

## THE HUMANE METHODS OF SLAUGHTER ACT: DEFICIENCIES AND PROPOSED AMENDMENTS

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### I. INTRODUCTION

A cow enters a slaughterhouse stun box. The captive bolt swiftly impacts her frontal lobe, intended to render her insensate.<sup>1</sup> However, she remains conscious and proceeds towards the cutting machines with sensibilities intact. As she is cut, stuck, and dismembered, she feels excruciating pain. Most Americans are unaware of these practices. They hold to the ideal that their meat was raised on a family farm and decently slaughtered. The meat industry views farming and raising livestock solely as a business.<sup>2</sup> Cruel practices are a part of that business and economics is king. Economics decides the manner in which animals are slaughtered. Ethics and such are encumbrances.<sup>3</sup>

The Humane Methods of Slaughter Act of 1978 (HMSA)<sup>4</sup> was passed to prevent slaughterhouse cruelty. The HMSA should be amended to apply to *all* animals raised for slaughter. It should state that humane slaughter comprises techniques that render animals insensate prior to slaughter through reliable chemical means where applicable and through the captive bolt method where chemical means are not feasible.

This note will analyze the current HMSA, compare it to analogous laws in Canada, the United Kingdom, and the European Union, and propose a statute intended to secure actual humane slaughter of livestock. Part I sets out a brief history of the statute.

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\* This note is dedicated to my husband, Vince.

\*\* The author would also like to extend her sincere gratitude to Professor David Favre and to Professor Chris McNeil for all their help and advice during the writing of this note.

<sup>1</sup> See A. Shimshony & M.M. Chaudry, *Slaughter of Animals for Human Consumption*, 24 REV. SCI. TECH. OFF. INT. EPIZ. 693, 702 (2005).

<sup>2</sup> See MATTHEW SCULLY, DOMINION 254 (2002).

<sup>3</sup> *Id.* at 257.

<sup>4</sup> Humane Methods of Slaughter Act of 1978, 7 U.S.C. § 1901 *et seq.* (1978).

Part II demonstrates the HMSA's inherent weaknesses. Part III compares the HMSA to its counterparts in other parts of the world. Part IV discusses solutions to the HMSA's problems that have been proposed and discarded as ineffectual or unviable. Part V sets forth proposed statutory language for an amended HMSA and the advantages of such a statute.

## II. PART I: HISTORY

### a. HISTORY OF HMSA

The United States has declared a policy of humane slaughter for animals.<sup>5</sup> Congress announced this in the original 1958 HMSA. It declared itself an act intended "to establish the use of humane methods of slaughter of livestock as a policy of the United States, and for other purposes."<sup>6</sup> The other purposes included a safer working environment and better slaughter economics.<sup>7</sup> This first piece of legislation was fueled by public interest in securing humane slaughter for animals. It allowed for research into humane slaughter methods and an accompanying advisory committee.<sup>8</sup> It did not provide any authority for the United States Department of Agriculture (USDA) or any other agency to enforce the Act. It lacked any penalties for violations of the Act or any inspection scheme.<sup>9</sup> Congress amended the statute in 1978 to provide the USDA the authority to inspect slaughterhouses for compliance with the statute and to penalize violators.<sup>10</sup> The 1978 HMSA remains the authoritative law on humane methods of slaughter.<sup>11</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> The Humane Methods of Slaughter Act of 1958, Pub. L. No. 85-765, 72 Stat. 862 (1958).

<sup>7</sup> *Id.*

<sup>8</sup> The Humane Methods of Slaughter Act of 1958 §§ 4-5.

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

<sup>10</sup> The Humane Methods of Slaughter Act of 1958, Pub L. No. 95-445, § 2, 92 Stat. 1069 (1978).

<sup>11</sup> In May 2007, an amendment to the current HMSA was proposed in Congress. The amendment would expand the Act's applicability to chickens under the "other livestock" phrase in 7 U.S.C. § 1902(a). This amendment is not yet effective.

## III. PART II PROBLEMS WITH THE HMSA

## a. THE STATUTE IS TOO NARROW

Humans recognize that other animals are sentient and able to feel pain.<sup>12</sup> This recognition led to the creation of the HMSA. However, the HMSA is too narrow to achieve its intended purpose. The statute's main requirement for a humane slaughter is that animals be rendered unconscious prior to slaughter.<sup>13</sup> The statute states "in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut."<sup>14</sup> Noticeably absent from this list of livestock are chickens, turkeys, rabbits, fish, and bison—all animals which are raised and slaughtered for food in the U.S. The Poultry Production Inspection Act (PPIA) pertains to the slaughter and inspection of poultry, but it states nothing about a humane slaughter.<sup>15</sup> Rabbits, fish, bison, and other animals are ignored completely.

The definition of "humane" goes beyond a mere state of unconsciousness. A standard dictionary defines "humane" as "characterized by kindness, mercy, or compassion."<sup>16</sup> The word's plain meaning demonstrates that a humane slaughter requires much more than an animal be unconscious prior to dismemberment. Humane slaughter requires humane treatment and care leading up to the slaughter, during the process, and after the animals are deceased. The USDA regulations require slaughter facilities "be maintained in good repair." This includes maintaining floors, pens, ramps, and driveways to prevent injuries.<sup>17</sup> Animals are to

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<sup>12</sup> See Stephanie J. Engelsman, "World Leader"—*At What Price? A Look at Lagging American Animal Protection Laws*, 22 PACE ENVTL. L. REV. 329, 331 (2005).

<sup>13</sup> For this paper, the author ignores 7 U.S.C. § 1902(b) which pertains slaughter of animals in accordance with Jewish and Muslim religious rituals. The HMSA declares such slaughter *per se* humane.

<sup>14</sup> 7 U.S.C. § 1902(a).

<sup>15</sup> Poultry Products Inspection Act, 21 U.S.C. § 451 *et seq.*(1957).

<sup>16</sup> AMERICAN HERITAGE DICTIONARY (4th ed. 2004).

<sup>17</sup> 9 C.F.R. § 313.1 (2007).

be led to confinement pens with little stimulation and in a calm manner.<sup>18</sup> These regulations are paltry attempts. The current HMSA inadequately protects animals during the slaughter stages. Animals experience inhumane treatment during all parts of the slaughter process.<sup>19</sup> The present statute and the present practices are in conflict. The United States requires a statute with broader language and broader application if it desires a policy of humane slaughter.

a. THE STATUTE IGNORES ANIMALS TO WHICH IT SHOULD APPLY.

i. "OTHER LIVESTOCK"

The HMSA applies only to cattle, horses, sheep, mules, and pigs. Other animals besides these are exposed to horrific slaughterhouse processes. The HMSA includes under its protection "other livestock."<sup>20</sup> The phrase's interpretation has not included many of the animals that are slaughtered in this country, chickens being the primary example. A standard dictionary defines livestock as "domestic animals, such as cattle or horses, raised for home use or for profit, especially on a farm."<sup>21</sup> The first step in statutory interpretation is to use the plain language approach. Chickens fit the definition of "livestock" under this approach. Chickens are domestic animals. Chickens have been a barnyard mainstay for generations. They are not raised as pets. Chickens have always been raised for their meat, their eggs, or for the profit stemming from the eggs or meat.

