



# Nonambulatory Livestock and the Humane Methods of Slaughter Act

**name redacted**

Specialist in Agricultural Policy

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## Summary

Revelations in early 2008 that cattle were mistreated at a California slaughter plant raised questions about enforcement of the Humane Methods of Slaughter Act. Evidence emerged that the plant had permitted nonambulatory (“downer”) cattle to be slaughtered for human food, also potentially jeopardizing food safety. The U.S. Department of Agriculture (USDA) announced the largest meat recall ever, alerted school food authorities to destroy any unconsumed products from the plant, and launched an investigation. Since then, animal welfare activists have alleged additional cases of mistreatment at livestock markets. The 110<sup>th</sup> Congress responded with hearings and proposals to alter current policy, but no statutory changes were enacted.

In the 111<sup>th</sup> Congress, the Senate-passed version of the American Recovery and Reinvestment Act of 2009 (H.R. 1) included a provision to permanently prohibit the use of federal funds for inspecting any nonambulatory disabled cattle for use as human food, regardless of the reason or time the animal became nonambulatory. (Uninspected cattle cannot enter the food supply.) However, the provision was removed by House-Senate conferees prior to final enactment (as P.L. 111-5); the House version lacked the provision. Additional bills are possible in the 111<sup>th</sup> Congress.

Meanwhile, USDA published a final rule in the March 18, 2009, *Federal Register* that now specifically requires cattle slaughter establishments to notify FSIS inspectors when cattle become nonambulatory disabled even if they have already passed ante-mortem inspection; all such cattle must be condemned (diverted from the human food supply) and properly disposed of. USDA already was condemning them if they were nonambulatory at the time of ante-mortem inspection, as a safeguard against the introduction into the human food supply of the agent that causes bovine spongiform encephalopathy (BSE, or “mad cow disease”).

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## Background

On February 17, 2008, USDA announced that Hallmark/Westland Meat Packing Co. of California was recalling 143 million pounds of fresh and frozen beef products dating to February 1, 2006. About 50 million pounds were distributed to the school lunch and other federal nutrition programs in at least 45 states. This largest U.S. meat recall ever came after USDA's Food Safety and Inspection Service (FSIS) found that the facility did not always notify it about cattle that had become nonambulatory after they had been inspected, but before slaughter for food. FSIS rules prohibit most nonambulatory cattle because they are more likely to have bovine spongiform encephalopathy (BSE).

The recall was so-called Class II, indicating a remote possibility that the products could cause adverse health effects, but USDA said the recall was necessary because its rules deem the animals unfit for human food. (Most large recalls have been Class I, with a reasonable probability of serious health consequences or death.) Officials asserted, however, that findings of BSE are extremely rare in the United States and cited the effectiveness of other BSE safeguards—including a ban on feeding most cattle parts back to cattle, and the removal of potentially infectious material from all older animals. They said most of the recalled beef likely had been consumed, and that school and other domestic feeding sites had been instructed to hold and destroy all remaining products.

The agency suspended inspection at the plant, which was not expected to reopen, on February 4, 2008, three days after it voluntarily ceased operations. The matter came to light when the Humane Society of the United States (HSUS) released videotapes of what it described as employees inhumanely handling downer cattle before slaughter.<sup>1</sup> USDA inspectors reportedly had failed to detect that these animals became nonambulatory after they received antemortem inspection—causing some to question the use or effectiveness of recent increased appropriations from Congress for more aggressive enforcement of the federal Humane Methods of Slaughter Act (HMSA; 7 U.S.C. §§ 1901 *et seq.*).

