

Domestic Policy Subcommittee
Oversight and Government Reform Committee

Statement
of
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Deputy Under Secretary for Food Safety

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Oversight and Government Reform Committee

Thursday, March 4, 2010
2154 Rayburn HOB
2:00 p.m.

Hearing Entitled:
“Continuing Problems in USDA’s Enforcement of the Humane Methods of Slaughter Act.”

**For release only by the
The House Oversight and Government Reform
Subcommittee on Domestic Policy**

Statement of
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Before the
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Chairman Kucinich, Ranking Member Jordan and members of the Subcommittee, thank you for inviting me to appear before you today at this hearing to review the state of USDA's Food Safety and Inspection Service's (FSIS) enforcement of the Humane Methods of Slaughter Act (HMSA), and a Government Accountability Office (GAO) report requested by the Subcommittee on this matter. I want to assure you that we are deeply committed to the humane handling of livestock and to meeting our obligations to enforce HMSA at federally-inspected establishments. We welcome today's hearing and the GAO report as steps that will help support the mission of ensuring the humane handling of livestock.

I would like to begin my testimony today with a brief description of the mission and an overview of FSIS, and then I will move on to discuss humane handling and FSIS' enforcement of HMSA. Finally, I will close with comments on the GAO report reviewed by FSIS.

Mission and Overview of FSIS

FSIS is the public health regulatory agency within the U.S. Department of Agriculture. It is responsible for ensuring that the Nation's commercial supply of meat, poultry, and processed egg products is safe, secure, wholesome, and accurately labeled and packaged, whether those

products are domestic or imported. We administer and enforce the Federal Meat Inspection Act, the Poultry Products Inspection Act, the Egg Products Inspection Act, and the Humane Methods of Slaughter Act, which is the topic of our discussion today.

Currently, the Agency employs over 9,500 personnel, including around 7,800 full-time in-plant and other front-line personnel protecting the public health in approximately 6,200 federally-inspected establishments nationwide.

These inspection program personnel are present for all livestock slaughter operations to inspect each animal before slaughter and each carcass after slaughter, as required by our authorizing statutes. FSIS inspection program personnel also inspect each processing establishment at least once per shift. In fiscal year (FY) 2009, FSIS personnel inspected 150 million head of livestock and 9 billion head of poultry.

FSIS' inspection activities are rooted in science and based on data. Through science-based initiatives and continual efforts to strengthen our infrastructure, FSIS works to prevent adulterated food from reaching the consumer. FSIS accomplishes this, in part, through rigorous sampling programs for foodborne pathogens such as *E. coli* O157:H7 in beef products, *Listeria monocytogenes* in ready-to-eat products, and *Salmonella* in raw meat and poultry products. Through the Hazard Analysis and Critical Control Points (HACCP) system, the Agency's responsibility also includes verifying that the establishment has effectively identified hazard points in its system and has deployed steps to prevent and mitigate risks.

FSIS frontline employees inspect and verify that establishments follow their food safety plans and enforce FSIS regulations to prevent contamination from occurring. When outbreaks occur and recalls are issued to protect public health, FSIS personnel are engaged in facilitating rapid response and recovery.

In addition to in-plant personnel in federally-inspected establishments, FSIS employs a number of other field personnel, such as laboratory technicians, veterinarians, and investigators.

FSIS Enforcement of HMSA

As I stated earlier, FSIS enforces HMSA, which provides the Agency with the authority to regulate the handling of livestock prior to slaughter, as well as the method of slaughter at establishments. We take this responsibility very seriously. I want to assure the Subcommittee that enforcing this law is a high priority for FSIS.

When Congress passed HMSA, it found that humane slaughter prevented needless suffering, resulted in safer and better working conditions for employees at slaughter establishments and provided benefits to producers and consumers through better products and improved flow of livestock and livestock products.

FSIS inspectors are in plants every day, and a key duty of these inspectors is to ensure that Congress' intent to assure that humane slaughter at every slaughter plant is carried out properly. FSIS inspectors are tasked with three essential duties: identifying problems, acting on those problems, and documenting the problems.

Documentation is a critical part of enforcement. If a problem is not documented properly, FSIS becomes less able to exercise proper enforcement. For this reason, proper documentation of humane handling violations is a basic part of FSIS inspector training. When FSIS personnel detect violations, they have the authority to take action by either suspending the establishment or issuing a noncompliance report (NR).

Each of FSIS' 15 District Offices has a District Veterinary Medical Specialist (DVMS) who serves as an expert on humane handling issues. The DVMS in each District Office

performs a formal review of each slaughter plant in the district every 12-18 months. In addition, they participate in making decisions about appropriate enforcement actions in response to humane handling violations. For example, the DVMS performs a comprehensive review of a plant 30 days after a suspension has been lifted to determine if proffered corrective actions are effective. They also perform additional follow-up reviews 60 and 90 days following the lifting of a suspension.

