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FSIS Docket Clerk
Department of Agriculture
Food Safety and Inspection Service
Room 2534 South Building
1400 Independence Avenue, S.W.
Washington, DC 20250-3700

**UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY INSPECTION SERVICE**

**Petition to amend 9 C.F.R. § 309.3(e) to)
Prohibit the Slaughter of)
Non-Ambulatory Pigs, Sheep, Goats,)
and Other Livestock and to Require)
that Such Animals be Humanely)
Euthanized)
_____)**

Docket No. _____

I. INTRODUCTION

Pursuant to applicable Food Safety Inspection Service (FSIS) regulations, 9 C.F.R. § 392, and the Administrative Procedure Act, 9 U.S.C. § 551 *et seq.*, this petition for rulemaking is submitted on behalf of Farm Sanctuary and its members and supporters, and requests action regarding the treatment and slaughter of non-ambulatory swine, sheep, goats, and other livestock.¹ Federal regulation makes clear that FSIS' responsibilities include implementation of regulations employing the provisions of the Humane Methods of Slaughter Act, 7 U.S.C. § 1901 *et seq.* ("Humane Slaughter Act") and the Federal Meat Inspection Act, 21 U.S.C. § 601 *et seq.*²

¹ FSIS regulation defines "livestock" as "[c]attle, sheep, swine, goat, horse, mule, or other equine." 9 C.F.R. § 301.2. Species other than pigs, goats, or sheep, such as bison, comprise a smaller portion of livestock slaughtered in the United States each year. Therefore, for purposes of this petition the Petitioner focuses on goats, sheep, and swine but intend this for this request for rulemaking to encompass all livestock species as defined by FSIS regulation.

² 9 C.F.R. § 300.2(b)(4).

Petitioner requests a rulemaking to prohibit the slaughter of non-ambulatory pigs, sheep, goats, and other livestock. Specifically, Petitioner requests an amendment to 9 C.F.R. § 309.3(e) requiring that all non-ambulatory livestock be condemned and humanely euthanized in accordance with 9 C.F.R. § 309.13.

II. INTERESTS OF PETITIONER

Farm Sanctuary is the nation's leading farm animal protection organization. Since incorporating in 1986, Farm Sanctuary has worked to expose and stop cruel practices of the "food animal" industry through research and investigations, legal and institutional reforms, public awareness projects, youth education, and direct rescue and refuge efforts. Farm Sanctuary shelters in Watkins Glen, N.Y., and Orland, Calif., provide lifelong care for hundreds of rescued animals, who have become ambassadors for farm animals everywhere by educating visitors about the realities of factory farming.

Farm Sanctuary has over 200,000 members and supporters, some of whom regularly consume meat from pigs, sheep, goats, and other livestock. Farm Sanctuary's members include individuals who are concerned about their exposure to potentially unsafe meat due to the USDA's failure to properly regulate downed animals. These members are exposed to an increased risk of disease because the USDA permits downed pigs, sheep, goats, and other livestock to enter the human food supply—animals who, as detailed below, are more likely to be affected with diseases and to transmit food-borne illnesses.

III. STATEMENT OF GROUNDS SUPPORTING REQUESTED ACTION

A. Legal Background

As declared by Congress in the Humane Slaughter Act, "it is . . . the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with

slaughter shall be carried out only by humane methods.”³ In May 2002, Congress enacted a statute amending the Humane Slaughter Act and mandated that the USDA “investigate and submit to Congress a report on – (1) the scope of non-ambulatory livestock; (2) the causes that render livestock non-ambulatory; (3) the humane treatment of live non-ambulatory livestock; and (4) the extent to which non-ambulatory livestock may present handling and disposition problems for stockyards, market agencies, and dealers.”⁴ Congress further required that “[b]ased on the findings of the report, if the Secretary determines it necessary, the Secretary shall promulgate regulations to provide for the humane treatment, handling and disposition of non-ambulatory livestock”⁵

