



CENTER FOR  
FOOD SAFETY

December 23, 2015

Mary Porretta, Petitions Manager  
Department of Agriculture  
Food Safety and Inspection Service  
Room 2534 South Building  
1400 Independence Avenue, S.W.  
Washington, DC 20250-3700

**Re: Petition Calling for Regulations Under the Humane Methods of Livestock Slaughter Act and Federal Meat Inspection Act that Will Decrease Cruelty to Farm Animals at Slaughter (FSIS Petition Number 15-01)**

Dear Mary Porretta:

Center for Food Safety (CFS) is a nonprofit, public interest advocacy organization dedicated to protecting human health and the environment by curbing the proliferation of harmful food production technologies and promoting sustainable agriculture. As a membership organization, CFS represents more than 700,000 farmer and consumer members who reside in every state across the country, and who support safe, sustainable food systems. CFS offers the following letter in support of the petition for rulemaking, assigned petition number 15-01, submitted by Farm Sanctuary to amend regulations related to the Humane Methods of Slaughter Act (HMSA) and Federal Meat Inspection Act (FMIA), with a focus on improving enforcement of the law to prevent foodborne illness.

## I. INTRODUCTION

The humane treatment of animals raised for food is a critical component of a safe and healthy food system. How animals are handled and slaughtered is intrinsically related to the quality of meat. Both the HMSA and FMIA require the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) to ensure that livestock animals are treated humanely throughout the slaughter process. However, reports from USDA's Office of the Inspector General (OIG) and the Government Accountability Office (GAO), undercover investigations, and FSIS's own humane enforcement records indicate that FSIS inspectors routinely fail to enforce violations of the HMSA or do so inconsistently and arbitrarily. FSIS's lack of adequate enforcement to compel the humane treatment of animals throughout the slaughter process increases the risk of foodborne illness and puts consumers in danger of contracting serious diseases

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CFS submits this letter in support of Farm Sanctuary’s petition to request that FSIS amend 9 C.F.R §§ 313 and 500, FSIS Policy Directive 6900.2, and all other appropriate FSIS policy documents to reflect a more comprehensive approach to enforcement of the HMSA. More specifically, CFS requests that FSIS grant Farm Sanctuary’s petition in full, and take the following regulatory actions:

1. Amend 9 C.F.R. § 500 to provide that FSIS “will” issue at least a Noncompliance Record (NR) for all violations of the HMSA;
2. Amend 9 C.F.R. § 313 to codify the definition of “egregious” violations of the HMSA given by FSIS Directive 6900.2, rev.2;
3. Amend 9 C.F.R. § 500 to provide that FSIS “will” issue a Notice of Suspension for all “egregious” violations of the HMSA, as defined in 9 C.F.R. § 313;
4. Amend 9 C.F.R. § 500 to require that all intentional cruelty, as well as especially egregious and reckless abuse, be referred for criminal prosecution;
5. Amend 9 C.F.R. § 500 to provide FSIS with a timeline for withdrawal proceedings based on repetitive HMSA violations.

## **II. LEGAL BACKGROUND OF THE HMSA AND FMIA**

The Humane Methods of Livestock Slaughter Act established a national policy that requires livestock to be handled and slaughtered only by the “most humane practicable methods.”<sup>1</sup> The HMSA, which is incorporated in the FMIA,<sup>2</sup> authorizes and instructs FSIS to appoint inspectors to enforce the humane handling regulations at slaughter facilities and allows the Secretary of Agriculture (Secretary) to refuse inspection at slaughter establishments that do not comport with the HMSA.<sup>3</sup>

The HMSA minimizes the potential for injury and disease to livestock by standardizing the design of holding pens and equipment, regulating the handling of animals prior to slaughter, and requiring various stunning methods.<sup>4</sup> Non-ambulatory disabled livestock, or so-called “downer” cows, must be separated from animals that can walk and must not be dragged, pushed with equipment, or otherwise treated inhumanely.<sup>5</sup> Downer adult cattle that are presented for slaughter must be condemned and humanely euthanized to prevent the spread of foodborne illness.<sup>6</sup>

There are numerous ways FSIS inspectors can enforce humane handling regulations. First, FSIS can take remedial regulatory control action to correct violations by slowing or suspending the slaughter line, rejecting equipment or facilities, or refusing to allow the processing of certain products.<sup>7</sup> Second, it is directed to issue a Noncompliance Record (NR)

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<sup>1</sup> H.R. REP. NO. 85-706, at 4 (1957); *see also* 7 U.S.C. § 1902 (“No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane.”).