In early May 2008, HSUS notified the Secretary of Agriculture that it had collected new evidence of abuse of nonambulatory cows and pigs at livestock auction markets in Maryland, Pennsylvania, New Mexico, and Texas. HSUS asserted that mistreatment of so-called downers is “systemic” and not limited to slaughterhouses.<sup>2</sup> USDA promised to address the allegations. The Livestock Marketing Association (LMA) issued a statement arguing that the “overwhelming majority” of its members humanely handle their animals out of “both a humane, and economic necessity” and cited its work with the industry to ensure proper handling, but criticized HSUS for promoting an anti-meat agenda.<sup>3</sup>

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<sup>1</sup> HSUS said it randomly selected the plant for its undercover operation. Several Members of Congress in turn criticized the Society for waiting four months to reveal the problem. Information and updates on the Hallmark situation were accessed in December 2008 from USDA's website at [http://www.usda.gov/wps/portal/tut/p/\\_s.7\\_0\\_A/7\\_0\\_10B?contentidonly=true&contentid=usda\\_actions.xml](http://www.usda.gov/wps/portal/tut/p/_s.7_0_A/7_0_10B?contentidonly=true&contentid=usda_actions.xml). For the impact on schools, see March 4, 2008, testimony before the House Education and Labor Committee, at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_house\\_hearings&docid=f:40944.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:40944.pdf).

<sup>2</sup> HSUS, “Expanded Undercover Investigation Shows Mistreatment of Downer Cows Is Commonplace at Livestock Auctions,” accessed December 2008 at [http://hsus.org/farm/news/ournews/downer\\_investigation\\_050708.html](http://hsus.org/farm/news/ournews/downer_investigation_050708.html).

<sup>3</sup> Statement by LMA President Jim Santomaso, accessed May 8, 2008, at <http://www.lmaweb.com/>.

HSUS called for expanded government oversight of animal handling throughout the marketing chain. It also criticized USDA for not fulfilling a requirement in § 10815 of P.L. 107-171, the 2002 farm bill, for a report to Congress on the scope, causes, and treatment of nonambulatory livestock, and for humane handling regulations if the report deems them necessary. USDA noted that it had collected and published data on the number of such livestock and was completing work on causes and handling practices regarding dairy cattle, to appear in a peer-reviewed journal in 2008.<sup>4</sup>

## Inspection Basics

Federal law requires FSIS inspectors to be present at all times meat and poultry slaughter plants are operating. Among other requirements, an inspector must observe every live animal before slaughter, both at rest and in motion, to detect signs of any disease or health problems that might render the animal unfit for human food. Plants must notify FSIS when animals first arrive, and the “antemortem” inspection is to be conducted on the day of their slaughter. Although inspectors are not stationed in the antemortem areas for the entire day, they are to return randomly after initial inspection to verify proper handling of the animals. This contrasts with “postmortem” inspection, where inspectors are stationed constantly along the processing lines inside the slaughter plants to examine each carcass and monitor other processing activities.<sup>5</sup>

## The Humane Methods of Slaughter Act

The HMSA’s key provision states: “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 ... [meaning] ... (a) 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>6</sup>

To implement the act, FSIS issued regulations (at 9 C.F.R. parts 313 and 500), and a directive (6900.2) for inspection personnel covering the proper maintenance of pens and rampways; how to handle livestock during unloading and movement to the stunning area, including the use of electric prods and other instruments; and the methods of stunning the animals. For each, the directive spells out how personnel are to verify compliance and specifically what to do if there is noncompliance. There are approximately 6,200 federally inspected meat and poultry slaughtering and processing establishments. More than 900 of them slaughter livestock and all are subject to

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<sup>4</sup> May 12, 2008, e-mail communication, USDA-APHIS Legislative and Public Affairs Office. The dairy cattle research has since been published; see A. L. Green and others, “Factors Associated with Occurrence and Recovery of Nonambulatory Dairy Cows in the United States,” *Journal of Dairy Science*, 2008, 91:2275-2283. Also see “USDA Announces Nonambulatory Livestock Study,” March 11, 2005, accessed December 2008, at [http://www.aphis.usda.gov/lpa/pubs/fsheet\\_fa\\_notice/sa\\_ahnonambulatory.pdf](http://www.aphis.usda.gov/lpa/pubs/fsheet_fa_notice/sa_ahnonambulatory.pdf).