Despite the passage of over seven years, the USDA has failed to submit to Congress the report mandated by 7 U.S.C. § 1907(a). Notwithstanding the agency’s failure to complete the required report, existing information makes clear that non-ambulatory livestock, including sheep, goats, and pigs, should be prohibited from entering the food supply and be humanely euthanized. While recently enacted regulations prevent non-ambulatory cattle from entering the food supply, sheep, goats, pigs, and other animals covered by the Humane Slaughter Act have not been similarly protected by the USDA.⁶

FSIS has indicated that it intends to address this issue. In response to comments submitted during the 2007 rulemaking regarding non-ambulatory cattle, FSIS stated that it “intends to initiate a separate action in which it will discuss measures that may be necessary to ensure that non-ambulatory disabled cattle *and other non-ambulatory livestock* are humanely

³ 7 U.S.C. § 1901.

⁴ *Id.* § 1907(a).

⁵ *Id.* § 1907(b).

⁶ *See id.* § 1902(a) (providing methods for humane handling and slaughter of “cattle, calves, horses, mules, sheep, swine, and other livestock.”).

handling [sic] in connection with slaughter.”⁷ Despite statutory mandate and the agency’s statements that it intends to initiate rulemaking to address other non-ambulatory livestock, the USDA has taken no apparent steps to remedy the problem. In order to comply with the 2002 amendment to the Humane Slaughter Act, the agency must promulgate rules that require safe and humane treatment for non-ambulatory sheep, goats, pigs, and other livestock.

B. Factual Background

Non-ambulatory livestock, commonly referred to as “downers” or “downed” animals, are livestock animals which are too ill or injured to stand or walk unassisted. Federal regulation defines non-ambulatory livestock as animals 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 conditions.”⁸ According to findings released by the USDA in 2005, the number of downed cattle in the United States was estimated at 465,000 in 2003 and 450,000 in 2004.⁹

Like cattle, many pigs, goats, sheep, and other livestock also become non-ambulatory before slaughter, making them similarly susceptible to inhumane treatment at processing establishments. The number of downed sheep in 2004 was 37,000 and 39,000 in 2005.¹⁰ The

⁷ Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle, 72 Fed. Reg. 38,700, 38,722 (July 13, 2007) (codified at 9 C.F.R. pts. 309, 310, 318) (emphasis added). FSIS further insisted it would address non-ambulatory livestock other than cattle in its 2009 rulemaking, explaining that

[t]he proposed rule addressed ante-mortem inspection and humane handling issues related to non-ambulatory disabled cattle, not other livestock. This issue is outside the scope of this rulemaking. However, as the Agency has noted in a prior rulemaking (72 FR 38722), it plans to evaluate measures that may be necessary to ensure the humane handling of livestock.

Requirements for the Disposition of Cattle that Become Non-Ambulatory Disabled Following Ante-Mortem Inspection, 74 Fed. Reg. 11,463, 11,464 (Mar. 18, 2009) (codified at 9 C.F.R. pt. 309).

⁸ 9 C.F.R. § 309.2(b).

⁹ NATIONAL AGRICULTURE STATISTICS SERVICE (NASS), NON-AMBULATORY CATTLE AND CALVES 1 (May 5, 2005).

¹⁰ NASS, NON-AMBULATORY SHEEP AND GOATS 1 (May 4, 2005).

number of downed goats was estimated at 36,000 both in 2004 and in 2005.¹¹ Although Congress also directed the USDA to investigate and determine the number of non-ambulatory swine, to Petitioner's knowledge, the USDA has undertaken no such study.¹²

However, researchers at the University of Illinois found that 0.85 percent of swine arriving at slaughter plants studied in 2003 and 2004 were non-ambulatory, while 0.23 percent were dead upon arrival.¹³ With over 100 million swine slaughtered annually, it is reasonable to estimate that the annual number of non-ambulatory swine is at least 850,000, nearly twice the number of downed cattle.¹⁴

The USDA, in its 2009 rulemaking regarding non-ambulatory cattle, recognized the enormous potential for abuse and inhumane treatment when animals become downed.¹⁵ FSIS's attention was directed to inhumane practices following the Humane Society of the United States' (HSUS) undercover investigation of a Westland/Hallmark Meat Packing Company slaughterhouse in January 2008. Video footage and other evidence showed downed dairy cattle being subjected to horrible abuse.¹⁶ Slaughterhouse workers were observed kicking cows, forcefully prodding them with the blades of a forklift, jabbing them repeatedly in the eyes and other sensitive areas with electric shock prods, and even forcing water up their nostrils with a hose in order to force the cows to rise to their feet so they could pass inspection and be

¹¹ *Id.*

¹² See 7 U.S.C. § 1907(a).