The USDA, Congress, and the courts have avoided using this interpretation method for the HMSA. This does millions of animals a great disservice. It also is against rudimentary statutory interpretation rules. Generally, this method is the first method employed in any case regarding statutory language.<sup>22</sup> Courts are

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<sup>18</sup> 9 C.F.R. § 313.2 (2007)

<sup>19</sup> See GAIL A. EISNITZ, *SLAUGHTERHOUSE: THE SHOCKING STORY OF GREED, NEGLIGENCE, AND INHUMANE TREATMENT INSIDE THE U.S. MEAT INDUSTRY* 42-47 (1997).

<sup>20</sup> 7 U.S.C. § 1902(a).

<sup>21</sup> AMERICAN HERITAGE DICTIONARY (4th ed. 2004).

<sup>22</sup> See *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 476 (1992).

required to defer to an agency's interpretation if two prerequisites exist. The agency must be interpreting its own authorizing statute and the statute must be ambiguous. Deference is only granted if the agency's interpretation of the statute is reasonable.<sup>23</sup>

An interpretation of "other livestock" that excludes chickens is not reasonable. The dictionary definition of livestock includes many other animals than those to which the statute actually applies. The statute should apply to not only cattle, horses, mules, sheep, and pigs but also to poultry, fowl, rabbits, reindeer, elk, bison, antelope, ostrich, and fish. These animals are all raised domestically for home use and for profit. They fit the dictionary definition, the plain meaning definition and they experience pain and suffering in slaughterhouses just as do cattle, sheep, horse, mules, and pigs. Most of these animals merely have the disadvantage of being newer additions to the American farm.

Chickens do not have that disadvantage. Ninety percent of the animals slaughtered in the each year are chickens.<sup>24</sup> Because chickens are not covered by the HMSA, they do not require a humane slaughter. The result is that 90% of the animals slaughtered in the U.S. have less protection than lab rats.<sup>25</sup> Most chickens are slaughtered by being shackled by their legs, slit across the throat, dipped in scalding water and then dismembered. This process is cruel and inhumane. The shackles often break legs and panic occurs when the birds are hung upside down causing further injuries from wing flapping and struggling. This process often fails to cut birds adequately so that they do not reach the scalding water insensate.<sup>26</sup> The large number of chickens slaughtered per year assures that many are inhumanely slaughtered. This process is most used although chickens can be stunned using chemical means and then easily slaughtered without pain.<sup>27</sup>

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<sup>23</sup> See *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

<sup>24</sup> AR Media Institute, *FarmStats Resource Page*, <http://www.armedia.org/farmstats.htm> (last visited June 6, 2007).

<sup>25</sup> LYLE MUNRO, *COMPASSIONATE BEASTS* 111 (2001).

<sup>26</sup> Virgil Butler, *Tyson Foods Under Fire for Inhumane Slaughter of Chickens & Cover Up*, 412 THE AGRIBUSINESS EXAMINER, July 5, 2005 (<http://www.organicconsumers.org/foodsafety/tysonfoods0705.cfm>)(last visited June 7, 2007).

<sup>27</sup> See Shimshony & Chaudry *supra*, note 1 at 704.

The PPIA governs the slaughter of chickens and other poultry. Its terms govern chicken slaughter to ensure the meat is not adulterated and spoiled for human consumption.<sup>28</sup> The PPIA prohibits the sale of adulterated poultry<sup>29</sup> and allows inspections of poultry slaughtering facilities.<sup>30</sup> The Meat Inspection Act (MIA) reiterates the humane slaughter requirement for cattle, sheep, swine, and equines while simultaneously serving the same purpose as the PPIA.<sup>31</sup> The MIA further allows inspectors to stop slaughterhouse production if animals are not humanely slaughtered.<sup>32</sup> Chickens should be included under the MIA, or the PPIA should be amended to parallel the HMSA and MIA. This would afford some protection to 90% of animals slaughtered in the U.S.

## ii. PERSONAL CONSUMPTION

The HMSA does not apply to animals that are slaughtered for personal consumption.<sup>33</sup> This mostly means animals slaughtered by farmers on family farms. The HMSA and similar statutes were written and intended to apply only to industrial farms and slaughterhouses. Such entities slaughter enormous amounts of animals and require governmental supervision to protect both the animals and consumers. Animals on family farms and family farmers do not pose the same concerns. However, animals on family farms feel pain and deserve equal legal protection as those bound for industrial slaughterhouses.

Enforcing any provision for humane slaughter on private property would be difficult.<sup>34</sup> Violations would be difficult to find, and this would hinder the ability to obtain a warrant to search the premises.<sup>35</sup> Furthermore, enforcement would likely fall under the

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<sup>28</sup> 21 U.S.C. § 451(1957).

<sup>29</sup> 21 U.S.C. § 458(a)(2)(1957).

<sup>30</sup> 21 U.S.C. § 454 (1957).

<sup>31</sup> The Meat Inspection Act, 21 U.S.C. § 601 *et seq.* (1906).

<sup>32</sup> 21 U.S.C. § 603(b).

<sup>33</sup> 21 U.S.C. § 623.

<sup>34</sup> David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 ANIMAL L. 123, 132 (1996).

<sup>35</sup> *Id.*

USDA's or FSIS's jurisdiction and inspectors may be prone to ignoring small family farms for industrial slaughterhouses with larger numbers of animals and corresponding numbers of violations. These hurdles may prompt some to label such legislation as likely ineffective and not worth pursuing. Such legislation would be a first step toward guaranteeing all animals a humane slaughter. Opposition would be minimal. Any opposition would stem from arguments that a farmer is autonomous and able to do as he pleases with his property. Opposition against the actual humane slaughter would be non-existent; no one favors inhumane slaughter. Legislation of this sort is achievable and worth putting on the books to protect farm animals.

Animals that are outside interstate commerce are also exempted from the HMSA.<sup>36</sup> Such a distinction is absurd. All animals feel the same pain when slaughtered. A humane slaughter ought not depend on whether the carcass will be shipped to another state or not. The HMSA is a federal statute. Dormant Commerce Clause challenges that are concerns with state laws regulating slaughterhouse practices do not exist.<sup>37</sup> Federal statutes have the advantage of preemption. No significant obstacle exists that requires this distinction. Any amended HMSA should not include this distinction.

c. THE SLAUGHTER PROCESS DOES NOT MEET THE  
DEFINITION OF "HUMANE"

The USDA regulates slaughter and stunning methods under the HMSA. Not all of the approved methods meet the definition of "humane" as adopted in this paper. Those methods that do not meet the definition should be discarded. Only one stunning method sanctioned by USDA has humane characteristics. Research for new methods as stated in the 1958 version of the Act is needed.<sup>38</sup>

1. THE PROCESS DESCRIBED

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<sup>36</sup> 21 U.S.C. § 623(a).