<sup>5</sup> Rules on antemortem inspection are at 9 C.F.R. 307.2(a), 309, 310, 311, 321.1(b)(1)(iv), and part 500. FSIS Directive 6100.1, *Antemortem Livestock Inspection*, contains more detailed inspector instructions, including how to deal with nonambulatory disabled animals (see below). For general information on FSIS programs, see CRS Report RL32922, *Meat and Poultry Inspection: Background and Selected Issues*, by (name redacted).

<sup>6</sup> 7 U.S.C. § 1902. The only other accepted method in the law relates to certain Jewish or other religious ritualistic slaughter. Chickens, turkeys, and other poultry are not covered by the act.

the HMSA, according to USDA; approximately 600 of them slaughtered nearly 34 million cattle in 2007.

## **Nonambulatory Disabled Cattle**

Until early 2004, FSIS required that inspectors consider all seriously crippled livestock (cattle and other species) and those commonly known as “downers” to automatically be identified as “U.S. Suspects”—i.e., possibly having a disease or condition that would require their condemnation. FSIS required that an agency veterinarian examine them both before and after slaughter, and that they be slaughtered separately, before being cleared for food. After a cow imported from Canada was found to have BSE in late 2003, FSIS issued a number of rules aimed at keeping BSE-infected beef from entering the food supply, including a prohibition on the slaughter of any nonambulatory cattle, regardless of the reason, or of when they became disabled.

Specifically, an interim final rule on January 12, 2004 (69 *Federal Register* p. 1873), stated, “non-ambulatory disabled cattle shall be condemned and disposed of” in accordance with other FSIS regulations, including that they be humanely euthanized. The interim rule also for the first time explicitly defined nonambulatory disabled livestock to be those “that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic condition.” FSIS based this rule change on findings in Europe, where BSE was far more prevalent, that nonambulatory cattle were much more likely to harbor the BSE agent than ambulatory cattle, and that “typical clinical signs associated with BSE cannot always be observed in non-ambulatory cattle infected with BSE because the signs of BSE often cannot be differentiated from the typical clinical signs of the many other diseases and conditions affecting non-ambulatory cattle” (69 *Federal Register* p. 1870).

On July 13, 2007, FSIS modified its rule to say that “FSIS inspection personnel will determine the disposition of cattle that become non-ambulatory after they have passed ante-mortem inspection on a case-by-case basis” (72 *Federal Register* p. 38729). In the preamble to the rule, the agency said a notice to its personnel—issued after the January 2004 interim rule—already was directing FSIS veterinarians to permit such animals to be slaughtered, so long as the veterinarian could verify that the animal had suffered an acute injury (e.g., a broken leg).<sup>7</sup> However, the agency also reaffirmed its earlier findings that BSE clinical signs cannot always be observed in a nonambulatory animal even though BSE was much more prevalent in such animals. Thus, its general ban on their use in food—with this noteworthy exception—would be continued by the final rule.

In an effort they said could help to rebuild market confidence, the American Meat Institute, the National Meat Association, and the National Milk Producers Federation petitioned FSIS on April 22, 2008, to again amend the rules to ban nonambulatory disabled cattle from the meat supply under any circumstances. FSIS published a proposed rule to do so in the August 29, 2008, *Federal Register* with a 30-day public comment period. The final rule was published in final form on March 18, 2009 (74 *Federal Register*, pp. 11463-11466). The rule, effective April 17, 2009, now specifically requires establishments to notify FSIS inspectors when cattle become

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<sup>7</sup> Notice 5-04, *Interim Guidance for NonAmbulatory Disabled Cattle and Age Determination*.

nonambulatory disabled after passing ante-mortem inspection; all such cattle must be condemned and properly disposed of.<sup>8</sup>