FSIS has a rigorous program to train inspection personnel in verifying humane handling at slaughter establishments and ensure that the three essential duties are performed properly. All inspection personnel who might be required to conduct humane handling activities receive humane handling training as part of their basic training. All entry level inspectors receive both classroom instruction and one to two weeks of field training on humane handling. In February 2009, FSIS inspection personnel assigned to livestock slaughter establishments were required to complete refresher training on the Agency's humane handling policies. This training included information on how to determine insensibility, documenting noncompliance, and suspending inspection for egregious situations. FSIS is planning further workforce training activities related to humane handling for FY 2010.

FSIS has a collection of management controls and accountability mechanisms it uses in order to ensure that its personnel are properly enforcing HMSA and its associated regulations. Supervisory personnel at slaughter establishments conduct performance reviews at least twice annually on all aspects of inspection personnel performance, including humane handling. When the DVMS performs the formal review of establishments, corrections with inspection personnel occur at that time, as needed. In addition, FSIS produces a national report on humane handling on a quarterly basis, which compares districts according to humane handling procedures

performed, noncompliance records, suspensions, and time spent on specific humane activities, as recorded in the Humane Activities Tracking System (HATS), a nationwide database that provides FSIS with an accurate and complete accounting of the time spent by FSIS inspection program personnel performing HMSA verifying activities in nine specific categories related to humane handling and slaughter. The DVMS reviews noncompliance records and suspension documentation immediately, and other data on a regular basis.

Recent Steps

There are a variety of steps that FSIS has recently taken to ensure compliance with HMSA, as well as actions we will be taking in the near future to make our enforcement of HMSA as effective as possible. FSIS continues aggressive hiring and the maximum use of recruitment and retention authorities.

Consistent with directives established in the fiscal year (FY) 2010 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, FSIS devoted approximately 140 full-time equivalent (FTE) staff years to the verification and in-plant enforcement of humane handling requirements at slaughter establishments in 2009.

In addition, FSIS recently added an additional 23 inspection positions, and assigned them to higher-risk establishments in order to boost humane handling oversight and verification inspection activities at those locations. FSIS is also working diligently to fill the newly created position of Humane Handling Enforcement Coordinator. The Coordinator is a headquarters-based position, primarily responsible for providing consistent oversight of the field level humane handling activities. In addition, this individual will play a key role in the various humane handling enforcement and verification activities that I have described in my testimony.

FSIS recently created a new scoring verification tool, called the “Humane Handling and Slaughter Verification Tool” to DVMSs; and on December 7, 2009, included it as part of FSIS Directive 6910.1, Revision 1. While this scoring tool is not used by DVMSs for purposes of regulatory action, it is designed to create an objective system that will facilitate the DVMS’ determination of whether there are problems in the establishment’s humane handling and slaughter system that the establishment needs to address. The tool allows DVMS to record ante mortem observations, such as the number of times livestock slip and fall while proceeding through the stunning chute area or the number of times an electric prod is used on the animals. Percentages are calculated and compared to minimum acceptable scores as suggested by Dr. Temple Grandin. FSIS conducted training on the scoring tool in August 2009.

Since the events at the Hallmark/Westland establishment in 2008, FSIS has made numerous efforts to strengthen and improve its verification and enforcement related to HMSA. One of the major measures taken since the start of the new Administration was the issuance of a final rule in March 2009 to amend federal meat inspection regulations to require a complete ban on the slaughter of cattle that become non-ambulatory disabled after initial inspection by FSIS personnel. In addition, FSIS issued a notice to its inspection personnel in 2009 that reminds and instructs Public Health Veterinarians (PHVs) and other inspection personnel to conduct humane handling activities randomly throughout their shift. The notice also directs PHVs to encourage establishments to develop and implement a systematic approach to humanely handle livestock. PHVs will regularly verify that establishments are following their plans.

FSIS will significantly strengthen its analysis of humane handling data this year. In an effort to dramatically improve our data collection and analysis, FSIS will launch the Public Health Information System (PHIS) later this year. PHIS will enhance FSIS’ data infrastructure

through the integration of a variety of relevant data streams, including data collected in HATS. PHIS will allow FSIS to provide ongoing, real-time assessment, analysis and surveillance of public health, food defense, and humane handling data.

In the near future, FSIS intends to issue compliance guidelines to industry for the use of video or other electronic monitoring or recording equipment, in response to USDA's Office of the Inspector General (OIG) recommendations, and will seek public comment on the guidelines. FSIS encourages establishments to consider using such monitoring as part of an overall systematic approach to maintaining humane handling and compliance with regulatory and statutory requirements.