<sup>37</sup> Colin Kreuziger, *Dismembering the Meat Industry Piece by Piece: The Value of Federalism to Farm Animals*, 23 LAW & INEQ. J. 363, 389-90 (2005).

<sup>38</sup> See The Humane Methods of Slaughter Act of 1958 §§ 4-5.

Modern slaughterhouses are large factory-like facilities. Animals are first unloaded from transports and then herded toward slaughter pens. Slaughterhouse workers are given prods to keep the animals moving. Workers are instructed to not to prod animals on the head or near the eye area. Electrical prods are intended for sparing use. From the slaughter pens, animals travel through shutes toward the "stun box." The animals' heads are stabilized in a restraining device. Animals are then stunned.<sup>39</sup> This is supposed to make the animals unconscious. The animals are then shackled, hoisted and stuck. The animals are lifted so that the blood drains from the body. The hide, head, and limbs are removed. The animals are then cut in half and inspected for impurities.<sup>40</sup>

## 2. CHANGING THE PROCESS

### A. SLOWING THE LINE SPEED

The slaughter process occurs so that a large slaughterhouse can slaughter a hundred or more cattle per hour and several hundred hogs per hour.<sup>41</sup> These numbers are the result of a 200 to 300 percent increases in the slaughter line speed since 1978.<sup>42</sup> Slaughterhouse workers and USDA inspectors are unable to keep up with the rapid pace.<sup>43</sup> As a result, some animals are not properly stunned and go to the line conscious. The HMSA has no provision regarding line speed and is ill equipped to deal with this problem. Slowing the line speed in slaughterhouses is a simple and effective way to ensure humane slaughter. It would allow workers the time to properly stun animals and inspectors the time to do proper inspections.

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<sup>39</sup> United States Department of Agriculture Animal Welfare Information Center, *Guidelines for the Slaughter of Animals for Human Consumption*, <http://awic.nal.usda.gov> (last visited June 5, 2007).

<sup>40</sup> Eisnitz, *supra* note 19, at 24.

<sup>41</sup> Animal Welfare Institute Quarterly, *Cutting the Gordian Knot*, <http://www.awionline.org/pubs/Quarterly/fall00/f00gordian.htm> (last visited June 25, 2007).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*; Eisnitz, *supra* note 19, at 189.

## B. GOOD MANAGEMENT

Phasing in other changes while simultaneously altering the HMSA can forward humane animal slaughter. Most important is ensuring that slaughterhouses are properly managed.<sup>44</sup> Slaughterhouse managers who care for the animals' welfare run slaughterhouses with better humane slaughter statistics.<sup>45</sup> Such a person is generally one who did not rise to manager from the bottom up but entered the position in another way.<sup>46</sup> A good slaughterhouse manager can prevent inhumane slaughter through employee training and proper supervision.<sup>47</sup> Many slaughterhouse workers are illegal immigrants willing to work for meager wages.<sup>48</sup> The language barrier and little training increase animal suffering. A manager who requires adequate training for all workers ensures that each knows how to handle animals to minimize suffering at all stages of the process.

## C. GUIDELINES AND PRIVATE INSPECTORS

Implementing specific, objective guidelines in the slaughter process is a third way to support humane slaughter. Such guidelines as those developed by Dr. Temple Grandin, a well known expert on animal slaughter facilities, help workers recognize a properly stunned animal and help inspectors recognize humane or inhumane facilities.<sup>49</sup> Using such guidelines in the

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<sup>44</sup> Temple Grandin, Professor of Animal Science at Colorado State University, Animal Welfare in Slaughter Plants, Paper presented at the 29th Annual Conference of American Association of Bovine Practitioners. Proceedings (1996) available at <http://www.grandin.com/welfare/general.session.html> (last visited June 25, 2007).

<sup>45</sup> Temple Grandin, *Commentary: Behavior of Slaughter Plant and Auction Employees Toward Animals*, 1 ANTHROZOOS 205 (1988).

<sup>46</sup> *Id.*

<sup>47</sup> Animal Welfare Institute Quarterly, *Cutting the Gordian Knot*, <http://www.awionline.org/pubs/Quarterly/fall00/f00gordian.htm> (last visited June 25, 2007).

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

<sup>49</sup> Temple Grandin, *Progress and Challenges in Animal Handling and Slaughter in the U.S.*, 100 APPLIED ANIMAL BEHAVIOR SCIENCE 109 (2006).

slaughter process helps standardization in slaughterhouse practices. They provide workers with an easy way to tell if they are following the correct procedures. Fast food chains McDonald's and Wendy's and some grocery store chains support such innovations.<sup>50</sup> Both McDonald's and Wendy's have private inspectors that audit slaughterhouses providing meat for their products.<sup>51</sup> Such audits have forced improvements in those slaughterhouses. Similar guidelines and inspections in all slaughter facilities would force improvements in other facilities.

### 3. PRE SLAUGHTER PRACTICES ARE INHUMANE

The USDA requires that slaughterhouses maintain facilities so that inadvertent injuries to animals do not occur. This is a paltry attempt by the USDA to protect animals when they enter slaughterhouse gates. These measures are largely ineffective. They protect the meat industry and its profits more than the animals for which they are intended.

The USDA regulations state that slaughterhouses must not have equipment with sharp corners on which animals could hurt themselves in passing.<sup>52</sup> Floors must not be slippery.<sup>53</sup> Wooden floors must not have holes into which animals could sink or harmful splinters.<sup>54</sup> Slaughter experts recommend using textured, matte floors and avoiding metals that would cause animals to become frightened of their own reflections.<sup>55</sup> Veterinarians advise that animals proceed to their deaths calmly, at a normal pace, and with as little stimulation as possible. Electric prods are to be used sparingly and never around the eyes, nose, or anal-genital area.<sup>56</sup> The regulations also mandate that slaughterhouses provide water and feed to animals.<sup>57</sup>

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

<sup>51</sup> *Id.*

<sup>52</sup> 9 C.F.R. § 313.1(a) (2007).

<sup>53</sup> 9 C.F.R. § 313.1(b) (2007).

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

<sup>55</sup> See Shimshony & Chaudry, *supra* note 1, at 698-99.

<sup>56</sup> See Lisa Baker, *Humane Slaughter Systems*, (2004)(unpublished DVM thesis, Virginia-Maryland College of Veterinary Medicine)(on file with author).

<sup>57</sup> 9 C.F.R. § 313.2(e)(2007).

These regulations have little to no effect on whether an animal receives a humane slaughter. An injury an animal might receive from a sharp corner of a chute pales in comparison to the pain it will feel if it is chopped apart while conscious. These regulations and those that require animals be stunned prior to slaughter are the only protection animals in slaughterhouses receive. They need reconsideration so that they actually provide protection. These regulations favor the meat industry more than the animals.

An animal that proceeds calmly to slaughter without any cuts or bruising on its body will fetch a higher market price. Evidence suggests calm animals that are slaughtered are healthier for human consumption because their carcasses resist bacterial growth.<sup>58</sup> One infected animal can contaminate all the meat produced from a slaughterhouse.<sup>59</sup> This can result in human illnesses and lost profits. Viewed in this light, the regulations offer little actual protection to the animals. Only the mandate that animals must be provided food, water, and resting space benefits the animals.