¹³ Temple Grandin, *Elbow Room for Pigs in Transport is Beneficial*, MEAT & POULTRY 119 (Jan. 1, 2007).

¹⁴ Joe Vansickle, *Preparing Pigs for Transport*, NAT'L HOG FARMER (Sep. 15, 2008), available at <http://nationalhogfarmer.com/behavior-welfare/0915-preparing-pigs-transport/index.html> (last accessed Mar. 11, 2010).

¹⁵ Requirements for Disposition of Cattle. 74 Fed. Reg. at 11,463 ("The Agency issued the proposed rule in response to a January 2008 investigation into events at the Hallmark/Westland Meat Packing Company that highlighted a vulnerability in our inspection system and that disclosed instances where cattle had been inhumanely handled.").

¹⁶ Rick Weiss, *Inspectors Verify Abuse of Cows in California: Mistreatment was Captured on Video at Slaughterhouse* WASH. POST Feb. 7 2008, at A4.

slaughtered for human food.¹⁷ Many of those cows were subsequently slaughtered and sold to the National School Lunch Program, despite potentially serious health risks associated with meat from downed cattle.¹⁸

In a Zogby poll taken in September 2003, seventy-seven percent of Americans said that the practice of slaughtering downed animals for human consumption was unacceptable.¹⁹ The 2008 investigation at Westland/Hallmark's plant is only among the most recently documented instances revealing downed animal abuse at this facility. Farm Sanctuary videotaped similar abuses at the same plant more than ten years earlier, underscoring a history of inhumane practices.²⁰

Though it is unknown how frequently humane handling regulations are violated, evidence suggests that these violations are almost never reported or subjected to enforcement measures. For example, slaughter plant audits conducted by the industry itself indicate that millions of livestock animals are not adequately stunned after the first attempt, as required by federal law.²¹ Yet, the Animal Welfare Institute (AWI) reported that only sixty-five noncompliance reports (NRs) were generated for ineffective stunning over an 18 month period.²² Thus, in over 99.99 percent of all cases of ineffective stunning, no enforcement actions were taken.²³ Out of the 432

¹⁷ *Id.*

¹⁸ HSUS, *Rampant Animal Cruelty at California Slaughter Plant – Undercover Investigation Finds Abuses at Major Beef Supplier to America's School Lunch Program* (Jan. 30, 2008), available at http://www.humanesociety.org/news/news/2008/01/undercover_investigation_013008.html (last accessed Mar. 11, 2010).

¹⁹ Letter from Pam Malin, Zogby Int'l, to Gene Bauston, Farm Sanctuary. *Results from Zogby America Poll* (Sept. 8, 2003). As of March 14, 2010, 16,462 citizens have signed Farm Sanctuary's petition to President Obama requesting that legal protection be extended to all downed livestock. See Farm Sanctuary, *Petition signatures, Petition for the Pigs*.

²⁰ Video: *Downed Cattle at Hallmark Packing* (1993), available at <http://www.youtube.com/watch?v=0LhFXBnW5po> (last accessed Mar. 11, 2010); Weiss, *supra* note 16.

²¹ DENA JONES, *CRIMES WITHOUT CONSEQUENCES: THE ENFORCEMENT OF HUMANE SLAUGHTER LAWS IN THE UNITED STATES* 86–86 (Animal Welfare Institute 2008).

²² *Id.* at 40.

²³ See *id.* at 40, 53–56, 83–87.

