



# Animal Welfare Institute

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Docket Room Manager  
US Department of Agriculture, Food Safety and Inspection Service  
Patriots Plaza 3  
1400 Independence Avenue SW  
Washington, DC 20250-3700

Submitted via [www.regulations.gov](http://www.regulations.gov)

**Re: Inhumane Handling of Livestock in Connection with Slaughter by Persons Not Employed by the Official Establishment (Docket No. FSIS-2016-0004)**

To Whom It May Concern:

I submit these comments on behalf of the Animal Welfare Institute (AWI) and our supporters throughout the United States.

**I. Introduction**

A final determination published in the *Federal Register* on October 26, 2016 (Vol. 81, No. 207) announced the intention of the Food Safety and Inspection Service (FSIS) to alter its policy for dealing with acts of inhumane handling by persons not employed by the official slaughter establishment. According to the determination, FSIS will be holding livestock owners, transporters, haulers and other persons not employed by the official establishment responsible for acts of inhumane handling by initiating civil or criminal actions against these parties. FSIS enforcement personnel will evaluate individual cases for determination of the appropriate action, including warning letters for minor violations, civil penalties for repetitive violations, and criminal prosecutions for egregious violations.

The *Federal Register* item states that this change will “further improve the welfare of livestock handled in connection with slaughter.” However, the determination does not explain how the policy change will benefit animals and does not discuss—or even acknowledge—the possibility that the change could negatively impact animal welfare. We also note that, although FSIS is providing an opportunity for comment, it is doing so only after the final determination has been made, and any potential changes based on the comments will be limited to the implementation plan and will not affect the policy itself.

**II. The policy change has the potential to negatively impact animal welfare**

This policy change does not in any way extend or enhance current legal protections for animals at the time of slaughter. It merely shifts the party being cited in cases where the act of inhumane handling is performed by an individual not employed by the slaughter establishment. FSIS is apparently assuming these incidents will be reduced by the threat of holding the offending party responsible, which, on the face of it, seems fair and reasonable. However, slaughter establishments currently face immediate suspension for egregious acts of inhumane handling, and the motivation to avoid being shut down will

be lost under the new policy. The threat of a plant suspension—and to a lesser degree, a notice of an intended suspension—are the most effective means of ensuring compliance with food safety and Humane Methods of Slaughter Act (HMSA) regulations. These are the strongest options available to FSIS inspection personnel, as the impact on the company is immediate and financially significant. The non-employee policy change, however, takes these options off the table and replaces them with less timely, potentially less effective alternatives.

AWI has reviewed incidents of inhumane handling by non-employees occurring during the past three and one-half years (January 1, 2013 through June 30, 2016). These incidents were described in Notices of Suspension and Notices of Intended Enforcement posted on the FSIS website, as well as in Noncompliance Records obtained through the Freedom of Information Act. Through this process, AWI identified approximately 70 humane handling violations involving transporters. The records reviewed suggest that 30 percent of the violations were committed by employees of the official establishment or its parent corporation, and 70 percent were committed by non-company/corporate employees.

Based on AWI's review, transporter-involved incidents appear to represent less than 5 percent of all humane handling/humane slaughter non-compliances. However, it is certainly conceivable that the infrequency of these incidents is somehow related to plants monitoring the behavior of transporters in order to avoid administrative enforcement actions. The possibility exists, therefore, that transporter-involved inhumane handling incidents will increase under the policy change.

### **III. Slaughter establishments have control over access to their facilities**

While we appreciate that slaughter establishments do not have complete command over the behavior of non-employees, they do hold control over access to their facilities and access to animals once they are on their premises. In most instances, establishments are able to restrict or deny access to transporters with a record of handling animals inhumanely. Moreover, slaughter establishments have the ability to monitor the behavior of non-employees, to train non-employees, and to even require that only establishment employees handle animals on their premises, if they see fit to do so.

During the past three and one-half years, six slaughter establishments had more than one non-employee transporter-involved humane handling incident. AWI believes that establishments with repeat transporter-related incidents should be issued standard HMSA administrative enforcement actions, i.e., Notices of Suspension or Notices of Intended Enforcement for egregious violations, and Noncompliance Records for non-egregious violations.

### **IV. Delayed civil penalties are ineffective**

Civil penalties must be immediate and significant to be effective. According to its Quarterly Enforcement Reports, FSIS assessed only approximately 10 civil penalties in the past three and one-half years, and the fines ranged in amount from just \$660 to \$6,000. The Reports do not indicate the time interval between the infraction and issuance of the penalty, but AWI assumes that it is typically not short. In order to have the desired deterrent effect, civil fines should be assessed immediately through the issuance of some form of "ticket" to the transporter involved in the incident. As HMSA violations are observed first-hand by inspection personnel, the need for an investigation is negated, and a fine can be assessed on the spot.