Industry Compliance with HMSA

As requested by the Chairman, I would like to discuss the industry's compliance with HMSA. It should be noted that only approximately 800, or less than 20 percent, of federally-inspected establishments slaughter livestock and thus are subject to HMSA. As mentioned previously, FSIS personnel have a continuous presence in these establishments, and carry out inspection of all livestock at each federally-inspected slaughter establishment. In addition to the regular ante-mortem inspection of all animals, FSIS inspection program personnel in all livestock slaughter establishments conduct routine daily verification activities in nine categories for plant compliance with humane handling laws and regulations. Examples of the categories include: truck unloading, electric prod use, and stunning effectiveness. Inspectors record the amount of time it takes to conduct these activities into HATS. FSIS projects that in FY 2010, in-plant personnel will spend the equivalent of 140 staff years, or 291,200 person-hours, verifying humane handling activities at livestock slaughter establishments. These activities are in addition

to the many hours of time FSIS spends on ante-mortem inspection, when HMSA violations can also be observed and acted on.

When humane handling violations are observed during an inspection, FSIS personnel can initiate one of two regulatory actions at their disposal (suspension, and issuing a noncompliance record), depending on the situation observed. Noncompliance records for humane handling may be issued when the violation observed is less than egregious, such as observation of broken fencing that has the potential for causing injury to penned or driven animals.

In calendar year (CY) 2009, FSIS in-plant personnel conducted 128,417 humane handling verification procedures at federally-inspected livestock slaughter establishments. Only 0.4 percent of these procedures resulted in the issuance of noncompliance records for humane handling violations.

In addition, when FSIS inspection personnel do observe egregious humane handling violations, they take immediate action to issue suspensions. A suspension effectively shuts down all or part of a plant's operations. In CY 2009, inspection personnel issued 87 suspensions for egregious humane handling violations. Of these suspensions, 71 were initial suspensions, and as a result of corrective actions taken by the establishments, did not require suspensions to be reinstated by FSIS.

2008 OIG Audit

Following the events that occurred at the Hallmark-Westland establishment in 2008, USDA's OIG conducted an audit to determine what inspection controls and/or processes broke down at Hallmark-Westland including those for humane handling, and whether the events that took place there were isolated or systemic. The OIG found that "the events that occurred at

Hallmark were not a systemic failure of the inspection processes/system as designed by FSIS.”
OIG did determine that FSIS’ management controls demonstrate that the sufficiency and competency of its personnel resources were in need of strengthening, and made numerous recommendations.

Although OIG found that the incidents at Hallmark-Westland were not an example of a systemic problem in enforcement, the Agency has nevertheless increased its enforcement of HMSA significantly. Our response to this, I believe, is another demonstration that the Agency takes inhumane handling of livestock very seriously, and is looking for effective ways to strengthen its humane handling program.

FSIS is continuing to complete corrective actions in response to the recommendations made in OIG’s audit report. OIG and FSIS are in agreement on all of the corrective actions needed in response to all of the audit recommendations, and we are working to implement these actions. Of the four recommendations related to humane handling issues, three recommendations have been closed, as a result agreed-upon corrective action. These actions include: 1) instructions and additional guidance provided to DVMSs regarding work methods they must use when conducting their humane handling reviews at establishments; 2) analysis of noncompliance rates at establishments that slaughter other market classes of adult cattle; and 3) development of the first quarterly humane handling report for CY 2008. The fourth recommendation asks FSIS to determine whether FSIS-controlled in-plant video monitoring would be beneficial in preventing and detecting animal abuses at cull cow slaughter establishments. We expect it to be closed soon, as a result of the upcoming the publication of an FSIS Directive and a guide for industry regarding video monitoring by establishments to ensure compliance with HMSA requirements.

Similar to its response to OIG's recommendations, I can assure you that FSIS will take the necessary actions to respond to those presented in GAO's most recent audit report. I want to be clear that FSIS appreciates the recommendations from GAO, which builds on the considerable work already being done by FSIS to improve our performance in verifying humane handling at slaughter establishments.

Comments on the GAO HMSA Report

In the fall of 2008, the GAO began a review of FSIS' enforcement of HMSA. Throughout the duration of the review, FSIS worked with the GAO to provide an accurate picture of the Agency's enforcement of HMSA. On behalf of the Agency, I would like to thank the GAO for its efforts to work with us during its investigation and for giving us the opportunity to provide comments on the report.