In separate state action, the California governor signed into law a bill (A.B. 2098) that imposes a strict prohibition against a slaughterhouse holding a nonambulatory animal (not limited to cattle) without taking immediate action to humanely euthanize it. The bill, effective January 1, 2009, also prohibits stockyards, auctions, market agencies, or dealers from holding a nonambulatory animal without taking immediate action to humanely euthanize the animal or to provide immediate veterinary treatment. Violators are subject to up to one year in jail or a fine of up to \$20,000, or both. The new measure appears intended to strengthen an existing state law on the treatment of nonambulatory animals. Meat industry representatives challenged the new law in federal court (*National Meat Association v. Brown*, No. 1:08-cv-01963-LJO-DLB, California Eastern District), winning a preliminary injunction on February 19, 2009, against the law's enforcement in swine slaughterhouses.<sup>9</sup>

## Critical Views

### OIG Reports

USDA's enforcement both of the ban on nonambulatory cattle and of the humane slaughter law has long been at issue. A January 2006 audit report by the USDA Office of Inspector General (OIG) was highly critical of a number of FSIS antemortem inspection procedures. These included what OIG said was the inconsistent application of procedures: for example, at 2 of 12 slaughter plants OIG visited, 20 of the 29 nonambulatory animals slaughtered were downers "with no documentation of any acute injury."<sup>10</sup>

OIG also reported that, from 1995 until July 2005, when the policy was discontinued, FSIS inspectors in some plants were examining only 5%-10% of live cattle both at rest and in motion; the remainder were observed only at rest. The 33 plants subject to this alternative procedure were to be those with good compliance records that were killing primarily younger domestic animals, not likely to be at risk for BSE. However, due to inadequate enforcement and documentation, some older cattle at these plants did not receive full inspection before slaughter, according to OIG. Since the report, a number of critics continue to assert that the agency's antemortem policies are inconsistently applied and enforced among slaughter plants, and that such inspections often involve only cursory views of animals in large groups, not individually.<sup>11</sup>

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<sup>8</sup> FSIS stated in the rule preamble that it would continue to allow custom operators to slaughter for human food cattle that become nonambulatory disabled if no other condition is observed that would make them unfit for consumption, provided that the animal's products are delivered back to the owner solely for his/her own use.

<sup>9</sup> Additional sources: Bill analysis prepared for an April 1, 2008, hearing by the California Assembly Committee on Public Safety; also, "Meat Industry Seeks to Overturn Calif. Law Barring Sick, Disabled Farm Animals From Food Supply," HSUS press release, January 27, 2009.

<sup>10</sup> USDA, OIG, *Animal and Plant Health Inspection Service - Bovine Spongiform Encephalopathy (BSE) Surveillance Program—Phase II and Food Safety and Inspection Service—Controls Over BSE Sampling, Specified Risk Materials, and Advanced Meat Recovery Products—Phase III*, report no. 50601-10-KC.

<sup>11</sup> Source: February 26, 2008 personal communications with Dr. Linda A. Detweiler, DVM, formerly a BSE expert with USDA's Animal and Plant Health Inspection Service; and Felicia Nestor, Food and Water Watch, a consumer advocacy group, who works with meat inspectors union members.



In November 2008, OIG issued another audit report on what had occurred at Hallmark, whether the events were isolated or systemic, and how effective FSIS's controls were over several other BSE-related safeguards required of plants.<sup>12</sup> In this audit, OIG determined that Hallmark personnel had taken deliberate actions to bypass required inspections, and that FSIS inspectors did not comply with all inspection procedures.