#### 4. STUNNING METHODS ARE INHUMANE

##### A. CAPTIVE BOLT

There is a variety of stunning methods. The “captive bolt” method causes pressure in the brain or enters the brain cavity to cause immediate unconsciousness.<sup>60</sup> It is used for larger animals such as cattle, sheep, horses, and hogs. If the first stun fails, facilities have second stunning devices on hand to re-stun the animals. Multiple stuns are not always effective to render large, adult animals unconscious. Incorrectly stunned animals try to escape the slaughterhouse. This can result in human injuries.<sup>61</sup>

This method of stunning is not humane. It conflicts with the HMSA’s intent. Animals surely suffer from botched stunnings. Guidelines exist to determine whether an animal is sufficiently

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<sup>58</sup> See Baker, *supra* note 56.

<sup>59</sup> Eisnitz, *supra* note 19, at 159-62.

<sup>60</sup> 9 C.F.R. § 313.15(a)(2007).

<sup>61</sup> Eisnitz, *supra* note 19, at 45.

stunned. These include a tongue that is hanging limply from the mouth, no head or eye movement, and no vocalization.<sup>62</sup> These signs declare an animal successfully stunned. Animals *undoubtedly* feel pain if they are slaughtered after an unsuccessful stun. This occurs in facilities with high line speeds. Economics demands that the slaughter line not be stopped for an unsuccessfully stunned animal. This results in inhumane and a horrific death for animals.<sup>63</sup> Humane slaughter requires that animals be treated with dignity and respect, kindness and compassion. Slaughtering an improperly stunned animal does not meet these criteria.

#### B. ELECTRICAL SHOCK AND GUN SHOT

The USDA deems stunning animals through electrical shock<sup>64</sup> or a gun shot to the head<sup>65</sup> acceptable stunning methods. Electrical shock is intended to instantaneously produce a “surgical anesthesia”<sup>66</sup> state. The shock itself may cause an animal undue pain and suffering when used correctly. When used incorrectly the method absolutely causes pain and suffering. Documented abuses of the electrical shock method include torturing an animal with multiple shocks before unconsciousness is achieved.<sup>67</sup> Employees that work at a particular slaughterhouse job for an extended duration can be prone to such behavior. A good manager who rotates employees through the various jobs can remedy this.<sup>68</sup> Shooting an animal is equally inhumane. It is too unreliable to be humane. For shooting to be effective, the animal must be calm. This method is difficult to use on excited, anxious animals and on large groups. If the first shot misses, the calm is shattered and the stunning method becomes unviable.

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<sup>62</sup> See Baker, *supra* note 56.

<sup>63</sup> Joby Warrick, *They Die Piece By Piece*, THE WASHINGTON POST, April 10, 2001, at A01.

<sup>64</sup> 9 C.F.R. § 313.30(a) (2007).

<sup>65</sup> 9 C.F.R. § 313.16(a) (2007).

<sup>66</sup> 9 C.F.R. § 313.30(a) (2007).

<sup>67</sup> Eisnitz, *supra* note 19, at 69.

<sup>68</sup> Temple Grandin, *Commentary: Behavior of Slaughter Plant and Auction Employees Toward Animals*, 1 ANTHROZOOS 205 (1988).

None of these stunning methods display any characteristics of a humane slaughter. There are no indicia of kindness, mercy, or compassion. There is only fear, pain, and indignity. The animals suffer needlessly. These methods demonstrate that the U.S. has no actual policy of humane slaughter. It merely has a statement that there shall be humane slaughter.

### C. CHEMICAL STUNNING

Chemical stunning is the sole stunning method sanctioned by the USDA, which displays humane characteristics. Chemical stunning entails animals being loaded onto a conveyor belt that travels through a tunnel saturated with carbon dioxide or another gas mixture.<sup>69</sup> When the animals emerge from the tunnel, they are unconscious. This stun method is acceptable to stun sheep, calves, and swine.<sup>70</sup> It is also an acceptable slaughter method for swine.<sup>71</sup> Chemical stunning is employed in other parts of the world with poultry.

Chemical stunning requires a gaseous mixture that will render the animals unconscious while in the tunnel. The mixture varies for different animals.<sup>72</sup> Chemical stunning requires animals be cut quickly after emerging from the tunnel so that the anesthesia effect does not dissipate.<sup>73</sup> This process requires technology that some slaughterhouses are unwilling to install and worker training which some slaughterhouses see as an unnecessary expense.

Chemical stunning is the most humane stunning process. It creates an unconscious state. It does so in a manner without trauma for the animals. It is akin to euthanasia. Euthanasia derives from the two ancient Greek words “eu” and “thanatos” translated literally as “good death.”<sup>74</sup> It requires removing an animal’s pain and suffering, reducing anxiety and fear, and inducing a “painless and distress free death.”<sup>75</sup> Euthanasia is a

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<sup>69</sup> 9 C.F.R. § 313.5(a)(1)(2007).

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

<sup>71</sup> 9 C.F.R. § 313.5(a)(3)(2007).

<sup>72</sup> See Shimshony & Chaudry *supra*, note 1 at 703-04.

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

<sup>74</sup> “Eu” and “θανάτος”

<sup>75</sup> See The Merck Veterinary Manual, *Euthanasia: Introduction*, <http://merckvetmanual.com> (last visited May 21, 2007).

term generally associated with dearly loved family pets. Family pets and farm animals raised for slaughter are not inherently different. Nothing makes cattle or chickens less worthy of a good death than a golden retriever.

Chemical stunning is a feasible stunning method for many animals. Methods that cause chemical residue on animals for human consumption require approval from the USDA.<sup>76</sup> Chemical stunning requires research so that the method can be adopted for all animals bound for slaughterhouses. These requirements hinder widespread use of chemical stunning in the U.S. Such considerations should not obscure the U.S.'s humane slaughter policy. Because of economic considerations, millions of animals are inhumanely slaughtered each year when there are methods available to give them a dignified, painless death.

#### B. THE HMSA IS POORLY ENFORCED

##### i. HMSA LACKS MEANS TO ENSURE COMPLIANCE

The HMSA lacks any teeth to encourage slaughterhouses to comply with the statute. The penalty for violating the HMSA is insignificant. Inspectors may only "tag" an unacceptable area or piece of equipment that is a statute violation.<sup>77</sup> The tag states "U.S. Rejected" on the equipment. The slaughterhouse then must bring that equipment into compliance with the statute. The tag is then removed once an inspector is satisfied there is no longer a violation.<sup>78</sup>

This is utterly ineffective at stopping HMSA violations. Odds are that the tag is simply removed after the inspector's departure and business goes on as usual. The intervening time between tagging and fixing the violation causes all animals slaughtered during that time to experience an inhumane death. Time intervals for serious violations should not be permitted. Such intervals undermine the statute's purpose.

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<sup>76</sup> *See Id.*

<sup>77</sup> 9 C.F.R. § 313.5 (2007).