**V. Criminal prosecutions are rare and time-consuming**

According to its Quarterly Enforcement Reports, FSIS performed only approximately 12 criminal prosecutions between January 2013 and June 2016. During this period, eight administrative enforcement actions were taken for non-employee transporter-involved humane handling violations of an egregious nature. Under the policy change, these egregious incidents will now be addressed through the initiation of criminal prosecutions. While AWI strongly supports criminal prosecution for egregious inhumane handling incidents, we are skeptical that all future egregious non-employee transporter incidents will result in prosecution. The Reports do not indicate the time interval between an offense and completion of the related criminal case, but we assume that the process is time-consuming and resource-intensive (compared to administrative enforcement actions). FSIS would need to nearly double the resources it allocates to civil fines and criminal prosecutions in order to implement the policy change, and there is no indication in the *Federal Register* item that it has plans to do this.

**VI. FSIS must clarify the meaning of “establishment employee”**

According to FSIS, the policy change applies only to the behavior of establishment non-employees. The FR item states: “FSIS will continue to use its administrative authority to take action against the establishment when establishment employees are found responsible for inhumane handling of livestock.” However, it is not clear whether employees of a parent corporation or subsidiary fall under the term “establishment employee.” The largest meat processors in the United States—Tyson Foods, JBS USA, and Smithfield Foods—operate their own livestock transport companies. Individuals working for these trucking companies may not be officially classified as employees of any particular slaughter establishment. In addition, it is conceivable that large meat processors could set up separate businesses for their transport companies in order to fall under the policy. Therefore, the policy should be clear that the term “establishment” includes any parent corporation, subsidiary, or any other business entity financially associated with the plant where the incident occurred.

**VII. Regulations and policy changes that actually prevent inhumane handling are needed**

This policy change is aimed at assisting small and very small slaughter establishments. According to the *Federal Register* item, the change is in response to a memorandum from an attorney for an official swine slaughter plant. FSIS handled the memo as a petition, and finalized the policy change without providing any opportunity for public comment.

This is not the first time FSIS has made a change to HMSA enforcement that was requested by the meat industry, and without soliciting public comment. In 2011, FSIS revised its Humane Handling and Slaughter Directive (6900.2) to allow the use of Notices of Intended Enforcement for egregious acts of inhumane slaughter if inspection personnel determine that the slaughter establishment operates under a robust systematic approach, a change requested by Tyson Foods in a letter to FSIS. In 2003, an earlier version of the Directive was immediately changed after representatives of the Jewish faith sent a letter to FSIS contesting its authority to enforce HMSA regulations in ritual slaughter situations. These policy changes have had a major negative impact on animal welfare, and in both cases, public comment was not allowed.

While FSIS readily facilitates HMSA changes to benefit the industry, it has yet to do it to help animals. In fact, FSIS has not amended the HMSA regulations for the purpose of reducing incidents of inhumane

slaughter in nearly 40 years. Hundreds of humane slaughter violations—including the most egregious—could be prevented each year by a few relatively simple revisions to the HMSA regulations. In 2013, AWI analyzed more than 1,000 federal and state humane handling enforcement actions in order to identify contributing factors in inhumane slaughter incidents and possible means of preventing the incidents. As a result, AWI submitted a petition to FSIS requesting six changes, including requirements for animal handling plans, employee training, equipment maintenance, and the availability of back-up stunning devices. FSIS has failed to respond to AWI's petition and has not provided the public with an opportunity to comment on the petition.

### **VIII. Conclusion**

AWI is opposed to the policy change, on the basis that slaughter establishments currently possess the ability to deal with non-employees, and because the change may negatively impact animal welfare. The item published in the *Federal Register* does not analyze the potential impacts of the change on animals, nor does it consider possible alternatives. It cannot be known whether inhumane handling incidents will increase, decrease, or remain the same as a result of the change. Incidents may well increase once the threat of plant suspension is removed and replaced by less effective consequences.

AWI appreciates the opportunity to comment on the non-employee transporter policy change. We hope FSIS will either reconsider the policy change, or implement it in a manner that truly improves the treatment of animals at slaughter establishments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dena Jones". The signature is written in a cursive, flowing style.

Dena Jones  
Director, Farm Animal Program