



**NATIONAL CATTLEMEN'S BEEF ASSOCIATION**

1301 Pennsylvania Ave., NW, Suite #300 • Washington, DC 20004 • 202-347-0228 • Fax 202-638-0607

September 29, 2008

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

RE: Docket No. FSIS-2008-0022

The National Cattlemen's Beef Association (NCBA) 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.

Producer-directed and consumer-focused, the National Cattlemen's Beef Association is the trade association of America's cattle farmers and ranchers, and the marketing organization for the largest segment of the nation's food and fiber industry. NCBA appreciates the opportunity to review and comment on this important rule.

NCBA members strongly support humane handling of cattle throughout their lives and have adamantly supported full enforcement of the Humane Methods of Slaughter Act (HMSA) to ensure humane processing of cattle. Additionally, NCBA has firmly supported thorough and appropriate enforcement of the Federal Meat Inspection Act (FMIA) to ensure the quality and food safety of beef products. This commitment to humane care and the production of the world's safest, highest quality, plentiful and affordable beef is evident throughout our industry's history. We have numerous policies dealing with cattle health and well-being and food safety, as well as the Beef Industry Food Safety Council's (BIFSCO's) Best Practice documents, outlining procedures for producing safe beef in each industry sector; Beef Quality Assurance programs; and an investment of over \$27 million dollars since 1993 in food safety research to build knowledge about threats to beef safety and develop and validate interventions through the Beef Checkoff funds.

NCBA policy 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. NCBA policy 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. NCBA 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 and utilized.

**NCBA’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.**

NCBA 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. **NCBA requests that FSIS re-evaluate their 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 NCBA is concerned that FSIS did not fully evaluate the costs of this proposed rule to the small 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.” So FSIS apparently concluded their economic analysis without full data or full evaluation. And yet 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.”

NCBA does not believe FSIS gave the effects of this proposed change a full evaluation in regards to custom operations nor the small producer. In fact it does not appear that FSIS even considered the effect on the small producer. Based on just the economic effects, notwithstanding the potential effect regarding scientifically based public policy, NCBA is concerned that this non-scientifically based rule change will be economically substantial to individual cattle producers, especially our small herd owners. 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.

In these times of economic uncertainty, increased input costs across the beef sector, increased food prices for the consumer and increased challenges for small businesses and rural America, it is all the more imperative that our government carefully evaluates the costs of their actions as well as the scientific soundness of the actions.

NCBA producers are consistent in their dedication to the proper care of their animals, to their commitment to producing safe, wholesome and the highest quality beef, in their strong support and insistence on the use of sound science to formulate good public policy, and against politically motivated or reactionary government regulatory or legislative interventions regarding our industry. **Is this rule the proper way to address the recent problems mentioned in the “Recent Events” section as the reason for this rule change?** Have all of the facts contributing to issues regarding adherence to, and enforcement of, existing regulations been fully analyzed? The recent events FSIS highlights in the proposed rule were not at a custom plant and from preliminary publically available evidence, appears to be due to plant personnel not following regulations/laws, and a lack of proper enforcement of the HMS and FMIA by federal employees.

Is as Secretary Schafer stated in his press release announcing this proposed rule on August 27, 2008, as the Department’s reasoning behind these modifications, “I believe it is sound policy to simplify this matter by initiating a complete ban,” an appropriate way to address recent problems? Will it preclude future such issues? Are there other, more appropriate, sound policy ways to address poor decisions, bad actors and failure of enforcement? NCBA advocates for full compliance and full enforcement of the existing FSIS laws/regulations regarding humane handling as well as food safety. We are concerned that the Department is viewing this proposed rule as the “simple” and expedient way out and in their haste, may not be addressing some underlying issues that may need to be addressed in order to improve regulatory compliance and enforcement and prevent future instances of non-compliance or lack of proper enforcement. What are all of the contributing factors that lead to noncompliance and lack of proper enforcement of FSIS regulations? Is there a need for more education of industry and inspectors, a need for more compliance or inspection tools, a need for more technical or manpower resources?

The proposed rule states that eliminating the case-by-case basis disposition determinations of non-ambulatory disabled cattle would increase “the time inspection program personnel can focus on other inspection activities.” In multiple 2008 Congressional hearings on the events preceding this proposed rule change, FSIS Undersecretary Dr. Richard Raymond, FSIS Administrator Dr. Al Almanza and Secretary of Agriculture Ed Schafer all stated that FSIS had adequate inspection personnel to perform all of the required regulatory enforcement duties of the Acts FSIS administers. These seem to be contradictory. If there are personnel needs necessary to improve FSIS regulatory activities and enforcement, NCBA would prefer FSIS to address that issue more broadly. Under the “Benefits of the Proposed Rule” FSIS states that “If adopted as a final rule, the proposed amendment would ensure effective implementation of ante-mortem inspection. This action will provide additional efficiencies to food safety inspection.....” How does this

proposed rule make the enforcement of the FMIA more effective and efficient? And the proposed rule and USDA/FSIS Congressional testimony has not indicated the need for improved efficiency or identified specific additional resources needed as it relates to this particular matter.

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.” As well, the proposed rule 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.” Currently establishments already must 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.

In USDA’s May 20, 2008 press release regarding the decision of the Department to begin working on this proposed rule, Secretary Schafer said “In February, I said that we would look into every option, and more importantly, we would listen and base our decisions on sound policy.” It does not appear that USDA has looked into every option nor fully evaluated the situation leading them to this proposal, nor explored all appropriate potential solutions. As a public policy matter, this raises concerns beyond this particular topic at hand as well as the ability of this proposal to preclude future failures regarding noncompliance and lack of proper enforcement of the Humane Methods of Slaughter Act and the Federal Meat Inspection Act.

NCBA advocates for all government actions, whether legislative or regulatory, to be science-based and fact based. Politically motivated or reactionary actions do not provide good sound policy that is beneficial to both consumers and producers, as well as the animals in our care. 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.

If you have any questions or concerns, please contact Dr. Elizabeth Parker, NCBA’s Chief Veterinarian at (202) 347-0228 or at [eparker@beef.org](mailto:eparker@beef.org) .

Sincerely,



Andy Groseta  
President  
National Cattlemen’s Beef Association