As can be seen by the above examples of FSIS' enforcement of HMSA, it is clear the Agency is committed to the proper enforcement of HMSA and is constantly improving upon its efforts to ensure that establishments comply with the law and FSIS' humane handling regulations. Thus, the Agency will consider the GAO's findings and recommendations carefully as we strive to improve and evolve. FSIS does recognize the need to improve our inspectors' ability to identify trends in humane handling violations, a weakness that is repeated throughout the report. The Agency will need to work with academia, industry, non-profit organizations, animal health experts, and our workforce to identify practices that will achieve more consistent enforcement of HMSA.

That being said, it should be mentioned that FSIS disagrees with several of the components that were contained in the draft GAO report that FSIS reviewed. We believe that

several of these points of disagreement could result in a misleading portrayal of FSIS' enforcement of HMSA. These points are contained in our complete response to the GAO report, which I have included as an addendum to my testimony.

We agree with GAO that FSIS ought to adopt a numerical scoring system for verification of compliance with humane handling requirements. In fact, as I stated earlier, such a verification tool was provided to FSIS DVMSs in December 2009.

As part of its review, the GAO conducted a survey of FSIS inspection program personnel, from which it drew many of its findings and recommendations. Through this survey, the GAO concluded that there are inconsistencies in the enforcement of HMSA, as inspection program personnel answered the survey questions on what regulatory actions they would take for the various examples of HMSA violations very differently.

While we respect GAO's effort to capture a true picture of the knowledge and understanding of humane handling rules by our frontline inspectors, it's important to say that an accurate understanding of HMSA enforcement must consider both the qualitative and quantitative standards that are applied to observations of humane handling practices. The statute and regulations are enforced through the observation of individual events of handling and slaughter practices, which can vary significantly depending on the specifics of an establishment and the situation in question. It can be very difficult to establish definitively which of the two regulatory actions at the disposal of an FSIS inspector (suspension, and issuing a noncompliance record) should be utilized, without knowing the history, context, and situation observed by FSIS inspection personnel.

It is important to note that there was consistency in the survey responses in that FSIS personnel did know that each situation required action. So while inspection program personnel

differed on the type of action they would take, they all agreed they would take action. This is a key point that should not be overlooked; FSIS field personnel know when to take action and they do take action.

FSIS has very clear guidance in place on how to implement suspensions for egregious humane handling violations, which carries authority equivalent to an FSIS directive. According to FSIS Notice 21-09, “if the observed inhumane treatment is of an egregious nature, the regulations at 9 CFR 500.3(b) apply. The Notice provides our inspectors 10 examples of egregious situations. For example, “making cuts on or skinning conscious animals, dragging conscious animals, driving animals off semi-trailers over a drop off without providing adequate unloading facilities (animals are falling to the ground), or leaving disabled livestock exposed to adverse climate conditions while awaiting disposition.”

The regulations state, “FSIS also may impose a suspension without providing the establishment prior notification because the establishment is handling or slaughtering animals inhumanely.” Therefore, the inspector-in-charge (IIC) is to take an appropriate regulatory control action to prevent continued egregious inhumane handling and orally notify plant management of an immediate suspension action.

Bushway Packing Inc.

Before I close, I would like to briefly comment on the abuse of veal cattle at the Bushway Packing Inc., establishment captured by the Humane Society of the United States in a video released on October 30, 2009. Secretary Vilsack, in a statement issued the same day, stated that “The deplorable scenes recorded in the video... are unequivocally unacceptable,” and that the “behavior of FSIS and establishment personnel witnessed in the video is inexcusable.” The Agency took immediate action in response to the incident. The Secretary called on USDA’s

Office of Inspector General to conduct a criminal investigation, which remains under way. FSIS suspended operations at the Bushway Packing establishment, which remains in effect today, and subsequently filed formal administrative proceedings regarding the suspension. FSIS also initiated an investigation into the alleged misconduct by Agency personnel and has, to date, terminated one employee. Again, I want to assure the Subcommittee that the Agency takes humane handling violations very seriously, and takes immediate action when violations are observed.

Conclusion

Chairman Kucinich, Ranking Member Jordan and members of the Subcommittee, I would like to reiterate that the Agency is committed to ensuring that our livestock are humanely handled, and committed to the enforcement of HMSA at federally-inspected establishments. We must always seek improved performance and we value the opportunity to discuss developments that could enhance our enforcement of the Humane Methods of Slaughter Act.

I would like to thank the GAO for its review of FSIS' enforcement of HMSA, and for giving the Agency an opportunity to comment on its report. The Agency appreciates this review, and considers the GAO's survey results, among other reviews to be essential in our continued efforts to improve HMSA verification and enforcement.

Thank you, Chairman, Ranking Member and members of the Subcommittee for your concern about this important topic and for this opportunity to appear before you today and testify. I look forward to your questions.