However, after looking at 10 other plants that also slaughter cull cows, the OIG concluded that “nothing came to our attention to indicate that unsuitable animals were passed for slaughter” or that systemic inhumane handling incidents were occurring at these plants. Thus, the events at Hallmark did not represent “a systemic failure of the inspection processes/system as designed by FSIS,” but management controls can be strengthened to minimize such occurrences in the future. These include the need for a supportable, risk-based methodology for assigning inspection staff, a reassessment of the effectiveness of the agency's supervisory processes, improvements in inspection and supervisory staff training, and strengthening of ante-mortem and related inspection procedures, among other things.<sup>13</sup>

## **GAO Report on HMSA Enforcement**

A January 2004 report by the Government Accountability Office (GAO) concluded that incomplete and inconsistent inspection records had made it difficult to determine the extent of humane handling and slaughter violations; that FSIS took inconsistent enforcement actions to address noncompliance; and that it lacked data on numbers of inspectors and time devoted to HMSA enforcement.<sup>14</sup>

## **Inspectors Union Criticism**

Following release of the video showing inhumane treatment, the meat inspectors' union and a consumer advocacy group charged that inspectors at Hallmark were specifically instructed not to visit cattle pens before slaughter. Only the FSIS veterinarian-in-charge could check the animals for humane handling, and “[h]e was absent most of the time.” The letter argued that slaughter plants often have inspection vacancies, requiring off-line inspectors and even the FSIS veterinarian to work on-line at essential post-mortem inspection activities, reducing oversight of holding pens. The letter also charged, among other things, that FSIS veterinary positions created specifically to monitor humane practices “are not always filled” and that such veterinarians are often “redirected to perform other tasks not even remotely associated with humane handling issues.”<sup>15</sup>

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<sup>12</sup> USDA, OIG, *Evaluation of FSIS Management Controls Over Pre-Slaughter Activities*, report no. 24601-0007-KC. This audit is independent of a separate OIG-led criminal investigation into potential violations of the Federal Meat Inspection Act.

<sup>13</sup> *Evaluation of FSIS Management Controls Over Pre-Slaughter Activities* (Executive Summary excerpts).

<sup>14</sup> *Humane Methods of Slaughter Act: USDA Has Addressed Some Problems but Still Faces Enforcement Challenges* (GAO-04-247). FSIS responses: House Appropriations Committee, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations* for 2005 (Part 7, p. 223); for 2006 (Part 3, p. 167); and for 2007 (Part 1, p. 196).

<sup>15</sup> Stan Painter, President, National Joint Council of Food Inspection Locals, and Wenonah Hauter, Executive Director, Food and Water Watch, February 12, 2008, letter to USDA.



## Other Views

The suitability of downers was discussed extensively at a February 28, 2008 hearing on Hallmark before the Senate Appropriations subcommittee on agriculture. Secretary of Agriculture Edward T. Schafer argued that at times an animal can be injured in a fall between antemortem inspection and the plant's killing station, and that a veterinarian should be able to examine and approve it for food if it is not diseased. Humane Society witness Wayne Pacelle countered that injuries and diseases are often interrelated, making it challenging if not impossible even for a trained inspector to determine whether the animal is safe to eat. Studies also indicate that downers are much more likely to harbor not only BSE but foodborne pathogens like *e. Coli* and *Salmonella*, he argued.

USDA's former BSE expert also reiterated USDA's own declaration (see pages 3-4) of the difficulty in determining whether a cow has BSE; often the BSE is first suspected through subsequent testing. "Neurological, metabolic or other diseases which affect coordination and other aspects of gait often predispose an animal to injuries such as broken limbs or soft tissue damage. If the animal is then down because of a broken leg, or torn ligament, the injury may be the prominent or sole presenting sign. Without a complete diagnostic work up and history of disease progression the true underlying cause of the nonambulatory condition may be impossible to ascertain."<sup>16</sup>

## In Congress

In the 111<sup>th</sup> Congress, Senate supporters of a ban on downer cattle sought to include such a provision in economic stimulus legislation (H.R. 1), but it was removed by conferees on the measure. The provision (Section 104) in the Senate-passed version of the American Recovery and Reinvestment Act of 2009 (H.R. 1) would have permanently prohibited the use of federal funds to pass through USDA inspection any nonambulatory disabled cattle for use as human food, regardless of the reason or time the animal became nonambulatory. Because cattle must pass USDA inspection before they can be processed into human food, such a provision would remove the economic incentive to slaughter downers. However, Section 104 exempted from the definition of such cattle those that are less than five months old or weigh less than 500 pounds—essentially, veal calves.