NRs AWI reviewed for that eighteen-month period, only fifty-one were for the mistreatment of downed animals.²⁴ With well over a million animals becoming too ill or injured to stand every year, the likelihood that fewer than one out of 20,000 are subject to cruelty strains credulity.

IV. ARGUMENTS IN SUPPORT OF REQUESTED ACTION

A. Current Regulations Regarding Non-Ambulatory Livestock Do Not Properly Ensure Humane Treatment of Pigs, Sheep, or Goats Before Slaughter and Act as an Incentive for Inhumane Handling.

In 2009, the USDA implemented requirements for the disposition of downed cattle “to improve humane handling practices and preclude establishments from attempting to force non-ambulatory disabled cattle to rise,” after it became aware that some establishments will stop at nothing to move downed animals through inspection and on to slaughter.²⁵ The final rule adopted amendments to 9 C.F.R. § 309.3(e), further requiring establishments to specifically notify FSIS inspection personnel when a cow becomes non-ambulatory after passing ante-mortem inspection and to prevent those cows from being slaughtered for human consumption.²⁶ These rules “proposed to make clear that establishments have an affirmative obligation to make FSIS personnel aware when an animal goes down.”²⁷

Downed cattle were previously regulated in the same manner as downed pigs, goats, and sheep when inhumane treatment was documented. Non-ambulatory pigs, goats, sheep, and other livestock continue to be subjected to similar inhumane treatment in attempts to move them

²⁴ *Id.* at 40.

²⁵ Requirements for Disposition of Cattle, 74 Fed. Reg. at 11,463.

²⁶ 9 C.F.R. § 309.3(e) was amended as follows:

Establishment personnel must notify FSIS inspection personnel when cattle become non-ambulatory disabled after passing ante-mortem inspection. Non-ambulatory disabled cattle that are offered for slaughter must be condemned and disposed of in accordance with § 309.13.

9 C.F.R. § 309.3(e).

²⁷ *Id.*

through processing.²⁸ Reports submitted by FSIS inspectors document that these practices are used on other livestock animals. For instance, in 2002, an inspector witnessed a slaughterhouse employee dragging a downed sow on her back from a trailer onto an unloading ramp.²⁹ The FSIS inspector observed the conscious sow squealing and blinking.³⁰ In 2004, an inspector reported that an employee allowed pigs to run over a downer pig in the alleyway and also attempted to force the downed pig to rise.³¹ Another record reports the kicking and probing with a “Hot Shot” of a downed pig, “causing the animal excess pain.”³²

A Raleigh District Veterinary Medical Specialist reported observing plant personnel drag a conscious downed hog into the aisle-way of a plant from the holding pen.³³ Although the plant owner stated that the plant did not accept downed animals at delivery, it did not have proper equipment or procedures suitable to move conscious downed animals.³⁴ In another incident, an inspector observed a truck driver kicking injured and downed hogs and attempting to drag them from a trailer by the tails.³⁵ The inspector reported that the hogs were conscious and squealed when kicked.³⁶

²⁸ See Video: Downer Pigs in the Food Supply, CNN (Dec. 8, 2009) available at <http://us.cnn.com/video/?/video/us/2009/12/08/lapin.downer.pigs.cnn> (last accessed Mar. 11, 2010); Peter Eisler, *Food Safety: Veterinarian to Detail Slaughterhouse Breaches*, USA TODAY (Mar. 3, 2010).

²⁹ Non-Compliance Record No. 00015-02, issued to Est. No. 1586 M/1 (Apr. 12, 2002). Current regulations prohibit the dragging of conscious livestock at slaughter establishments. 9 C.F.R. § 313.2(2).

³⁰ *Id.*

³¹ Non-Compliance Record No. 0030-2004-7036, issued to Est. No. 09166 M/1 (Nov. 5, 2004); See also Non-Compliance Record No. 166-2003-255, issued to Est. No. 18079 M/2 (Sept. 9, 2003) (reporting the running of pigs over a downed pig); Non-Compliance Record No. 80-2003-5471, issued to Est. No. 00085B M/1 (Aug. 26, 2003) (reporting the running of pigs over a downed pig during unloading); Non-Compliance Record No. 106-2002-928, issued to Est. No. 0244L M/1 (Oct. 2, 2002) (reporting stunned pigs falling onto disabled pig and attempt to shackle and hoist pig for slaughter without stunning).