<sup>2</sup> 21 U.S.C. § 601 et seq.

<sup>3</sup> 92 Stat. 1069 (1978) (codified at 21 U.S.C. § 603(b)).

<sup>4</sup> 9 C.F.R. § 313 et seq.

<sup>5</sup> *Id.* at § 313.2(d).

<sup>6</sup> *Id.* at § 309.3(e).

<sup>7</sup> 9 C.F.R. §§ 500.1(a), 500.2(a)(4).

where abuse of animals is illegal.<sup>8</sup> Third, it can temporarily suspend inspections, which have the effect of halting the slaughter line.<sup>9</sup> Lastly, for particularly egregious offenses, FSIS can refer violations to federal authorities for criminal prosecution that may result in a fine and/or imprisonment.<sup>10</sup>

### III. **FOODBORNE ILLNESS ASSOCIATED WITH LIVESTOCK PRESENTS A SIGNIFICANT THREAT TO PUBLIC HEALTH**

Each year, 3000 American consumers are killed by foodborne illness.<sup>11</sup> Contaminated beef products are particularly to blame: *E. coli* in beef was the leading cause of death associated with foodborne illness in 2009 and 2010.<sup>12</sup>

Even when not deadly, foodborne illness associated with beef products is a serious threat to public health. Each year 47.8 million people—one in six Americans—are sickened by foodborne illnesses, and 128,000 are hospitalized.<sup>13</sup> The annual U.S. economic loss from just the resulting medical costs and loss of productivity is over \$77 billion.<sup>14</sup> Even mild cases often involve five to seven days of severe stomach cramps, diarrhea (often bloody), fever, and vomiting.<sup>15</sup> Some cases cause serious long-term effects such as chronic arthritis and brain and nerve damage.<sup>16</sup> Infections can be severe or even life-threatening.<sup>17</sup> For example, 5 to 10% of individuals struck by *E. coli* develop hemolytic uremic syndrome (HUS), a type of kidney failure that can result in serious long-term damage or death.<sup>18</sup>

Beef products, alongside poultry, are principally to blame for foodborne illness outbreaks.<sup>19</sup> In 2009 and 2010, beef and poultry were respectively the first and fourth commodities most often implicated in outbreaks attributed to a commodity food.<sup>20</sup> Ground beef follows chicken as the second most common source of meat- and poultry-related outbreaks

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<sup>8</sup> FSIS Directive 6900.2, Revision 2, Humane Handling and Slaughter of Livestock, at 21 (III.B & III.D) (Aug. 15, 2011), available at <http://www.fsis.usda.gov/wps/wcm/connect/2375f4d5-0e24-4213-902d-d94ee4ed9394/6900.d.pdf?MOD=AJPERES>.

<sup>9</sup> 21 U.S.C. § 603(b).

<sup>10</sup> 21 U.S.C. § 676.

<sup>11</sup> Ctrs. for Disease Control & Prevention (CDC), *2011 Estimates of Foodborne Illness in the United States*, <http://www.cdc.gov/foodborneburden/2011-foodborne-estimates.html> (last visited Sep. 22, 2015).

<sup>12</sup> CDC, *Tracking and Reporting Foodborne Disease Outbreaks*, <http://www.cdc.gov/features/dsfoodborneoutbreaks/> (last visited Sep. 22, 2015).

<sup>13</sup> CDC, *2011 Estimates of Foodborne Illness in the United States*, *supra* note 11.

<sup>14</sup> Helena Bottemiller, *Annual Foodborne Illnesses Cost \$77 Billion, Study Finds*, Food Safety News (Jan. 3, 2012), <http://www.foodsafetynews.com/2012/01/foodborne-illness-costs-77-billion-annually-study-finds/#.UDU4Isx5XIN> (last visited Sep. 22, 2015).

<sup>15</sup> U.S. Food & Drug Admin. (FDA), *Foodborne Illnesses: What You Need to Know*, <http://www.fda.gov/food/resourcesforyou/consumers/ucm103263.htm> (last visited Sep. 22, 2015).

<sup>16</sup> FoodSafety.gov, *Food Poisoning*, <http://www.foodsafety.gov/poisoning/index.html> (last visited Sep. 22, 2015).

<sup>17</sup> CDC, *E. coli (Escherichia coli)*, <http://www.cdc.gov/ecoli/general/> (last visited Sep. 22, 2015).