This provision, not in the House-passed version of the stimulus package, generally would have written into statute somewhat less restrictive language than what USDA has promulgated through regulatory action. Specifically, the Senate definition of nonambulatory cattle was similar to USDA's definition, in its meat inspection regulations, of all nonambulatory disabled livestock, which are those "that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic condition."<sup>17</sup> However, the USDA definition does not exempt veal calves.

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<sup>16</sup> Detweiler, Linda A., DVM. May 7, 2004 comments on FSIS's interim rules on BSE safeguards. Also, February 26, 2008, personal communication with CRS.

<sup>17</sup> These regulations were adopted several years ago primarily to ensure that any cow affected with bovine spongiform encephalopathy (BSE, or "mad cow disease") does not enter the food supply. See CRS Report RL32199, *Bovine Spongiform Encephalopathy (BSE, or "Mad Cow Disease"): Current and Proposed Safeguards*, by (name redacted) and (name redacted).

In the 110<sup>th</sup> Congress, a number of committees held hearings during 2008 on Hallmark and related matters. Several bills were offered seeking to address humane treatment and/or other inspection issues. For example, S. 394 and H.R. 661 would have required USDA to regulate “the humane treatment, handling, and disposition of all nonambulatory livestock by covered entities, including a requirement that nonambulatory livestock be humanely euthanized.” Such entities would have been expanded beyond slaughter establishments to include stockyards, market agencies, and dealers. The bill would have applied not only to cattle but also to any sheep, swine, goats, horses, mules, or other equines. Another bill, S. 2770, would have banned the slaughter of nonambulatory livestock for human food; establish gradually increasing penalties for plants that do so or that fail to comply with the HMSA; and require USDA to publish, in final form, rules it proposed in 2006 to disclose the names of all retailers that received recalled meat or poultry.<sup>18</sup>

Past Congresses had attempted to address humane oversight in a number of past, mainly appropriations, acts. After a number of major news stories reported continuing abuses at slaughterhouses in 2000, Congress, in the 2001 Supplemental Appropriations Act (P.L. 107-20), directed USDA to spend not less than \$1 million to enforce the act. USDA in turn allocated \$1.25 million to hire 17 newly established District Veterinary Medical Specialists exclusively to oversee enforcement. Lawmakers next included, in the 2002 farm law (in § 10305), a resolution urging USDA to fully enforce the act and to report the number of violations to Congress annually.

USDA’s FY2003 appropriation (in P.L. 108-7) included an increase of \$5 million for FSIS to, as a Senate report stated, hire “50 additional inspection personnel to work solely on HMSA enforcement through full-time ante-mortem inspection, particularly unloading, handling, stunning and killing of animals at slaughter plants.” The Senate Appropriations Committee noted in its report (S.Rept. 107-223) that it was “extremely concerned” that FSIS did not have adequate inspection personnel dedicated to checking for or reporting HMSA violations, and it questioned the effectiveness of simply instructing all inspectors to stop production when a violation is observed.

Subsequent appropriations continued and then increased designated funding for HMSA enforcement, which now is at 63 positions and \$5 million annually. Appropriators also have provided a total of at least \$10 million over several years since FY2005 to incorporate FSIS’s “Humane Animal Tracking System” into its field computer systems.

## **Author Contact Information**

(name redacted)  
Specialist in Agricultural Policy  
[redacted]@crs.loc.gov, 7-....

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<sup>18</sup> FSIS published a final rule to disclose the names of such retail stores in the July 17, 2008, *Federal Register*. See also CRS Report RL34313, *The USDA’s Authority to Recall Meat and Poultry Products*, by Cynthia Brougher and (name redacted).



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