³² Non-Compliance Record No. 0020-2002-235, issued to 19922 M/1 (Oct. 3, 2002).

³³ Non-Compliance Record No. 11-2004-4146, issued to Est. No. 04005 M/1 (Feb. 25, 2004); See also See also Non-Compliance Record No. 116-2002-928, issued to Est. No. 0244L M/1 (Oct. 24, 2002).

³⁴ *Id.*; See also Non-Compliance Record No. 9-2003-4077, issued to Est. No. 21898 M/1 (Apr. 7, 2003) (reporting disabled pig dragged by the leg); Non-Compliance Record No. 21-2003-1452, issued to Est. No. 09131 M/1 (Oct. 7, 2003) (reporting dragging of conscious downed pigs, failure to segregate downed pigs, trampling of downed pig, and lack of proper equipment to move downers).

³⁵ Non-Compliance Record No. 0019-2005-7799, issued to Est. No. 0235 M/1 (Apr. 12, 2005).

³⁶ *Id.*

FSIS reports demonstrate similar downed animal abuse at sheep plants. In 2004, an inspector reported that downed sheep were confined to a pen without water or means of access to food, since they could not rise from a recumbent position.³⁷ The inspector noted that the sheep should have been placed into a suspect pen and given water and feed directly.³⁸

These examples illustrate that the current regulations, which allow the slaughter of animals that become downed after inspection but prior to slaughter, incentivize inhumane handling practices—so that as many animals as possible make it to market, slaughterhouse employees attempt to force downed animals to rise and proceed to slaughter. FSIS recognized this issue in its cattle rulemaking, stating that it had “determined that a change in the regulation is needed to ensure more effective and efficient implementation of inspection procedures and compliance with humane handling requirements at official establishments.”³⁹ Petitioner requests that the agency now extend these protections to all livestock animals.

Under the current regulations regarding pigs, sheep, goats, and other livestock, animals are subject to inspection on the day of slaughter before they may enter the establishment (referred to as the “ante-mortem” inspection).⁴⁰ Downed livestock and those showing symptoms of disease during ante-mortem inspection must be labeled as “US Suspect,” set apart from normal, ambulatory animals, and slaughtered separately.⁴¹ The carcasses of suspect animals must be handled in accordance with specific procedures.⁴²

³⁷ Non-Compliance Record No. 7-2003-6513, issued to Est. No. 20708 (Mar. 29, 2004).

³⁸ *Id.*; See also Non-Compliance Record No. 11-2004-6232, issued to Est. No. 19789 M/1 (May 17, 2004) (reporting failure to provide downed pigs with water or shelter). Current regulation requires that all animals in holding pens be given access to food and water. 9 C.F.R. § 313.2(e).

³⁹ Requirements for Disposition of Cattle, 74 Fed. Reg. at 11,465.

⁴⁰ 9 C.F.R. § 309.1(a).

⁴¹ *Id.* § 309.2(n).

⁴² *Id.* § 314.

Establishments are required to move any disabled or non-ambulatory livestock, other than cattle, to covered pens where they may be held to await disposition by an inspector.⁴³ If an animal in the holding pen exhibits certain signs of disease, it will be tagged as condemned or suspect and slaughtered accordingly.⁴⁴ However, if the inspector deems the animal is free of disease, it may be slaughtered for human food, in whole or in part, or may be released from the pen “for any purpose,” depending on the animal’s condition.⁴⁵

The recent changes to regulation regarding cattle require establishments to notify inspectors when a cow becomes non-ambulatory after inspection.⁴⁶ The cow must then be labeled as “U.S. Condemned” and euthanized using humane methods described in 9 C.F.R. § 313.⁴⁷ This process eliminates any incentive for establishments to force cows to rise and move to slaughter, because the regulations prohibit the slaughter, for human consumption, of a cow that becomes downed at any point before slaughter. Labeling downed cattle as “U.S. Suspect” and setting them aside—which encourages inhumane treatment, as portrayed in the Hallmark investigation—is no longer an option.