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

<sup>19</sup> Gretchen Goetz, *11 Years of Data Show Poultry, Fish, Beef Have Remained Leading Sources of Food-Related Outbreaks*, Food Safety News (June 28, 2013), <http://www.foodsafetynews.com/2013/06/20-years-of-foodborne-illness-data-show-poultry-fish-beef-continue-to-be-leading-sources-of-outbreaks/#.UpUjJOKkGil> (last visited Sep. 22, 2015).

<sup>20</sup> CDC, *Tracking and Reporting Foodborne Disease Outbreaks*, *supra* note 12.

reported to the Centers for Disease Control and Prevention (CDC), due to contamination with *Salmonella* and *E. coli*.<sup>21</sup>

In terms of foodborne illness, the practices that take place in slaughter houses that allow contaminated products to enter our food supply are at best dangerous and at worst deadly. Proper enforcement of the HMSA in order to prevent food safety violations is paramount to protecting public health.

**a. Incidences of Foodborne Illness are Closely Connected to Animal Welfare at Slaughter Houses**

The connections between foodborne illness and the conditions in animal factories are obvious and well-documented. By some estimates, 78% of beef eaten in the U.S. comes from animal factories.<sup>22</sup> As a result, how livestock are raised and slaughtered in these plants has direct and serious effects on the safety of our nation's food supply and our overall public health.

One of the most significant food-related threats to public health comes from non-ambulatory livestock. Every year an estimated 195,000 to 1.8 million cattle collapse for a variety of metabolic, infectious, toxic, and/or musculoskeletal reasons.<sup>23</sup> When downer cows are slaughtered, there is an increased risk that mad cow disease, *Salmonella*, and *E. coli* will contaminate the food supply.

**i. Mad Cow Disease**

A cow's inability to walk or stand may indicate possible contamination with bovine spongiform encephalopathy (BSE or "mad cow disease"). People who eat meat from BSE-infected animals can contract the human version of BSE, which slowly eats holes in the brain over a matter of years.<sup>24</sup> The disease invariably results in dementia and death.<sup>25</sup> There is no known cure, treatment, or vaccine.<sup>26</sup> Even worse, consumers have no way to protect themselves once infected meat enters the food supply because cooking does not adequately destroy

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<sup>21</sup> Sarah Klein and Caroline Smith DeWaal, *Risky Meat: A CSPI Field Guide to Meat and Poultry Safety*, at 8-9 (2013), available at [http://cspinet.org/foodsafety/PDFs/RiskyMeat\\_CSPI\\_2013.pdf](http://cspinet.org/foodsafety/PDFs/RiskyMeat_CSPI_2013.pdf).

<sup>22</sup> Nil Zacharias, *It's Time to End Factory Farming*, Huffington Post (Oct. 19, 2011), [http://www.huffingtonpost.com/nil-zacharias/its-time-to-end-factory-f\\_b\\_1018840.html](http://www.huffingtonpost.com/nil-zacharias/its-time-to-end-factory-f_b_1018840.html) (last visited Sep. 22, 2015).

<sup>23</sup> U.S. Dep't of Agric. (USDA) Office of the Inspector Gen. (OIG), Audit Report: Animal and Plant Health Inspection Service and Food Safety and Inspection Service: bovine spongiform encephalopathy (BSE) surveillance program—Phase I (Aug. 18, 2004), available at [www.oig.usda.gov/webdocs/50601-9-final.pdf](http://www.oig.usda.gov/webdocs/50601-9-final.pdf); Sparks Cos., Inc., *Livestock mortalities: methods of disposal and their potential cost* (Mar. 2002), available at [http://assets.nationalrenderers.org/mortalities\\_final.pdf](http://assets.nationalrenderers.org/mortalities_final.pdf); C.L. Stull et al., *A review of the causes, prevention, and welfare of nonambulatory cattle*, 231 J. of the Am. Vet. Med. Assoc. 227, 227-34 (2007).

<sup>24</sup> Ctr. for Food Safety (CFS), *About Mad Cow Disease*, <http://www.centerforfoodsafety.org/issues/1040/mad-cow-disease/about-mad-cow-disease> (last visited Sep. 22, 2015).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

infectious proteins; in fact, there is evidence that the proteins can survive incineration at temperatures hot enough to melt lead.<sup>27</sup>

As the United States Food and Drug Administration (FDA) has recognized, “non-ambulatory disabled cattle . . . are the population at greatest risk for harboring BSE.”<sup>28</sup> BSE is thought to occur spontaneously, but spreads when parts of infected cattle—including trimmings from the killing floor, inedible parts and organs, cleaned entrails, and fetuses—are included in rendered meat products that are fed to dairy cows for protein.<sup>29</sup> “BSE can result in an animal going down either directly, because of brain damage, or indirectly, by predisposing the animal to injury.”<sup>30</sup>