<sup>78</sup> *Id.*

The HMSA does not authorize imposing fines for violations. Fines are the most effective means to bring industries into compliance with statutes like HMSA. The fines must be correlated to the violation's seriousness and be enough to sting the industry. The HMSA also fails to allow an inspector to suspend slaughterhouse production if multiple or severe violations are found.<sup>79</sup> The MIA does allow an inspector to suspend production.<sup>80</sup> However, the MIA is not an animal protection statute. Congress was willing to impose fines to protect consumers, but not to protect the animals. Without fines or authority to stop production, the HMSA offers no motivation for slaughterhouses to comply with humane slaughter requirements.

## ii. POOR ENFORCEMENT

The Food Safety and Inspection Service (FSIS) is the agency within the USDA charged with enforcing the HMSA.<sup>81</sup> There is evidence to suggest agency inspectors are poorly trained and unmotivated to enforce the HMSA.<sup>82</sup>

In January 2004, the General Accounting Office (GAO) did a study on "1) frequency and scope of humane handling and slaughter violations, 2) actions to enforce compliance, and 3) the adequacy of existing resources to enforce the act [HMSA]"<sup>83</sup> to improve FSIS enforcement. The report names several problems pertaining to FSIS and the HMSA. It cites "incomplete and

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<sup>79</sup> 7 U.S.C. § 1901.

<sup>80</sup> 21 U.S.C. § 603(b).

<sup>81</sup> USDA Food Safety and Inspection Service, *Humane Slaughter Fact Sheet*, [http://www.fsis.usda.gov/Fact\\_Sheets/Key\\_Facts\\_Humane\\_Slaughter](http://www.fsis.usda.gov/Fact_Sheets/Key_Facts_Humane_Slaughter) (last visited June 7, 2007).

<sup>82</sup> Constantinos Hotis, *The Anthropological Machine at the Abattoir: The Humane Methods of Slaughter Act*, 2006 U. CHI. LEGAL F. 503, 513-17 (2006).

<sup>83</sup> United States General Accounting Office, *Humane Methods of Slaughter Act: USDA Has Addressed Some Problems But Still Faces Enforcement Challenges* (Jan. 2004), available at <http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.88&filename=d04247.pdf&director=y=diskb/wais/data/gao> (last visited June 7, 2007).

inconsistent inspection reports” from FSIS. FSIS admitted that its inspectors did not always document violations.<sup>84</sup> Inspectors were not aware of the regulations and did not document violations they considered minor. The report states that FSIS inspectors did not “address non compliance with the act and regulations” consistently and used inconsistent standards. This includes inconsistent enforcement with serious violations.<sup>85</sup> Most importantly, this report names ineffective stunning as the most common violation.<sup>86</sup>

This report demonstrates the poor enforcement the HMSA receives. Ineffective stunning should not be the most common violation. Stunning is at the heart of the HMSA. The FSIS inspectors must be familiar with the HMSA and the regulations. Uniform standards like those developed by Grandin must be implemented.<sup>87</sup> All violations must be documented consistently. The inspectors must enforce the HMSA for the animals’ benefit. The HMSA was enacted primarily to protect animals. Inspectors must keep this in mind. Human benefit was certainly another motivating factor,<sup>88</sup> but there are other statutes and inspectors geared toward protecting consumers from slaughterhouse practices. The HMSA must be enforced properly.

#### IV. PART III: OTHER COUNTRIES’ HUMANE SLAUGHTER LAWS

Most of the world’s sophisticated countries have identified humane animal slaughter as something worth pursuing. To this end, all have enacted laws similar to the HMSA. Most of these laws have significant advantages for the animals. Part III will analyze the laws from the United Kingdom, European Union, and Canada. It will demonstrate the advantages animals in these countries enjoy which the U.S. should incorporate into an updated HMSA.

##### a. UNITED KINGDOM

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

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Grandin, *supra* note 49.

<sup>88</sup> Hotis, *supra* note 70, at 511-12.

The United Kingdom's Welfare of Animals (Slaughter or Killing) Regulations 1995 (WAR)<sup>89</sup> correlates to the HMSA. It provides for humane slaughter and requires stunning to achieve this. This statute has three main advantages over the HMSA. First, it is much broader in application and definition than HMSA. Second, violations result in convictions for the guilty party. Third, it allows for poultry slaughter through gaseous means.

i. BROADER APPLICATION

WAR is a much broader statute than HMSA. It applies to the "movement, lairaging, restraint, stunning, slaughter and killing of animals bred or kept for the production of meat, skin, fur, or other products, to methods of killing animals for the purpose of disease control and to the killing of surplus chicks and embryos in hatchery waste."<sup>90</sup> HMSA applies to a much more limited group of animals. It applies to the slaughter of animals for meat in commercial slaughterhouses. It does not require humane slaughter for animals that are slaughtered solely for their skins, furs, or other parts. HMSA also does not require humane slaughter for diseased animals or for surplus chicks and embryos. WAR protects a much larger range of animals than HMSA.

WAR also applies to various stages of animal handling that accompany slaughter. HMSA pertains to the actual slaughter and centers on the stunning requirement. WAR encompasses the whole process. It requires that animals receive humane treatment before, during, and after slaughter and during transport to slaughterhouses. WAR explicitly states that animals must be treated humanely prior to slaughter.<sup>91</sup> HMSA does not contain such language. The USDA regulations require similar treatment, but the language is buried in the regulations. Regulations are less powerful and more easily altered than statutes. This lessens the regulations' impact and makes a much less powerful statement than WAR's explicit statutory requirement. The U.S. has separate

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<sup>89</sup> Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 731, s. 1 (U.K.).

<sup>90</sup> *Id.* at s. 3.

<sup>91</sup> *Id.* at s. 4.

statutes that govern slaughter and transport of animals. WAR incorporates the two into one set of animal regulations. This creates a stronger and more cohesive animal protection statute.

An important advantage of WAR is the definition of protected "animal" under the regulations. WAR states that the definition of "animal" shall include birds<sup>92</sup> and rabbits<sup>93</sup> in addition to cattle, horses, pigs, sheep, goats, and mules. HMSA applies neither to birds nor to rabbits. The WAR definition of "birds" includes "any domestic fowl, turkey, pheasant, quail, partridge, goose, duck, or guinea fowl."<sup>94</sup> This requires that in the U.K. all chickens be humanely slaughtered. This is WAR's most noteworthy advantage over the HMSA. WAR also surpasses HMSA by specifying geese, ducks, and turkeys as animals that are covered under the statute. All of these birds are consumed in the U.S., but are all excluded from the HMSA.

Similar to HMSA, WAR excludes certain categories of animals. Included are animals killed for personal consumption and animals killed not for a commercial purpose.<sup>95</sup> WAR does not apply to animals killed during sporting events<sup>96</sup> and wild game killed by hunters.<sup>97</sup> The first is a tribute to the U.K.'s history of foxhunting. WAR also does not protect laboratory animals,<sup>98</sup> but like the U.S., there is a separate statute governing animals and scientific experiments. A distinct advantage to WAR is its penalty provision. WAR, unlike HMSA, states that violations of the statute make a person "guilty of an offense."<sup>99</sup> The U.K. recognizes that actual penalties are required for such a statute to work. Overall, WAR is much more effective than HMSA.