Although disabled and non-ambulatory pigs, goats, and sheep currently must be set aside for further inspection, they may still be slaughtered for human food at the inspector’s discretion. Because these animals are now treated differently than non-ambulatory cattle and are not required to be labeled condemned and humanely euthanized, it remains in the establishment’s financial interest to force downed animals through to the end of the slaughtering process. Therefore, as seen in the NRs from swine and sheep facilities, workers will often resort to cruel and inhumane measures in dealing with downed animals to maintain the pace of production, just

⁴³ *Id.* § 313.1(c).

⁴⁴ *Id.* § 309.4–309.15.

⁴⁵ *Id.* §§ 309.2, 311.1.

⁴⁶ 9 C.F.R. § 309.3(e).

⁴⁷ *Id.*

as they did with cattle before cattle received protection from such practices.

Humane handling practices can reduce the occurrence of non-ambulatory animals.⁴⁸ As a result, the ban on slaughter of downed cattle for human consumption encourages humane handling and care, as each downed animal results in potential economic loss for the establishment. At this point, there is little incentive for transporters, handlers, and slaughterhouse workers to provide proper care throughout any stage of the process, because even if a pig, goat, sheep, or other livestock animal becomes downed, it is still eligible for slaughter. Requiring slaughter establishments to label all downed animals as “U.S. Condemned” and provide humane euthanasia, or otherwise prohibiting slaughter for human consumption, would generate motivation for transporters and establishments to reduce the chance that animals will become downed, thereby encouraging better handling practices.

B. Pigs, Goats, and Sheep are Capable of Feeling Pain and Distress and Should Receive the Same Protection from Inhumane Treatment as Cattle When They Become Too Ill or Injured to Rise.

Livestock animals are capable of feeling pain and can endure physical distress when not properly handled.⁴⁹ As set forth in the American Veterinary Medical Association’s policies regarding livestock animals, responsible use of animals for food or fiber must be consistent with the principle of the “relief of animal suffering.”⁵⁰ The USDA demonstrated an interest in preventing the suffering of downed animals when it engaged in rulemaking to encourage humane treatment of downed cattle.⁵¹ While this is commendable, it is also the agency’s responsibility to ensure humane treatment of other livestock animals as well.

⁴⁸ Tyler Kelley, *Don't Let Stress, Heat be a Downer for Pigs*, PORK (May 2, 2005).

⁴⁹ As set forth in the policy declaration of the Humane Slaughter Act, humane methods of handling are necessary to “prevent needless suffering” of livestock animals. 9 U.S.C § 1901.

⁵⁰ Am. Veterinary Med. Assoc., Policy, Responsible Use of Animals for Human Purposes, *available at* http://avma.org/issues/policy/human_purposes.asp (last accessed Mar. 11, 2010)..

⁵¹ See Requirements for Disposition of Cattle, 74 Fed. Reg.11,463.

As discussed above, many thousands of other livestock animals become downed each year. Injuries, such as torn ligaments or broken limbs, or illnesses, resulting from disease, exhaustion, or starvation, as well as inhumane handling, can render an animal non-ambulatory.⁵² If downed animals are prohibited from being moved to slaughter for human consumption, establishments and transporters will be encouraged to use best handling practices to reduce the rate of non-ambulatory animals at processing plants. A study conducted by the Prairie Swine Center, Inc., found that improved handling of pigs during transport can significantly reduce the rate of downed pigs arriving at slaughter establishments.⁵³

Because pigs, goats, and sheep are processed more quickly than cattle, these animals are highly vulnerable to inhumane handling and abuse.⁵⁴ Accordingly, a rulemaking to prohibit their slaughter for human consumption and a requirement that they be humanely euthanized is imperative for compliance with, and consistency among, the policies and mandates of the Humane Slaughter Act and its recent amendments.

