



United States Department of Agriculture

Food Safety and
Inspection Service

1400 Independence
Avenue, SW.
Washington, D.C.
20250

Animal Welfare Institute
c/o Dena Jones, Farm Animal Program Manager
900 Pennsylvania Avenue SE
Washington, DC 20003

FEB 21 2017

Dear Ms. Jones,

The Food Safety and Inspection Service (FSIS) has completed its review of the May 2013 petition, submitted by the Animal Welfare Institute (AWI), requesting that FSIS make several regulatory changes to deter noncompliance with the humane handling requirements for livestock.

The petition requests that the Agency engage in rulemaking to make several changes, including those that would require all livestock slaughter establishments to take a systematic approach to humane handling by maintaining a comprehensive, written humane handling plan; conducting routine testing and maintenance of stunning equipment; making back-up stunning devices available at all times; and providing employee training in animal handling and use of stunning equipment.

After careful consideration of the petition, FSIS has concluded that the petition should be denied. Although the Agency is cognizant of its authority to issue rules on the humane handling of livestock (7 USC 1901-1906), it has decided not to engage in rulemaking at this time. However, the Agency continues to examine the issues addressed in your petition to determine whether rulemaking would be warranted in the future.

When FSIS first encouraged the use of systematic humane handling plans in 2004, through a notice in the *Federal Register* (69 FR 54625), it noted considerable congressional and public interest about the humane treatment of animals, as well as the number of humane handling noncompliance incidents documented by FSIS in establishments during the previous three years. Since then, in light of the development of new humane handling methods and systems, FSIS has continued to publish guidance to industry and instructions to its inspectors regarding, respectively, best practices for and the verification of the humane handling of livestock. Notably, FSIS has undertaken several initiatives to improve humane handling practices since the petition was submitted in May 2013. The following describes these ongoing efforts to promote the humane handling and slaughter of livestock.

In October 2013, FSIS issued the *FSIS Compliance Guide for a Systematic Approach to the Humane Handling of Livestock* ("Compliance Guide") to promote a systematic approach to achieve compliance with the regulatory requirements for humane handling and slaughter of livestock. FSIS announced the guide in the *Federal Register* (78 FR 64470, October 29, 2013) and posted it on its website. As noted in the guide, a systematic approach takes the regulatory requirements for humane handling and slaughter in 9 CFR part 313 and organizes them into a logical approach, marked by attention to detail, regular implementation, and tailoring to the operation of the establishment. The Compliance Guide, which establishments were encouraged to follow upon issuance, addresses many of the issues raised in AWI's petition, including: (1)

training of employees on humane handling practices, (2) training on the use of stunning equipment, (3) ensuring proper stunning placement, (4) availability of back-up stunning equipment, and (5) implementing a humane handling management plan. Specifically, the Compliance Guide encourages establishments to consider how they train employees in the context of developing a systematic approach to humane handling. It also recommends documenting such training and reviewing past instruction periodically. Regarding stunning, the Compliance Guide asks establishments to evaluate stunning methods and possible problems when developing a systematic approach, including proper design and maintenance of stunning equipment. The Compliance Guide reiterates FSIS statutory and regulatory requirements that stunning produce insensibility by a single blow or gunshot or by electrical, chemical or other means that are rapid and effective (7 USC 1902(a) and 9 CFR 313.5, 313.15-16, and 313.30). The Compliance Guide also includes proper stunning placement as a parameter in the Sample Assessment Tool for Humane Handling and Slaughter. Further, the Compliance Guide notes the usefulness of back-up stunning equipment in the attached Sample Humane Handling and Slaughter Plan.

FSIS also encourages that these systematic approaches to humane handling be “robust.” FSIS Directive 6900.2 describes the criteria we will use to determine if an establishment has a robust systematic approach. Many of these criteria mirror the measures sought in the instant petition, including the use of written procedures to ensure compliance with FSIS regulations, maintenance of records demonstrating compliance, and the availability of records for FSIS review. FSIS utilizes strict standards in recognizing a robust approach. Specifically, FSIS recently updated instructions to inspection personnel for the assessment and verification of an official livestock establishment’s robust systematic approach for humane handling (*See* FSIS Notice 04-17, January 12, 2017). These instructions make clear that a humane handling plan’s robust status designation may be removed if FSIS’s verification review shows that the establishment is not implementing the robust systematic approach (FSIS Notice 04-17, section IV, para D).

Establishment implementation of either a systematic approach to humane handling or a robust systematic approach, as outlined in the Compliance Guide, is discretionary, but will help ensure that establishments comply with the mandatory rules governing humane handling of livestock in the Humane Methods of Slaughter Act (HMSA) and humane handling regulations. Further, in the event that an establishment has an incident of egregious inhumane handling, FSIS will take into account whether an establishment has implemented an effective robust systematic approach, along with other factors, in determining the appropriate sanction to impose. That is, in such a situation, the presence of a robust systematic approach is one factor that inspection personnel will consider in deciding whether to issue a Notice of Intended Enforcement (NOIE) or a Notice of Suspension. (*See* Directive 6900.2, Chapter VII, section IV). An NOIE gives an establishment time (up to three days) to provide adequate written corrective and preventative measures to ensure that livestock will be handled humanely (9 CFR 500.5). A notice of suspension, by contrast, results in the interruption of the assignment of inspectors to all or part of an establishment (9 CFR 500.1(c)). FSIS inspectors will also refuse to provide an establishment under suspension with marks of inspection, as required for establishments to sell their product in interstate commerce. Given that the presence of a robust approach is a factor in the decision-making process of inspectors when determining sanctions, the Compliance Guide and FSIS’s enforcement activities strongly incentivize establishments to implement robust systematic approaches.