## ii. GAS KILLING OF BIRDS

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<sup>92</sup> *Id.* at s. 2(1).

<sup>93</sup> *Id.* at s. 2(3).

<sup>94</sup> Welfare of Animals (Slaughter or Killing) Regulations 2007, s. 15, sch. 7a (U.K.).

<sup>95</sup> Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 731, sch. 1 (U.K.).

<sup>96</sup> *Id.* at s. 3(3).

<sup>97</sup> *Id.* at s. 3(4).

<sup>98</sup> *Id.* at s. 3(2).

<sup>99</sup> Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 731, s. 26(1) (U.K.).

Gas is used in the U.S. to stun and kill pigs. It is available to kill chickens but is not the preferred method. The U.K. amended WAR in 2007 to require that birds be killed by exposure to gaseous mixtures.<sup>100</sup> This is a distinct advantage to HMSA and demonstrates the U.K.'s commitment to humane slaughter.

Gas killing of birds is an innovative slaughter method. It allows birds to be killed painlessly, but it requires construction of gas chambers and requires that slaughterhouse personnel be trained in chamber methodology. All of this requires that slaughterhouses invest money in the technology. The U.S. is so far unwilling to require slaughterhouses to invest money in innovative slaughter methods. Economics is the biggest opponent to humane slaughter. Congress has not required such investment likely because the slaughter industry is politically powerful. Both economics and politics are poor reasons for not amending the HMSA similar to this 2007 WAR amendment. Such an amendment would not only be a strong statement on behalf of animals but would also save *millions* of animals from an inhumane death. Both are sufficient reasons to promote such an amendment in the U.S.

#### b. CANADA

Canada's Meat Inspection Act (CMIA) allows humane slaughter for Canadian animals. The HMSA has many flaws, but the statute does state that humane slaughter is the U.S.'s policy. The CMIA's main purpose is not the humane slaughter of animals and does not state a similar policy. The CMIA is a general statute that prescribes standards for various issues pertaining to meat. The issues range from import and export of meat products to trademark use. The statute itself does not require humane slaughter in Canada. It merely allows regulations pertaining to humane slaughter.<sup>101</sup> The CMIA's one advantage over the HMSA is its inclusion of birds in its definition of "animal."<sup>102</sup>

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<sup>100</sup> Welfare of Animals (Slaughter or Killing) Regulations 2007, s. 15, sch. 7a (U.K.).

<sup>101</sup> Meat Inspection Act, R.S.C., ch. 25 (1st Supp.), s. 20(f) (1985) (Can).

<sup>102</sup> *Id.* at s. 2.

The regulations for humane slaughter in Canada total three. Two parallel the USDA regulations for the HMSA. One requires that “every food animal that is slaughtered shall, before being bled, (a) be rendered unconscious in a manner that ensures that it does not regain consciousness before death.”<sup>103</sup> The methods approved for stunning include the captive bolt, gas exposure, electric shock, and decapitation for chickens and rabbits only.<sup>104</sup> The second regulation requires only food animals shall not be exposed to avoidable distress or pain.<sup>105</sup> The third states that only chickens and rabbits are to be shackled for slaughter without being unconscious.<sup>106</sup> This last regulation is disturbing. It unambiguously allows inhumane treatment of animals. This is in direct contradiction of the purpose of the three regulations on humane slaughter.

Similar to the U.S., Canada’s regulations do not apply to meat products that are not for commercial use.<sup>107</sup> Animals slaughtered to provide animal food or slaughtered for medicinal purposes are also excluded from humane slaughter.<sup>108</sup> This is something that is not mentioned in the HMSA. Although, horses, often slaughtered for animal food, are protected under the HMSA. Canada’s regulations do protect domesticated reindeer, caribou, and muskox from inhumane treatment.<sup>109</sup> These animals are not mentioned in the HMSA but are equally deserving of humane treatment and slaughter. Canada’s unique environment and culture influenced this provision. It is something that could easily be included in an amended HMSA as it is pertinent in the U.S. as well.

The few regulations for humane slaughter and the absence of a humane slaughter statute clearly demonstrate that Canada has not yet seriously considered inhumane slaughter and its repercussions. The HMSA has many flaws. However, compared to Canada’s similar legislation, the HMSA makes a clear statement in favor of humane slaughter and treatment of animals and has

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<sup>103</sup> Meat Inspection Act Regulations SOR/90-288, s. 79 (Can).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at s. 62.

<sup>106</sup> *Id.* at s. 78.

<sup>107</sup> *Id.* at s. 3.

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

<sup>109</sup> *Id.*

some influence to support that statement. Canada's legislation and regulations need extensive reconsideration.

c. EUROPEAN UNION

Among the countries examined, the EU's Council Directive 93-119 of 1993 (CD 93-119)<sup>110</sup> and its amendments comprise the most generous humane slaughter law. The EU has a liberal policy regarding animal rights and animal welfare. The EU enacted CD 93-119 for animal benefit. Hardly any exemptions are granted. Only a few member countries grant exemptions for religious rites.<sup>111</sup> Unlike the HMSA and CMIA, human considerations were less important and did not taint the final product to the same degree.

Similar to the other slaughter laws, CD 93-119 applies to the "movement, lairaging, restraint, stunning, slaughter and killing of animals bred and kept for the production of meat, skin, fur, or other products and to methods of killing animals for the purpose of disease control."<sup>112</sup> The original law names horses, cows, pigs, rabbits, goats, sheep, and poultry as the protected animals and requires that they be stunned prior to slaughter.<sup>113</sup> Wild game<sup>114</sup> and animals killed for personal consumption, in scientific experiments, and in cultural or sporting events are excluded from the law.<sup>115</sup>

The original CD 93-119 goes beyond the HMSA protections by including poultry. It also protects animals that are not slaughtered for their meat, hide, and fur but for "other products." This acts as a "catch all" category and protects animals slaughtered for pet food. Such a provision is an advantage over HMSA, WAR, and CMIA.

The original CD 93-119 failed to protect exotic animals such as reindeer, ostriches, and fish. In 2004, the European Commission sought recommendations and advice from the Scientific Panel on Animal Health and Welfare regarding slaughter

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<sup>110</sup> Council Directive 93/119/EC O.J. (L340)(hereinafter CD 93-119).

<sup>111</sup> The EFSA Journal 326, 1-18 (2006).

<sup>112</sup> CD 93-119, art. 1.

<sup>113</sup> *Id.* at art. 5.

<sup>114</sup> *Id.* at art. 9.

<sup>115</sup> *Id.* at art. 1.

practices for not only animals covered under CD 93-119 but also for farmed fish.<sup>116</sup> The EU adopted the recommendations on June 15, 2004 and became the first to include fish in humane slaughter legislation. The report included a recommendation for gas stunning for swine and poultry and an admonition against shackling of rabbits, chickens, and turkeys before slaughter.<sup>117</sup> The European Commission went one step further in 2006. It requested a similar report for deer, rabbits, goats, ostriches, ducks, geese, and quail.<sup>118</sup> This report was adopted on February 13, 2006. It gave the EU the most expansive list of animals covered under a humane slaughter program.