C. The Slaughter of Non-ambulatory Pigs, Goats, and Sheep Poses a Significant Threat to Human Health and Welfare.

One concern with the slaughter of downed cattle was the risk of Bovine Spongiform Encephalopathy (BSE), or “Mad Cow Disease.”⁵⁵ Consumption of BSE-contaminated meat can potentially cause a degenerative fatal brain disease, Creutzfeldt-Jakob Disease (CJD), in humans.⁵⁶ This concern applies to the slaughter of other downed animals as well. Experts suggest that animals other than cattle may be susceptible to BSE or similar diseases.

⁵² Temple Grandin, *Preventing Crippled and Non-Ambulatory Animals* (Nov. 2000), available at <http://www.grandin.com/welfare/lci/lci.html> (last accessed Mar. 11, 2010).

⁵³ Harold W. Gonyou, *Stressful Handling of Pigs*, Prairie Swine Center (Nov. 2004) available at <http://www.thepigsite.com/articles/?Display=1246> (last accessed Mar. 11, 2010).

⁵⁴ See *supra* notes 28–35.

⁵⁵ See Requirements for Disposition of Cattle, 74 Fed. Reg. 11,463.

⁵⁶ Fact Sheet, USDA Food Safety Information Research Office, A Focus on Bovine Spongiform Encephalopathy (Nov. 2007).

Experts have concluded that BSE can be transmissible to sheep by blood transfusion and through consumption of infected brain matter.⁵⁷ In 2005, the potential of BSE in goats was confirmed when a goat in France was documented as infected with the disease.⁵⁸ Furthermore, studies discussed in the *Journal of General Virology* showed that pigs may also be susceptible to BSE.⁵⁹ Petitioner recognizes that federal law prohibits the use of materials from BSE-positive animals in livestock feed; nevertheless, the mere fact that research has determined that these other livestock animals may be susceptible to the disease should warrant rulemaking to prohibit the slaughter for human consumption of downed animals which could be infected.⁶⁰

In addition to BSE and related diseases, livestock species may become downed as a result of other illnesses which may be transmittable to humans. In 2007, the Government Accountability Office reported that pigs are susceptible to Swine Brucellosis, which can be transmitted to humans through the handling or consumption of infected tissues.⁶¹ Johne's Disease, Scrapie, and Foot and Mouth Disease are also listed as potentially transmittable diseases found in sheep and goats.⁶² A 2002–2003 Animal and Plant Health Inspection Service (APHIS) study of sheep slaughter found that 100 percent of facilities studied had at least one sheep infected with Scrapie, a disease transmittable to humans not only through food but also contact with other products such as wool.⁶³

⁵⁷ Int'l National Forum for Animal Diseases and Food Safety (TAFS), *TAFS Position Paper on BSE in Small Ruminants* 2–3 (Jan. 2009).

⁵⁸ Steve Conner, *First Case of BSE in Goats Found in France*, THE INDEP. (Jan. 29, 2005).

⁵⁹ Gerald A. H. Wells et al., *Studies of the Transmissibility of the Agent of Bovine Spongiform Encephalopathy to Pigs*, 1021 J. GEN. VIROL. 84 (2003) (“These findings show that pigs are susceptible to BSE.”).

⁶⁰ See 21 C.F.R. § 589.

⁶¹ GOVERNMENT ACCOUNTABILITY OFFICE, Report, *USDA Needs to Resolve Several Key Implementation Issues to Achieve Rapid and Effective Disease Trackback*, App. II (July 2007). Though Swine Brucellosis is more commonly found in wild swine, other livestock—both pigs and cattle—can become infected. See USDA, *Feral/Wild Pigs: Potential Problems for Farmers and Hunters*, USDA Ag. Info. Bulletin No. 799 (Oct. 2005).

⁶² USDA, *Phase II: Scrapie: Ovine Slaughter Surveillance Study 2002–03* (Jan. 2004).

⁶³ *Id.* at 34.

Though the USDA is responsible for implementing regulations to ensure the humane treatment of livestock animals, human health is also a critical concern.⁶⁴ Threats to human safety should serve as an additional incentive for FSIS to act. Therefore, despite the USDA's failure to complete the required investigation of these downed animals thus far, enough information exists to warrant rulemaking to prohibit the slaughter of downed pigs, goats, sheep, and other livestock and to require humane euthanasia for these animals.