Indeed, the use of the Compliance Guide by establishments has been encouraging. When AWI submitted its 2013 petition, approximately 35 percent of plants had a systematic approach to humane handling. We have seen an increase in the number of establishments with a systematic approach since we issued the initial Compliance Guide in October 2013. At the end of 2016, approximately 75 percent of plants had such an approach.

As you are aware, the Agency continues to update and improve the Compliance Guide. As noted in the guide, to promote consistency and transparency, FSIS applies the same clearance and public comment practices for guides as those required for rulemaking. FSIS encourages interested persons to submit comments on Agency guidance, including but not limited to, content, readability, applicability, and accessibility. FSIS will update the Compliance Guide as necessary to reflect current information and stakeholder feedback. We are aware of your comment on the Compliance Guide, which raises many similar issues to the instant petition. We will consider AWI's comment in promulgating an updated version of the Compliance Guide. After the updated Compliance Guide is published and a reasonable amount of time has passed for plants to consider it, FSIS intends to review records of humane handling violations and verification activities, including violations of humane handling regulations (9 CFR 313.1 to 313.30). Using the results of this review, FSIS will consider implementing additional measures to improve compliance with the HMSA, such as updating the Compliance Guide, amending the criteria used to evaluate written humane handling plans, or converting some measures into regulatory requirements.

Moreover, the Compliance Guide and related policy efforts are not the only actions taken by the Agency that cover the issues addressed in your petition. Also notable is the humane handling initiative to increase adoption of humane handling best practices mentioned in the FSIS Strategic Plan. On November 2, 2016, FSIS released its Fiscal Year (FY) 2017–2021 Strategic Plan. In the plan, FSIS identifies stunning and restraint as areas that need increased attention to ensure industry compliance with humane handling requirements in all livestock slaughter establishments. As explained in the plan, we intend to develop and implement an education and outreach campaign, targeting small and very small establishments, to ensure more consistent application of humane handling best practices and compliance with humane handling requirements. We will monitor the likely increase in compliance with livestock restraint and stunning requirements and implement enforcement actions as necessary. In the plan, we also explain that FSIS District Veterinary Medical Specialists will promote humane handling best practices by delivering educational material and guidance to establishments when conducting their routine humane handling verification visits, focusing on the most recent information and recommendations on effective animal restraint and stunning. After industry has had sufficient time to incorporate recommendations, we will consider whether to take intensified regulatory actions at establishments that have repeat stunning and restraint incidents. As noted in the plan, by working one-on-one with establishments on the areas of restraint and stunning, FSIS will encourage greater use of appropriate techniques by industry to ensure that establishments of all types and sizes comply with statutory and regulatory requirements.

Thus, in regard to your request for rulemaking, FSIS believes that current initiatives encouraging improved, voluntary compliance, such as the Compliance Guide and the updates to inspection procedures provided in FSIS Notices and Directives, have achieved positive results and should be given additional time before the agency imposes mandatory rules. The rulemaking process can be lengthy and can require significant investment of resources by the government, regulated industry and the public. Had FSIS initiated rulemaking shortly after AWI submitted the instant

petition, it is likely that the time required for drafting, notice and comment, and subsequent promulgation would have been substantial. By contrast, the draft Compliance Guide, encouraging many of the same measures sought in the petition, was issued and available to establishments in December 2013.

Initiatives to encourage improved, voluntary compliance are not only less resource-intensive than rulemaking, but also can allow for more flexibility in the verification of compliance. That is, compliance guides for industry and corresponding instructions to inspectors allow establishments to customize the methods by which they ensure that livestock are handled humanely, in light of the establishment size, layout, slaughter volume and other production factors. On this point, FSIS acknowledges that there are some specific items in the petition that are not explicitly mentioned in the Compliance Guide, such as the recommended requirement that establishments post written instructions for stunning devices, the recommended requirements that establishments clean and maintain stunning equipment on a prescribed schedule, and others. FSIS believes that the Compliance Guide better enables establishments to develop systematic and robust systematic humane approaches to ensure compliance with applicable regulations, while retaining flexibility to adapt such approaches to the needs of each establishment. FSIS has also expended significant effort to develop an updated Compliance Guide, which we intend to publish in the near future, in conjunction with policy on systematic and robust systematic approaches.

This does not mean that the Agency has foreclosed the possibility of issuing rules on the issues identified in your petition, as industry compliance with humane handling approaches evolves and the Agency acquires more information about the success of the Compliance Guide. We encourage you to consider resubmitting your petition at a later point, in light of the Compliance Guide and other efforts by the Agency.

For these reasons, FSIS is denying your petition without prejudice. In accordance with our petition regulations, we have posted your petition on the FSIS website (9 CFR 392.6). We intend to post this response as well.

Sincerely,



Daniel Engeljohn, Ph.D.
Assistant Administrator
Office of Policy and Program Development