Tissue from BSE-infected animals can be introduced into the food supply in several ways: muscle meat can be contaminated via aerosolization of the spinal cord during carcass splitting; central nervous system debris can accumulate in the split saws used to halve carcasses, which can then spread the contagion from one carcass to the next; or cheek meat can be contaminated if it is not removed before the skull of an animal with infected brain tissue is fragmented or split.<sup>31</sup> Additionally, captive bolt stunning may blow brain tissue onto slaughter plant equipment, workers’ hands and aprons, and into an animal’s bloodstream, which has the potential to disseminate the pathogen throughout the animal’s body.<sup>32</sup>

For these reasons, it is essential that the meat from BSE-infected animals be kept out of the food supply. When infected animals are forcibly brought to slaughter despite signs of being unfit for human consumption, the public is put in danger of contracting mad cow disease. Federal regulations<sup>33</sup> require BSE-infected animals to be slaughtered separately and condemned as unfit for human food. If FSIS enacted the specific recommendations requested in Farm Sanctuary’s

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<sup>27</sup> P. Brown, *Resistance of scrapie infectivity to steam autoclaving after formaldehyde fixation and limited survival after ashing at 360 degrees C: practical and theoretical implications*, 161 *J. of Infectious Diseases* 467, 467-72 (1990).

<sup>28</sup> Use of Materials Derived From Cattle in Human Food and Cosmetics, 69 Fed. Reg. 42256, 42259 (proposed July 14, 2004).

<sup>29</sup> CFS, *About Mad Cow Disease*, *supra* note 24; CFS, *Mad Cow Disease Q & A*, <http://www.centerforfoodsafety.org/issues/1040/mad-cow-disease/mad-cow-disease-q-and-a> (last visited Sep. 22, 2015); *see also* Hearing to Discuss the Recent Hallmark/Westland Meat Recall Before the U.S. Senate Comm. on Appropriations, Subcomm. on Agric., Rural Dev., FDA, and Related Agencies, 110th Cong., at 1 (Feb. 28, 2008) (statement of Wayne Pacelle, President & CEO, Humane Society of the United States), *available at* <http://www.humanesociety.org/assets/pdfs/farm/hsus-testimony-senate-ag-approps-hearing-2-28-08.pdf> (citations therein) (hereinafter “Pacelle Testimony”).

<sup>30</sup> Pacelle Testimony, *supra* note 29, at 3.

<sup>31</sup> J. Cohen et al., *Evaluation of the potential for bovine spongiform encephalopathy in the United States* (Nov. 26, 2001), Harvard Ctr. for Risk Analysis & Harvard School of Pub. Health, *available at* <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.319.6152&rep=rep1&type=pdf>; C. R. Helps et al., *Transfer of spinal cord material to subsequent bovine carcasses at splitting*, 67 *J. of Food Prot.* 1921, 1921-26 (2004); USDA Food Safety and Inspection Serv. (FSIS), Current thinking on measures that could be implemented to minimize human exposure to materials that could potentially contain the bovine spongiform encephalopathy agent (Jan. 15, 2002), *available at* [http://www.fsis.usda.gov/Oa/topics/BSE\\_Thinking.pdf](http://www.fsis.usda.gov/Oa/topics/BSE_Thinking.pdf).

<sup>32</sup> D. M. Prendergast et al., *Dissemination of central nervous system tissue during the slaughter of cattle in three Irish abattoirs*, 154 *Veterinary Record* 21, 21-24 (2004).

<sup>33</sup> *See* 9 C.F.R. §§ 309.3, 309.13.

petition and this letter of support, then the inhumane methods of slaughtering that lead to the food safety violations described in this section would be less likely to occur.

