

September 29, 2008



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USDA Food Safety Inspection Service
Room 2534 South Agriculture Building
1400 Independence Avenue, SW
Washington, DC 20250

RE: Docket No. FSIS-2008-0022

The following comments are filed on behalf of Texas Cattle Feeders Association (TCFA), a trade association representing cattle feeders and feedyards in New Mexico, Oklahoma and Texas – the largest cattle feeding region in the United States. Our members market approximately 7 million head of fed cattle each year, constituting about 30% of the nation's fed beef.

TCFA has carefully evaluated the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) proposed rule published in the Federal Register on August 29, 2008 (Volume 73, Number 169, Pages 50889-50892) titled "Requirements for the Disposition of Cattle That Become Non-Ambulatory Disabled Following Ante-Mortem Inspection," Docket No. FSIS-2008-0022. The proposed rule would amend portions of the Code of Federal Regulations under 9 CFR Part 309.

TCFA members strongly support humane handling of cattle throughout their life and support full enforcement of the Humane Methods of Slaughter Act (HMSA) to ensure humane processing of cattle. Additionally, TCFA supports thorough and appropriate enforcement of the Federal Meat Inspection Act (FMIA) to ensure the quality and safety of beef products. This commitment to humane care and the production of the world's safest, highest quality and affordable beef is evident throughout our industry's history. We have adopted numerous policies dealing with cattle health and well-being and food safety, conducted proper animal care and handling seminars, developed documents outlining procedures for producing safe beef in each industry sector, created beef quality assurance programs and invested in food safety research.

TCFA strongly supports exclusion of any disabled cattle from the commercial food supply that may be diseased or that could represent a threat to the safety or quality of the food supply. TCFA supported the original non-ambulatory ban when it was implemented by USDA after detection of the nation's first case of BSE in December 2003. TCFA also supported the July 2007 modified rule on non-ambulatory cattle, because it was viewed as a way that healthy cattle could be examined and deemed eligible for slaughter after sustaining a specific injury that did not threaten the safety or quality of the meat derived from the animal. The secondary inspection requirement was specifically designed to ensure this result, and would have done so if it had been properly followed and enforced. The current reinspection ability is not a large exemption or "loophole" as some would claim – it is the flexibility based on science and good policy that would enable healthy cattle that suffer an accidental acute injury, to be humanely processed.

TCFA's comments to this proposed rule are focused on two areas:

- 1. A custom slaughter exemption for personal use of an otherwise healthy animal that has suffered an acute injury.**
- 2. Advocating for and support of sound science-based public policy.**

TCFA supported the July 2007 modified rule on non-ambulatory cattle, because it was viewed as a way that healthy cattle could be examined and deemed eligible for slaughter after sustaining a specific injury that did not threaten the safety or quality of the meat derived from the animal. The secondary inspection requirement was specifically designed to ensure this result. This proposed rule applies both to official establishments and to custom slaughter operations. TCFA requests that FSIS reevaluate its decision regarding custom slaughter exemption for personal use. Cattle producers should have the ability to personally utilize the beef of an otherwise healthy animal in the case of an accidental acute injury. Concurrently the humane handling of the animal and the assurance of food safety in these instances is adamantly supported and expected.

Additionally TCFA is concerned that FSIS did not fully evaluate the costs of this proposed rule to the producer, nor the effects that this proposed rule would have upon custom slaughter operations. FSIS states that this rule is "insignificant compared to the value of their annual production" to small and very small plants, and in footnote 3 under "Cost of the Proposed Action" evaluates the economic effect on custom operations based on assumptions and extrapolation from their surveys at federal establishments. This does not seem to be consistent with the mandates of a thorough and appropriate evaluation of a government regulatory decision. Also, FSIS states "the [beef] industry eventually will pass at least some part of the additional cost to consumers through higher prices or reduced production" and states that it is "difficult to estimate ex-ante without data." FSIS apparently concluded their economic analysis without full data or full evaluation, but under "Benefits of the Proposed Rule" FSIS states "The Agency believes that the total benefits (quantifiable and unquantifiable) of this proposed rule will exceed the cost."

TCFA does not believe FSIS gave the effects of this proposed change a full evaluation in regard to custom operations nor the producer. In fact, it does not appear that FSIS even considered the effect on the small producer. TCFA is concerned that this non-scientifically based rule change will impose a substantial economic impact on cattle producers. As this proposed rule change moves forward, retaining the ability to slaughter an animal injured on the farm or ranch for personal consumption is a key concern for cattlemen. A well-crafted rule addressing this issue would keep this important option open for farm and ranch families, without affecting the commercial food supply in any way.

Given the economic uncertainty of today's marketplace, the increased input costs across the beef sector, the rise in consumer food prices and the growing challenges for small businesses and rural America, it is imperative that the government carefully evaluates the costs and the scientific soundness of the actions.

The recent events FSIS highlights in the proposed rule appear to be due to plant personnel not following the law, and a lack of proper enforcement by federal employees. Additionally the proposed rule states that "an investigation into the allegations found evidence that the establishment did not consistently notify FSIS inspection personnel when cattle became non-ambulatory disabled after initial ante-mortem inspection." The proposed rule also states that establishments must "notify FSIS inspection personnel when cattle become non-ambulatory disabled after passing ante-mortem inspection. The Agency is doing so to make clear that establishments have an affirmative obligation to make FSIS personnel aware when an animal goes down. This regulatory requirement should preclude establishments from attempting to force such animals to rise."

Establishments already are required to notify FSIS personnel when cattle become non-ambulatory disabled after passing initial ante-mortem inspection. It is unclear how this proposed rule change addresses and eliminates to the extent practicable, any future failures of processing plants to comply with this important aspect of FSIS regulations. We fail to see how this proposed rule would better ensure humane handling and as previously stated, we advocate for strict compliance and enforcement of the existing HMSA.

TCFA supports full compliance and full enforcement of the existing FSIS laws/regulations regarding humane handling and food safety. We are concerned that USDA is viewing this proposed rule as a simple and expedient way out, and in haste may not be dealing with some underlying issues that need to be addressed in order to improve regulatory compliance and enforcement.

In USDA's May 20, 2008, press release, Secretary Schafer said "we would look into every option, and more importantly, we would listen and base our decisions on sound policy." However, it does not appear that USDA has looked into every option or based its decision on sound science.

TCFA members are steadfast in their dedication to proper animal care and handling practices, the production of safe, wholesome, high-quality beef and the use of sound science to formulate good public policy. Likewise, TCFA members adamantly oppose nonscientific, reactionary and politically motivated government policies. We respectfully request that a full and fact-based assessment be utilized prior to making any changes of any government policies regarding non-ambulatory cattle.

Sincerely,

A handwritten signature in black ink that reads "Ross Wilson". The signature is written in a cursive, flowing style.

Ross Wilson
President & CEO

