February 8, 2011

MEMORANDUM FOR GENERAL MEMBER REPRESENTATIVES; INSPECTION COMMITTEE, ANIMAL WELFARE COMMITTEE

FROM: MARK DOPP

SUBJECT: FOOD SAFETY AND INSPECTION SERVICE: NON-

AMBULATORY DISABLED VEAL CALVES AND OTHER NON-AMBULATORY DISABLED LIVESTOCK AT SLAUGHTER;

PETITIONS FOR RULEMAKING

The Food Safety and Inspection Service (FSIS or the agency) has published in the *Federal Register* a notice, *Non-Ambulatory Disabled Veal Calves and Other Non-Ambulatory Disabled Livestock at Slaughter; Petitions for Rulemaking*, and is requesting comments on petitions filed by the Humane Society of the United States (HSUS) and Farm Sanctuary (FS) that seek to amend regulations that affect the disposition of certain veal calves and other nonambulatory livestock. Significantly, the agency indicated that it is inclined to grant the HSUS petition, which would have a notable impact on the veal industry. Conversely, FSIS did not indicate a willingness to grant the FS petition. The purpose of the notice, however, is to invite public comment on both petitions.

Comments on the petitions are due by April 8, 2011, and can be submitted in several ways. Electronic comments can be submitted directly on-line to http://www.regulations.gov. Written comments can be submitted to the Docket Clerk, U.S. Department of Agriculture, FSIS, Room 2–2127, George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705–5272. All comments should include the agency name and docket number FSIS–2010–0041. Comments received in response to this docket will be made publicly available and posted without change, including any personal information at http://www.regulations.gov.

 $\frac{http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/2010-0041.htm}{Pubs/2010-0041.htm}$

¹ The *Federal Register* notice can be found at:

Humane Society of United States Petition

FSIS regulations provide that non-ambulatory disabled cattle offered for slaughter, including those that become non-ambulatory disabled after passing *ante-mortem* inspection, be condemned.² Moreover, plant employees must notify the agency when cattle become non-ambulatory disabled after passing ante-mortem inspection so that those cattle can be euthanized.³

An exception to these requirements exists for veal calves in that calves that are non-ambulatory because they are tired or cold may be segregated and held for treatment pursuant to FSIS supervision.⁴ Calves so treated must be able to rise and walk after being set aside and warmed or rested, and they must be found to be free from disease before they may be slaughtered.

The Humane Society of the United States petition requests that FSIS amend § 309.13(b) by removing the provision that allows veal calves that are non-ambulatory disabled because they are tired or cold, to be set aside and treated.⁵ In support of its petition HSUS references videotape taken at a veal plant that shows inhumane treatment of calves conducted in an effort to get a non-ambulatory disabled bob veal to rise. HSUS asserts that allowing non-ambulatory disabled calves to be set aside for treatment is inhumane because the practice encourages abusive conduct and forces movement that is prohibited by the Humane Methods of Slaughter Act (HMSA). Moreover, the petition contends that the language in § 309.13(b) conflicts with the HMSA because it does not provide for "humane handling of livestock in connection with slaughter...."

HSUS also contends that "failing to require immediate euthanasia creates a financial incentive for establishments to engage in abusive conduct because a non-ambulatory disabled calf is worthless unless it is slaughtered." The petition also argues that the proposed change would "eliminate uncertainty," thereby improving the disposition of livestock. Lastly, the petition argues that the way veal calves are raised makes them "susceptible to conditions and injuries that increases the likelihood of them going down" and that eliminating the ability to set calves aside would improve raising conditions for the calves. 8

http://www.fsis.usda.gov/PDF/Petition HSUS Humane Handling.pdf

² 9 CFR § 309.13.

³ 9 CFR § 309.3(e). See also 9 CFR Part 314.

⁴ 9 CFR § 309.13 (b).

⁵ The HSUS petition can be reviewed at:

⁶ 7 U.S.C. 1902.

⁷ 76 Fed. Reg. at 6573.

⁸ *Id.* at 6574.

FSIS states that it has reviewed the HSUS information and that the agency "believes strongly in the importance of ensuring that animals are humanely handled in connection with slaughter." FSIS expressed concern that the "veal calves set-aside provision may create an incentive for establishments to inhumanely force non-ambulatory disabled veal calves to rise and for veal calf producers to send weakened calves to slaughter." The agency also indicated that it agrees that prohibiting the slaughter of all non-ambulatory disabled veal calves may remove potential uncertainty in determining the disposition of calves that have been set aside and would be consistent with the requirements for the other classes of non-ambulatory disabled cattle."

Accordingly, FSIS has "tentatively" determined to grant the HSUS petition. To accomplish such a change, however, would require rulemaking. This notice is not a proposal to amend the existing regulations but rather an invitation for public comment on the petition, the issues presented, and the agency's initial determination.

Farm Sanctuary Petition

FSIS regulations currently do not require the condemnation of non-ambulatory disabled livestock other than cattle.¹² When the agency conducted the rulemaking regarding non-ambulatory disabled cattle, a number of comments were submitted from animal welfare organizations and others about the welfare of other species such as sheep, goats, hogs, *etc*. Those comments advocated in favor of extending the slaughter ban to other livestock species to ensure humane handling.

In that regard, the FS petition requests that FSIS amend the regulations such that all non-ambulatory disabled livestock, regardless of species, are condemned.¹³ The FS petition references Non-Compliance Records (NRs) documenting inhumane handling, which focus mainly on swine. The petition argues that plants have a financial incentive to "force these animals through the slaughtering process, which encourages inhumane treatment." FS further argues that such a ban will "encourage livestock producers and transporters to improve their handling practices" and will "prevent diseased animals from entering the food supply." ¹⁵

⁹ *Id*.

 $^{^{10}}$ Id.

¹¹ *Id*.

^{12 9} CFR § 309.2(b)

¹³ The FS petition is available for review at:

http://www.fsis.usda.gov/PDF/Petition Humane Handling.pdf

¹⁴ 76 Fed. Reg. at 6574.

 $^{^{15}}$ *Id*.

FSIS has reviewed the FS petition but, unlike the HSUS petition, has not decided how to respond. Accordingly, FSIS is requesting comments on issues raised in the petition. In that regard, FSIS is "considering measures that may be necessary to ensure that all non-ambulatory livestock other than cattle are handled humanely in connection with slaughter." After receiving and considering comments regarding the FS petition, the agency will publish another *Federal Register* notice or proposed rulemaking regarding humane handling of livestock other than cattle at official establishments. 17

<u>Clarification on Disposition of Cattle that Become Non-Ambulatory</u> Disabled

The Federal Register publication also includes what FSIS characterizes as a "clarification" with respect to the slaughter of all non-ambulatory disabled cattle. In that regard, the agency emphasized that <u>all</u> non-ambulatory disabled cattle must be condemned, regardless of reason. FSIS stated that when reviewing the HSUS and FS petitions, the agency found certain ambiguities in some policy documents. For that reason, FSIS will review and update directives and other guidance materials to ensure that they are consistent with the regulatory requirements.

AMI will be preparing comments regarding both petitions. If you have any questions about this memorandum, the FSIS *Federal Register* notice, or the HSUS or FS petitions, please contact Mark Dopp at 202 587 4229 or mdopp@meatami.com.

cc: Patrick Boyle
Janet Riley
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¹⁶ *Id.* at 6574-75

¹⁷ FSIS has developed a systemic approach to humane handling for slaughter, http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/04-013N.pdf and a humane handling "Guidebook," http://www.fsis.usda.gov/PDF/Humane_Handling_booklet.pdf