.

<sup>119</sup> OR. REV. STAT. § 603.065.

<sup>120</sup> WASH. REV. CODE § 16.50.100.

<sup>121</sup> MD. CODE ANN. AGRIC. § 4-123.1.

<sup>122</sup> N.H. REV. STAT. ANN. § 427:33.

<sup>123</sup> NAT'L AGRIC. STATISTICS SERV., U.S. DEP'T OF AGRIC., LIVESTOCK SLAUGHTER 2017 SUMMARY 62 (2018).

<sup>124</sup> CRIMES WITHOUT CONSEQUENCES, *supra* note 57, at 69.

<sup>125</sup> *Id.* (however, one state—New Mexico—has since lost its accreditation).

<sup>126</sup> *Id.* at 69–71.

<sup>127</sup> *Id.* at 70–74.

<sup>128</sup> HUMANE SLAUGHTER UPDATE 2010, *supra* note 66, at 5.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> See HMSA Petition, *supra* note 77.

<sup>133</sup> See HUMANE SLAUGHTER UPDATE 2017 *supra* note 89 at 11.

<sup>134</sup> *Id.* at 16–17.

<sup>135</sup> Leavitt, *supra* note 1, at 58.

<sup>136</sup> *Id.* at 58–59.

<sup>137</sup> *Id.* at 59.

<sup>138</sup> A paper supporting humane slaughter using upright pens and finding shackling and hoisting to be a violation of Jewish laws forbidding cruelty to animals was approved by the Committee on Jewish Law and Standards (CJLS) of the Rabbinical Assembly on September 20, 2000. The CJLS provides guidance in matters of *halakhah*, but the individual rabbi is considered the authority for the interpretation and application of all matters of *halakhah*. See Elliot N. Dorff & Joel Roth, *Shackling and Hoisting*, Comm. on Jewish Law & Standards, (Sept. 20, 2000), <http://www.grandin.com/ritual/conservative.jewish.law.html>.

<sup>139</sup> Leavitt, *supra* note 1, at 59.

<sup>140</sup> 7 U.S.C. § 1906.

<sup>141</sup> CONN. GEN. STAT. § 22-272a.

<sup>142</sup> *Id.*

<sup>143</sup> IND. CODE § 15-17-5-11(2016).

<sup>144</sup> MICH. COMP. LAWS ANN. § 287.554.

<sup>145</sup> 3 PA. CONS. STAT. & CONS. STAT. ANN. § 2362.

<sup>146</sup> *Id.*

<sup>147</sup> N.H. REV. STAT. ANN. § 427:33.

<sup>148</sup> CRIMES WITHOUT CONSEQUENCES, *supra* note 57, at 33.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> See *id.* (citing the Noncompliance Record issued to the offending plant).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> FOOD SAFETY & INSPECTION SERV., U.S. DEP'T OF AGRIC., DIRECTIVE No. 6900.2 REV. 1, HUMANE HANDLING AND SLAUGHTER OF LIVESTOCK (2003).

<sup>155</sup> *Id.*

<sup>156</sup> Letter from Abba Cohen, to Philip Derflur, Deputy Adm'r, Food Safety & Inspection Serv. (Nov. 6, 2003).

<sup>157</sup> Temple Grandin, NORTH AM. MEAT INST., *Recommended Animal Handling Guidelines & Audit Guide, Rev. 1* (June 2017).

<sup>158</sup> North American Meat Institute, *Guidelines & Audits*, [http://animalhandling.org/producers/guidelines\\_audits](http://animalhandling.org/producers/guidelines_audits) (last visited Dec. 19, 2018).

<sup>159</sup> Nat'l Chicken Council, *Animal Welfare Guidelines and Audit Checklist For Broilers* (2017), <https://www.nationalchickencouncil.org/wp-content/uploads/2017/07/NCC-Welfare-Guidelines-Broilers.pdf>.

<sup>160</sup> Nat'l Turkey Fed., *Animal Care Guidelines* (2016), <http://www.eatturkey.com/sites/default/files/FINAL%20Animal%20Care%20Guidelines.pdf>.

<sup>161</sup> ANIMAL WELFARE INSTITUTE, *A CONSUMER'S GUIDE TO FOOD LABELS AND ANIMAL WELFARE*, 2018.

<sup>162</sup> AM. VETERINARY MED. ASS'N, *AVMA Guidelines for The Humane Slaughter of Animals: 2016 Edition*, <https://www.avma.org/KB/Resources/Reference/AnimalWelfare/Documents/Humane-Slaughter-Guidelines.pdf> (last visited Dec. 19, 2018).

<sup>163</sup> AM. VETERINARY MED. ASS'N, *AVMA Guidelines for The Humane Slaughter of Animals*, <https://www.avma.org/kb/policies/pages/guidelines-humane-slaughter-animals.aspx> (last visited Dec. 19, 2018).

<sup>164</sup> European Convention for the Protection of Animals for Slaughter, Oct. 5, 1979, E.T.S. 102.

<sup>165</sup> See Council Regulation (EC) No. 1099/2009 of Sept. 24, 2009, *The Protection of Animals at the Time of Killing*, O.J. (L 303).

<sup>166</sup> World Org. for Animal Health [OIE], *Terrestrial Animal Health Code Ch. 7.5* (June 13, 2016).

<sup>167</sup> World Org. for Animal Health [OIE], *Aquatic Animal Health Code Ch. 7.3* (June 10, 2016).