The EU is moving forward with humane slaughter for all animals at a quicker pace than the rest of the world. It frequently takes action to update its humane slaughter legislation to ensure it is up to date with modern technology. It has also expanded the legislation's scope. The EU makes a strong statement for animal rights and welfare with these actions and its minimal exemption policy. The U.K. updates its legislation somewhat less frequently, but its program appears headed in a similar direction as the EU's.

The U.S. has only updated the HMSA once. A few other attempts have failed. Presently, an amendment is pending in Congress. History suggests it is unlikely the amendment will pass. The HMSA is hampered by the poor consideration it was given initially and the fact that it was passed not entirely for animal benefit. Still, it surpasses the Canadian equivalent, which is little more than an afterthought stuck into the CMIA. The U.S., however, needs a new statute. The current HMSA in its current form is unable to evolve in the direction of the U.K. and EU, which lead the pack with the humane slaughter issue.

#### V. Part IV: Past Attempts At Changing The Statute

Animal welfare and animal rights groups have tried various solutions over the years to change the HMSA and propel the U.S. toward a more liberal stance on humane slaughter. All have failed; the HMSA has not changed for almost thirty years.

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<sup>116</sup> The EFSA Journal 45, 1-29 (2004).

<sup>117</sup> *Id.*

<sup>118</sup> The EFSA Journal 326, 1-18 (2006).

Lack of public recognition is the main problem that attached itself to these attempts.

a. PUBLIC SUPPORT

Most of the general public have never heard of the HMSA and are unaware of its shortcomings. Books like Eric Schlosser's *Fast Food Nation* have garnered some attention, but the issue remains mostly hidden. That results in the current situation. Most Americans are doing nothing to further humane slaughter change. Results do not come from doing nothing. Change in the HMSA requires the public be aware of the problem. That was the impetus for the birth of the HMSA; it is integral for the statute's evolution. The American public, particularly voters, are a powerful entity when united behind an issue. Humane slaughter is not a controversial issue. Gathering support for it is not an insurmountable problem.

b. GRASS ROOTS GROUPS

Grass roots groups attempt to bring issues such as the HMSA to the public's attention and effect change in this way. Grass roots groups are often stigmatized as ultra liberals who want to save the animals and the environment at the cost of everyday conveniences and luxuries.<sup>119</sup> Such preconceptions preclude grass roots groups from being taken seriously. They are known for "publicity stunts."<sup>120</sup> Farm Animal Task Force's (FARM) Great American Meatout is an example. It encourages Americans to give up meat and refers to meat as "flesh" to emphasize its point. Events like this and protests organized by similar groups are intended to spread the group's message through the mass media but usually do not have any long ranging effects. Often they simply irritate the public. An irritated public is not likely to support a group's cause. This results in a failure to accomplish the intended goal. The idea to disperse the message is sound, but the execution is poor. Grass roots groups like FARM are generally ineffective on a large scale. However, inserting the HMSA's

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<sup>119</sup> MUNRO, *supra* note 25, at 114.

<sup>120</sup> *Id.* at 113.

problems into an average person's everyday knowledge is a good starting point for changes in the HMSA.

c. VEGETARIANISM

A simple but unpopular way to destroy humane slaughter issues is to do away with the need to slaughter animals for food. Vegetarianism and veganism are popular suggestions. Both are unviable. Most humans are raised as meat eaters and enjoy meat too much to want to give it up. Ensuring humane slaughter of animals does not require such extreme measures. It merely requires ensuring that slaughtered animals receive respect and humane treatment at death. Offering up vegetarianism as an option only scares supporters of innovation away. Changing the HMSA requires support in a way that an everyday person can participate. Vegetarianism and veganism do not meet this criterion.

d. PREVIOUS LEGISLATION

Previous legislation to alter the HMSA has failed. The amendments were not well known. Politicians are not motivated to change statutes like HMSA without public pressure as an incentive to do so. However, new legislation that overhauls the HMSA remains the best method to change the HMSA. The federal government is really the only entity with enough authority and resources to implement a uniform, workable solution. It must have the public's support. Grass roots groups and others who support changing the HMSA would be well advised to lobby long, hard, and carefully so that a new amendment is visible and can acquire public support.

The current proposed amendment to the HMSA intends to alter the "and other livestock" phrase to include chickens. This would be a significant improvement on the current HMSA if it passes, but the HMSA contains many other flaws beside an exclusion of chickens.

Legislation has drawbacks. The process is slow and the HMSA is not high on most politicians' agendas. Changing the HMSA this way will take time and patience. New legislation will also require new rules and regulations, which take time to create and codify. The FSIS and its inspection standards must also

be overhauled and revamped. Legislators must approach a new HMSA carefully or doom the project to failure.

VI. PART V: FUTURE CHANGES IN THE STATUTE

a. LEARN FROM THE PAST

Future attempts to amend the HMSA should keep in mind the past's failures. New attempts must be visible to the public. They must be presented in a manner to garner public support and create political pressure on politicians. Legislation should be the preferred method and supporters must be prepared for the process to be time consuming.

b. BASIC REQUIREMENTS

Any amendment to the HMSA must also meet certain requirements. New legislation should be based on the EU's CD 93-119. It should provide protection for all animals that are likely to be slaughtered by humans, including but not limited to cattle, horses, sheep, mules, pigs, goats, fish, bison, deer of any kind, chickens, poultry, quail, antelope, and ostriches. It should apply to both animals slaughtered for commercial use and those slaughtered not for commercial use. A new HMSA must apply to animals that are slaughtered for reasons other than for food. Examples include animals that are slaughtered for their hides or furs and animals slaughtered for some other product. A "catch all" provision would not be misplaced.

c. REQUIRE BETTER SLAUGHTER AND STUN METHODS

One of the advantages other humane slaughter laws have over the HMSA is that they strongly promote humane slaughter and the use of new stunning and slaughter methods. A new HMSA should strengthen the U.S.'s policy by allowing minimal exemptions to the statutory requirements of humane slaughter. The statute should mandate chemical or gas methods of stunning or slaughter for swine and poultry and for other animals if it becomes acceptable for larger animals. Electrical shock and the gun shot

method of stunning should be discarded. Neither fit the dictionary definition of humane.