D. Potential Industry Opposition to a Prohibition on the Slaughter of Non-Ambulatory Livestock Is Likely Unwarranted as Illustrated in the 2009 Cattle Rulemaking.

During the 2009 rulemaking to prohibit the slaughter of downed cattle, several industry comments raised opposition to rulemaking based on anticipated costs. However, FSIS found that these arguments were unwarranted. There has been no indication, to Petitioner's knowledge, that these concerns have materialized since implementation.

For example, industry representatives asserted that the 2009 prohibition on slaughter of downed cattle would create significant expense for small and very small establishments.⁶⁵ FSIS found this argument to have no merit, as the agency's budget analysis showed that any expenses related to the regulation would account for merely .01 percent—at most—of the industry's \$8.4

⁶⁴ It is important to note that while other regulations may be aimed at reducing the occurrence of these types of diseases and illnesses, FSIS still found that additional rulemaking was necessary in the context of downed cattle. For example, in response to industry argument that the risk of human health implications arising from downed cattle was already low, the agency affirmed that a complete prohibition on slaughter was necessary not only to ensure public protection by effective inspection but also to facilitate humane handling.

Comment: Several industry commenters who opposed the proposed amendment stated that the risk of BSE [Mad Cow] is very low because of interlocking safeguards that the U.S. has implemented, and that, thus, the change to current policies is unnecessary.

Response: This final rule may help to reinforce the existing prohibition on the slaughter of non-ambulatory disabled cattle by ensuring the humane disposition of such animals at official establishments. In addition, FSIS has concluded that this final rule will better ensure more efficient and effective implementation of inspection and humane handling requirements at official establishments.

⁷⁴ Fed. Reg. at 11,465.

⁶⁵ *Id.*

billion in annual production. The agency stated in response that “there is strong evidence for concluding that the cost of the rule is not significant.”⁶⁶

To the extent that industry or other opposition sets forth arguments against this rulemaking based on costs,⁶⁷ it must be recognized that they are missing the point of this action—to ensure humane treatment of livestock. Despite industry argument that the new rules for non-ambulatory cattle would force them to treat and/or hold from production animals that could not stand for reasons other than disease, FSIS reminded them that the motivation for the rulemaking was to ensure that these injured animals were not forced to slaughter through inhumane methods.⁶⁸ This demonstrates FSIS’s acknowledgement that humane euthanasia serves as the appropriate option for non-ambulatory livestock. As a result, any opposition to extending this protection to other livestock animals based on cost or efficiency should fail, as it is unrelated to the purpose of the rulemaking.

IV. SPECIFIC REQUEST FOR AGENCY ACTION

Based on the foregoing, Petitioner requests that FSIS immediately undertake the following action:

- (1) prohibit the slaughter of non-ambulatory swine, goats, sheep, and other livestock; and
- (2) require that all non-ambulatory swine, goats, sheep, and other livestock at slaughter establishments be humanely euthanized.

⁶⁶ *Id.* “[T]he Agency’s analysis of the estimated cost of this rule to small and very small establishments would be about \$883,500 to \$1,342,600 annually, which is insignificant compared to the value of their annual production of about \$8.4 billion.” *Id.*

⁶⁷ *See supra* note 28.

⁶⁸ *See generally id.*

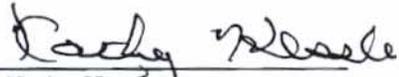
Petitioner requests that 9 C.F.R. § 309.3(e) be amended as follows:

309.3 Dead, dying, disabled, or diseased and similar livestock.

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(e) Establishment personnel must notify FSIS inspection personnel when ~~eattle~~ livestock become non-ambulatory disabled after passing ante-mortem inspection. Non-ambulatory disabled ~~eattle~~ livestock that are offered for slaughter must be condemned and disposed of in accordance with § 309.13.

FARM SANCTUARY
Respectfully Submitted,

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