## ii. *Salmonella* and *E. coli* Contamination

Non-ambulatory cattle that may otherwise appear healthy are still at increased risk of contamination with *Salmonella* and *E. coli*.<sup>34</sup> This is true for several reasons. First, these animals spend more time lying down, which increases the likelihood they will be contaminated with fecal matter.<sup>35</sup> Second, stressed animals are more likely to shed pathogens in large numbers.<sup>36</sup> Third, because starvation causes *E. coli* and *Salmonella* to proliferate, non-ambulatory animals that are often left to starve for extended periods before slaughter may be more likely to shed pathogenic bacteria.<sup>37</sup>

Dairy cattle, specifically, may harbor greater numbers of pathogens, and their slaughter may increase spread of pathogens at slaughter plants.<sup>38</sup> Multiple outbreaks of a multi-drug resistant strain of *Salmonella* have been tied to ground beef made from dairy cows.<sup>39</sup> Non-ambulatory cows have been found to be 3.3 times more likely to harbor *E. coli* than ambulatory dairy cows.<sup>40</sup> As with BSE, “[d]ue to the ubiquity of *E. coli* O157:H7 among cattle, as well as its low infective dose and the severity of the resistant illness in humans, effective control of the pathogen may be possible *only* by eliminating [it] at its source.”<sup>41</sup>

If FSIS adopted the recommendations in Farm Sanctuary’s petition to codify enforcement of inhumane handling and slaughtering, it would prevent inspectors from ignoring federal food safety laws that require pathogen-laden non-ambulatory cows to be kept out of the food supply. Cattle carry *E. coli* in their intestinal tract and on their hides.<sup>42</sup> Intestinal bacteria can be transferred to the animal carcass during slaughter, and bacteria on animal hides can become airborne and settle onto exposed meat if hides are improperly removed.<sup>43</sup> Even a single food safety violation during slaughter and processing of *E. coli*-infected cattle can contribute greatly to the onset and spread of foodborne illness. Because a single hamburger can be made from hundreds or even thousands of different cows,<sup>44</sup> it is “possible that, whereas in the past an

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<sup>34</sup> See J. F. Edwards et al., *A bacteriologic culture and histologic examination of samples collected from recumbent cattle at slaughter*, 207 J. of the Am. Vet. Med. Assoc. 1174, 1174-76 (1995).

<sup>35</sup> T. Grandin, *A.M.I. Sponsors Stunning and Handling Conference*, Meat & Poultry 48-49 (Mar. 1999).

<sup>36</sup> J. S. Spika et al., *Chloramphenicol-resistant Salmonella newport traced through hamburger to dairy farms: a major persisting source of human salmonellosis in California*, 316 New Eng. J. Med. 565, 565-70 (1987).

<sup>37</sup> Pacelle Testimony, *supra* note 29, at 8 (citing G. L. Armstrong et al., *Emerging foodborne pathogens: Escherichia coli O157:H7 as a model of entry of a new pathogen into the food supply of the developed world*, 18 Epidemiologic Revs. 29, 29-51 (1996)).

<sup>38</sup> M. J. Vanbaale et al., *A survey of dairy producer practices and attitudes pertaining to dairy market beef food safety*, 23 Food Prot. Trends 466, 466-73 (2003).

<sup>39</sup> A. Gupta et al., *Emergence of multidrug-resistant Salmonella enterica serotype Newport infections resistant to expanded-spectrum cephalosporins in the United States*, 188 J. of Infectious Diseases 1707, 1707-16 (2003).

<sup>40</sup> C. M. Byrne et al., *Characterization of Escherichia coli O157:H7 from downer and healthy dairy cattle in the upper Midwest region of the United States*, 69 Applied & Env'tl. Microbiology 4683, 4683-88 (2003).

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

<sup>42</sup> Klein et al., *supra* note 21, at 9.

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

<sup>44</sup> Pub. Broad. Serv., *Modern meat: interview with Dr. Robert Tauxe*, Frontline (Apr. 18, 2002), available at

infected animal would produce only a small number of cases, such an animal could now cause a large, widespread outbreak.”<sup>45</sup> A single downed cow infected with a pathogen such as *E. coli* could contaminate more than 100,000 hamburgers with an infectious dose.<sup>46</sup> Therefore, when slaughterhouses violate food safety regulations or FSIS fails to properly enforce the HMSA, there is an increased risk of foodborne illness.

#### IV. FSIS’S HISTORY OF FAILING TO ENFORCE THE HMSA

Despite FSIS’s broad authority established by the HMSA and FMIA, FSIS has a history of failing to meet its statutory obligations, as indicated by government reports and undercover investigations.