The captive bolt method is the recommended method for stunning larger animals.<sup>121</sup> It should be the only permitted method. Opposition will likely argue that economics makes such provisions impossible. Economics should not enter the equation. Allowing economics to play a part in a new HMSA pollutes it with the same human considerations as the current and original HMSA. Furthermore, the economic argument is not persuasive. Such provisions work in other countries; there is no reason one should not work in the U.S. Supporters of a new HMSA and drafters of the new statute should consider incentives for the meat industry to invest in new technology. Low interest loans or grants and tax benefits could ease the transition for the meat industry to any new requirements and lessen the industry's resistance.

d. BETTER ENFORCEMENT

An updated HMSA will only be effective if the USDA and the FSIS tighten enforcement. Mandatory labeling regarding how the animal was slaughtered should begin. It would motivate inspectors to enforce standards more strictly. It would also keep the public informed and interested in the issue. This allows the public to decide at the supermarket whether it prefers meat slaughtered in a manner approved under this statute or not. The labeling must be standardized and supervised by the USDA. Such labeling has helped organic food gather support, but organic labeling is not standardized. Protecting animals at slaughterhouses requires that consumers be able to rely on the type of labeling. If this is not controlled, it would become a loophole for the meat industry to sidestep its obligations.

The statute should also require biannual reports on violations. The FSIS has shown that it does not keep good records. This would fix that problem and would add to the information available to the public. Transparency encourages the meat industry slaughter to conform to the statute and makes positive results more likely. The statute should give the FSIS a worthy penalty for violations. Fining slaughter facilities should be allowed. Hefty

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<sup>121</sup> The EFSA Journal 326, 1-18 (2006).

finest and criminal charges for multiple violations should be authorized. Ideally, inspectors should have ability to stop production until all serious violations are rectified. This would include the most common violation, improper stunning.

e. HOW TO BEGIN THE PROCESS OF CHANGE

i. GRADUALLY

Changing federal legislation is a time consuming process. Change in the HMSA must occur gradually so the meat industry has time to adapt to the new requirements. Many reformers expect change to occur overnight. That simply is not possible given the magnitude of changes required. The simplest way to start this process is to start with state laws. Federal lawmakers and federal legislation are more difficult for an interest group to influence than state lawmakers and state legislation. States are generally more receptive to progressive legislation<sup>122</sup> and positive results are more likely. Historically, progressive trends in state laws have helped create progressive federal laws.<sup>123</sup> If a state trend toward stricter slaughter requirements arises, then the possibility of altering federal law increases.

Gradual change also will help to avoid alienating the meat industry.<sup>124</sup> Reforms can be phased in over time and incentives given to encourage the meat industry to comply without a struggle. The meat industry is very powerful politically. Many congressional representatives are elected by states that slaughter huge amounts of animals per year. Angering the meat industry by moving too fast will sabotage any HMSA change. Sponsors of any new HMSA must stress what humane slaughter will do for the meat industry. One of the initial reasons for passing the HMSA was that it was believed that humane treatment increased the quality of meat produced. There is still evidence to suggest this.<sup>125</sup> Better quality meat can only be good for the meat industry. The American consumer is increasingly interested in environmental and

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<sup>122</sup> Kreuziger, *supra* note 37, at 383-84.

<sup>123</sup> *Id.* at 383.

<sup>124</sup> *Id.* at 401.

<sup>125</sup> See Baker, *supra* note 56.

animal protection. Organic foods and free-range chickens and turkeys are increasingly popular. It has become trendy to eat organic foods. A similar trend for humanely slaughter beef and pork would affect the meat industry and promote change.

f. PROPOSED STATUTORY LANGUAGE

It is unlikely that every reform mentioned in this paper will find its way into such a statute. A statute incorporating most of the suggested reforms would appear similar to the following proposed statutory language. The proposed statutory language encompasses the best humane slaughter provisions from around the world and some other possible suggestions.

**Humane Methods of Slaughter  
Act of 2007**

**§1: Humane Slaughter**

a) No method of slaughtering or handling in connection with slaughtering shall comply with the public policy of the United States unless it is humane. Humane as used in this statute shall indicated slaughter methods

1) Characterized by kindness, mercy, or compassion; and

2) Characterized by care and respect for the animals prior to and immediately following slaughter; and

3) In conformance with any rules and regulations issued by United States

Department of Agriculture  
intended to protect  
animals from inhumane  
slaughter practices.

b) Slaughtering in accordance with ritual requirements of any religious faith that prescribes a method of slaughter whereby the animal loses consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering are deemed humane and exempt from the further requirements of this Act.

**§2: Application**

a) This statute shall apply to fish, bison, deer, poultry, rabbits, antelope, ostrich, cattle, horses, mules, sheep, goats, swine and any other animals deemed appropriate by the USDA.

b) This statute shall apply to all animals slaughtered regardless of the reason for slaughter.

**§3: Stunning**

a) All animals shall be stunned and rendered insensible to pain before slaughter.

**§4: Stun and slaughter method**

a) Chemical methods shall be used to slaughter or stun all animals for which this method is available. Scientific information shall deem when this method is appropriate to slaughter or stun an animal.

b) Animals for which chemical stunning or slaughter is unavailable shall be rendered insensible to pain through the captive bolt method prior to being shackled, hoisted, thrown, cast or cut.

c) Slaughter facilities must keep all stunning and slaughter devices in working order such that one blow renders animals insensate with minimal pain, fear, and discomfort.

d) Pens, holding areas, shutes, and all other equipment and areas must be maintained in such condition to avoid causing inhumane treatment or injury to the animals.

**§5: Rules and Regulations**

a) The United States Department of Agriculture is given authority to promulgate rules and regulations for this Act including equipment standards and other reasonable violations.

b) The United States Department of Agriculture shall promulgate rules and regulations pertaining to mandatory labeling regarding the slaughter method of all slaughterhouse products.

**§6: Inspections**

a) The United States Department of Agriculture and the Food Safety Inspection Service are authorized to inspect slaughter facilities for violations of this Act.

**§ 7: Violations and Penalties**

a) Violations shall be characterized as either major or minor.

1) Minor violations shall incur a minimum fine of Five Hundred Dollars (\$500.00) per animal per violation.

2) Major violations shall incur a minimum of One Thousand Five Hundred Dollars (\$1,500.00) per animal per violation.

3) The United States Department of Agriculture shall have discretion to increase the fine amount.

4) The United States Department of Agriculture

is authorized to stop production at any slaughter facility with five or more separate violations. The minimum shut down shall be one day for each separate violation.

5) More than ten separate instances of violations shall constitute a misdemeanor.

6) More than twenty separate instances of violations shall constitute a felony.

### **§8: Biannual Reports**

a) The United States Department of Agriculture shall provide and publish biannual reports of all violations of any slaughterhouse facility in the United States. The report shall state what action was taken to rectify the situation and the end result.

### **§9: Line Speed**

a) A slaughterhouse shall limit its line speed such that workers properly stun each animal before it proceeds to slaughter.

- b) Violation of the preceding provision shall be a major violation under this Act.

## VII. CONCLUSION

The United States needs a new HMSA and improved regulations. The United States is a world leader in many arenas and enjoys that position. Humane slaughter of animals is not one of those areas. Changes would benefit the meat industry, consumers, and, most importantly, animals that end their lives in a slaughterhouse. The current proposed legislation is a step in the right direction, but more reforms are necessary. Federal legislation is the only feasible way of remedying the current situation. The U.S. must seriously consider changes to the Humane Methods of Slaughter Act so that the legislative process may begin and changes may be implemented as soon as possible. Delay causes millions of animals per year to suffer through an inhumane death.