##### a. Hallmark/Westland Slaughterhouse Investigation

The inadequacy of the government to protect the public from foodborne illness associated with inhumane handling and slaughter of beef was illustrated by a 2007 investigation conducted by the Humane Society of the United States (HSUS) at a California slaughter plant operated by Hallmark/Westland. Downer cattle—cows too sick or injured to rise from a recumbent position on their own—are more likely to be contaminated than ambulatory cattle because the inability to walk or stand indicates possible bacterial infection, including infection from mad cow disease.<sup>47</sup> For approximately six weeks the HSUS inspector documented and filmed “egregious” violations of federal regulations regarding downer cattle, among other violations.<sup>48</sup> The investigator filmed non-ambulatory cows being kicked, jabbed in the eyes, electrically shocked in sensitive areas, sprayed with high-pressure hoses, and rammed with the blades of a forklift by plant employees in an attempt to force crippled animals to walk to slaughter.<sup>49</sup> Due to the appalling nature of these acts, USDA amended regulations implementing the HMSA to require establishment personnel to notify FSIS inspectors when cattle become non-ambulatory.<sup>50</sup> Furthermore, non-ambulatory animals must now be separated and condemned to prevent the spread of foodborne illness.<sup>51</sup>

The HSUS investigation ultimately led Congress, USDA, and the public to question how such events could have occurred at a slaughter plant that was under inspection by FSIS. When FSIS’s failure to properly inspect slaughter facilities causes non-ambulatory animals to enter the food supply, there is an enormous threat to public health from bacterial contamination. In the USDA OIG’s audit of Hallmark following HSUS’s investigation, OIG found that “there were deliberate actions by Hallmark personnel to bypass required inspections, as well as

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<http://www.pbs.org/wgbh/pages/frontline/shows/meat/interviews/tauxe.html>.

<sup>45</sup> Pacelle Testimony, *supra* note 29, at 8 (citing G. L. Armstrong et al., *Emerging foodborne pathogens: Escherichia coli O157:H7 as a model of entry of a new pathogen into the food supply of the developed world*, 18 *Epidemiologic Revs.* 29, 29-51 (1996)).

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

<sup>47</sup> USDA, OIG, Audit Report: Evaluation of FSIS Management Controls Over Pre-Slaughter Activities, at i, iii (Nov. 2008), available at <http://www.usda.gov/oig/webdocs/24601-07-KC.pdf> (hereinafter “Audit Report”).

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

<sup>49</sup> *Id.*; see also Pacelle Testimony, *supra* note 29, at 8.

<sup>50</sup> 9 C.F.R. § 309.3(e).

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

noncompliance with required inspection procedures by FSIS in-plant staff.”<sup>52</sup> OIG concluded that “there is an inherent vulnerability that humane handling violations can occur and not be detected by FSIS inspectors.”<sup>53</sup> OIG’s audit of Hallmark resulted in the recall of 143 million pounds of raw and frozen beef products due to the possibility that the beef could cause adverse health effects if consumed.<sup>54</sup> USDA could not deny its failures with regard to the Hallmark plant.

## **b. Continued Failure Documented by GAO**

In March 2010, three years after the Hallmark investigation, GAO issued a report that catalogued the ongoing problems in HMSA enforcement.<sup>55</sup> GAO’s survey of FSIS inspectors revealed that inspectors were not taking consistent actions to enforce the HMSA and specifically indicated the lack of enforcement regarding humane handling violations.<sup>56</sup> FSIS guidance dating back to 2005 requires suspension of a slaughter house for “egregious” violations, including when an animal is not rendered insensible through an acceptable stunning violation.<sup>57</sup> This is particularly important because captive bolt stunning—the predominant method used to render cattle insensible before blood draining—has the potential to disseminate the mad cow disease pathogen throughout the animal’s body, which poses a danger to public health.<sup>58</sup> Despite that guidance, GAO’s survey found that only “twenty three percent of inspectors reported they would suspend operations for multiple unsuccessful stuns with a captive bolt gun whereas twenty-seven percent reported they would submit a noncompliance report.”<sup>59</sup> This information illustrates that less than a quarter of inspectors would suspend a plant, even though suspension is required, and half of inspectors would not even issue an NR, despite guidance that NRs must be written for all HMSA violations.<sup>60</sup> GAO recognized that inspectors were not properly applying their discretion regarding what actions to take when egregious inhumane incidents occur.<sup>61</sup> In response to the erratic enforcement, GAO recommended that discretion needs to be informed by a clear “agency policy that ensures a consistent level of enforcement within plants and across districts.”<sup>62</sup> The report ultimately concluded that the “lack of consistency in enforcement may be due in part to the lack of clarity in current FSIS guidance and inadequate training.”<sup>63</sup>

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<sup>52</sup> Audit Report, *supra* note 47, at iii.

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

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

<sup>55</sup> GAO Report to Congressional Requesters, Humane Methods of Slaughter Act: Actions Are Needed to Strengthen Enforcement (Feb. 2010), available at <http://www.gao.gov/assets/310/300921.pdf>.

<sup>56</sup> *Id.* at cover page.

<sup>57</sup> FSIS Directive 6900.2, *supra* note 8, at 19 (“When [Inspection Program Personnel] observe a noncompliance that causes injury and distress and is of an egregious nature . . . the [Inspector In Charge] is to take a regulatory control action and recommend that an immediate suspension of operations per 9 CFR 500.3(b) be taken”); see also section VII.C.2.

<sup>58</sup> D. M. Prendergast et al., *supra* note 32; R. R. Coore et al., *Dissemination of brain emboli following captive bolt stunning of sheep: capacity for entry into the systemic arterial circulation*, 67 J. of Food Prot. 1050, 1050-52 (2004); T. Garland, *Brain emboli in the lungs of cattle after stunning*, 348 Lancet 610 (1996); D. J. Daly et al., *Use of a marker organism to model the spread of central nervous system tissue in cattle and the abattoir environment during commercial stunning and carcass dressing*, 68 Applied & Env'tl. Microbiology 791, 791-98 (2002).

<sup>59</sup> GAO Report, *supra* note 55, at cover page.

<sup>60</sup> FSIS Directive 6900.2, *supra* note 8, at 21.

<sup>61</sup> GAO Report, *supra* note 55, at 38-39.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at cover page.

## V. ACTION REQUESTED

In order for USDA to meet its statutory obligations under the HMSA and FMIA and to protect the public from foodborne illness, CFS requests that USDA adopt the five changes to the Code of Federal Regulations outlined in Farm Sanctuary's Petition.

### a. Amend 9 C.F.R. § 500 to Provide that FSIS “Will” Issue at Least a Noncompliance Record (NR) for all Violations of the HMSA.

The plain text of the HMSA requires the humane treatment of animals. Furthermore, the FMIA lists the slaughtering or handling in connection with slaughter of “any animals in any manner not in accordance with” the HMSA as a “Prohibited Act.” When FSIS routinely fails to enforce the regulations requiring non-ambulatory cattle to be separated and condemned, FSIS is in violation of its statutory obligation and places the public in danger of contracting a foodborne illness.

It is clear from the plain text of the HMSA, its regulations, and FSIS's own view on the subject, that inspectors should not be allowed to take a discretionary approach in deciding what constitutes a violation. FSIS's own directive requires NRs for non-egregious violations of the law and suspensions for egregious ones.<sup>64</sup> In order to comply with its statutory duty to enforce the HMSA, as well as its own directive, FSIS needs to make enforcement standards for NRs and Suspensions mandatory through appropriate regulatory codification.

Clear enforcement rules are necessary because the inconsistency and lack of enforcement described above increases the risk that contaminated meat will enter the food supply. Directive 6900.2, rev. 2 repeatedly states that inspectors are to issue an NR for all non-egregious violations of the HMSA.<sup>65</sup> Nonetheless, the current discretionary approach creates confusion amongst inspectors regarding what the HMSA requires. A codified rule requiring FSIS inspectors to issue a noncompliance report for all violations will standardize the enforcement process and help prevent foodborne illness.

### b. Amend 9 C.F.R. § 313 to Codify the Definition of “Egregious” Violations of the HMSA Given by FSIS Directive 6900.2, rev. 2.

The definition of “egregious” inhumane handling or treatment was provided in the 2005 FSIS directive.<sup>66</sup> The directive states “a[n] egregious situation is any act that is cruel to animals or a condition that is ignored and leads to the harm of animals,” such as “excessive beating or prodding of ambulatory or non-ambulatory disabled animals or dragging of conscious animals.”<sup>67</sup>

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<sup>64</sup> FSIS Directive 6900.2, *supra* note 8, at 21.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 19.

<sup>67</sup> *Id.* at 2-3.

The definition of “egregious” should be codified in the HMSA regulations to standardize enforcement action and prevent inspectors from making arbitrary and inconsistent decisions in response to clear violations. The broad nature of the definition has led inspectors to ignore it entirely and thus fail to take the proper enforcement responses. This in turn leads to increased risk of foodborne illness because downer cattle are slaughtered and circulated into the food supply without repercussions. A clear rule will lead to consistent enforcement of the HMSA and its regulations, which will help prevent exposure from contaminated meat to the public.

**c. Amend 9 C.F.R. § 500 to provide that FSIS “Will” Issue a Notice of Suspension for all “Egregious” Violations of the HMSA, as Defined in 9 C.F.R. § 313.**

A mandatory response to specific violations is required to ensure consistent enforcement of the HMA. This is particularly important with regards to “egregious” violations, such as prodding non-ambulatory animals to force them to slaughter. These actions are not only cruel, but also give rise to the grave potential that contaminated meat from downer cattle will enter the market place.

The directive states explicitly that “[w]hen [Inspection Program Personnel] observe a noncompliance that causes injury and distress and is of an egregious nature . . . the [Inspector in Charge] is to take a regulatory control action and recommend that an immediate suspension of operations per 9 C.F.R. § 500.3(b) be taken.”<sup>68</sup> This directive should be codified into regulation to ensure that a slaughterhouse’s operations will be suspended until the “egregious” violations that may lead to foodborne illnesses cease. This will have a deterrent effect to stop the violations before they occur, as well as prevent the slaughter of non-ambulatory animals once a violation becomes apparent.

**d. Amend 9 C.F.R. § 500 to Require that All Intentional Cruelty, as Well as Especially Egregious and Reckless Abuse, Be Referred for Criminal Prosecution.**

USDA has the power to enforce the HMSA with criminal sanctions, and it should do so to deter egregious and reckless abuse that leads to the spread of foodborne illness. FSIS Directive 6910.1 gives explicit authority to the District Veterinary Medical Specialists (DVMS) to contact the District Manager and potentially initiate a criminal investigation whenever it collects information establishing a knowing or willful inhumane practice or mistreatment of live animals.<sup>69</sup> Egregious abuses documented by undercover investigators at USDA-inspected plants, as well as the many and repeated violations by FSIS itself, have never resulted in federal prosecution. USDA should require that all intentional cruelty, as well as especially egregious and reckless abuse, be referred for criminal prosecution to deter slaughterhouses from circumventing the law and protect the public from contaminated meat.

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<sup>68</sup> *Id.* at 9.

<sup>69</sup> Directive 6910.1, Revision 1, District Veterinary Medical Specialist (DVMS)—Work Methods, at 20 (Dec. 7, 2009), *available at* <http://www.fsis.usda.gov/wps/wcm/connect/fefdbb5b-e7d4-49a6-88e0-85890dff6cbe/6910.1Rev1.pdf?MOD=AJPERES>.

**e. Amend 9 C.F.R. § 500 to Provide FSIS with a Timeline for Initiating Withdrawal Proceedings Based on Repetitive Violations.**

FSIS should adopt regulations in 9 C.F.R. § 500 to provide that three violations of the HMSA that are egregious or intentional in a one-year period will result in a plant's having its grant of federal inspection revoked. This type of established process will put facilities on notice regarding the consequences of inhumane slaughter and treatment and help prevent contaminated meat from entering the food supply.

In OIG's 2013 analysis of FSIS oversight regarding food safety, it noted that plants "repeatedly violated the same regulations with little or no consequence."<sup>70</sup> OIG noted that over the four years of its review, FSIS did not withdraw a grant of federal inspection even once.<sup>71</sup> OIG recommended that FSIS "develop a strategy to take progressively stronger enforcement action against plants with serious or repetitive violation . . . [and] define the frequency and specify the timeframes when violations lead to such enforcement action."<sup>72</sup> This section of the report was focused on food safety, highlighting the importance of withdrawing federal inspection to prevent foodborne illness from plants that consistently fail to practice humane slaughter methods. It is necessary to revoke grants of federal inspection from plants that repeatedly violate the law to ensure that contaminated or infected meat never enters the market.

**VI. CONCLUSION**

The humane treatment of animals before and during slaughter is essential to a safe and healthy food system. When the HMSA is violated, particularly with regard to non-ambulatory animals, there is an increased risk of contamination with foodborne illness. FSIS is charged with ensuring compliance with the HMSA; however, reports from OIG and GAO, undercover investigations, and FSIS's own humane enforcement records, indicate that FSIS inspectors routinely fail to enforce violations of the HMSA or do so inconsistently and arbitrarily. The proposed regulatory changes will increase compliance with the HMSA, thereby protecting the public from the potential dangers of foodborne illness. For the reasons described herein, CFS respectfully requests that FSIS grant Farm Sanctuary's petition.

Respectfully Submitted,



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Legal Fellow

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<sup>70</sup> USDA OIG, Food Safety and Inspection Service—Inspection and Enforcement Activities at Swine Slaughter Plants, at 4 (May 2013), available at <http://www.usda.gov/oig/webdocs/24601-0001-41.pdf>.

<sup>71</sup> *Id.* at 5.

<sup>72</sup> *Id.* at 9.