

HALLMARK/WESTLAND MEAT RECALL

HEARING
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE
ONE HUNDRED TENTH CONGRESS
SECOND SESSION

SPECIAL HEARING
FEBRUARY 28, 2008—WASHINGTON, DC

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HALLMARK/WESTLAND MEAT RECALL

THURSDAY, FEBRUARY 28, 2008

U.S. SENATE, SUBCOMMITTEE ON AGRICULTURE, RURAL
DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND
RELATED AGENCIES, COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 2:06 p.m., in room SD-192, Dirksen Senate Office Building, Hon. Herb Kohl (chairman) presiding.

Present: Senators Kohl, Harkin, Dorgan, Nelson, Bennett, and Craig.

OPENING STATEMENT OF SENATOR HERB KOHL

Senator KOHL. At this time we'd like to call this very important hearing to order.

Earlier this month, the Westland/Hallmark Company of Chino, California recalled 143 million pounds of beef. This is the largest recall of its kind in our history. It was triggered by gruesome video images that shocked us all. These images exposed wholly unacceptable gaps in American meat inspection systems. These shortcomings were not brought to light by any agency charged with protecting food safety. They came to our attention through an independent third party. Americans, myself included, were appalled to see cattle too sick to stand, much less walk, being chained, dragged, fork lifted, kicked, jabbed, and then dumped into America's food supply.

If that is not enough reason to pay attention, we have 30 million more, and that's the number of children who participate in the national school lunch program. This plant was a major supplier to that school lunch program.

In 2003, USDA reported the first case of mad cow disease in this country. USDA's immediate response was to ban downer cattle from the food supply. Last year, USDA did weaken that rule. And in the Hallmark/Westland case, there's evidence that even the weaker rule was being flaunted.

By law, all cattle are subject to inspection prior to slaughter. Despite the presence of five inspectors at the Hallmark/Westland Plant, blatant violations had evidently occurred and for some time. This begs the question, how did this happen? And in the next breath, a logical question would ask, what violations are going unnoticed in other plants? Those are the core questions that we will explore today.

Why was there a failure in FSIS inspection procedures? How do we know that there are not similar problems in other plants? What is the effect on the school lunch program and food safety in gen-

eral? And what steps should be, and will be taken to correct these problems?

No one wants another Hallmark/Westland situation anywhere in the country, cannot allow—we cannot allow a single downer cow to enter our food supply under any circumstances. We need to have tougher standards, around the clock surveillance, and stiffer penalties.

Mr. Secretary, the American people don't want bureaucratic double-speak about the mess in Chino. They are watching and listening to this hearing, and they want to know what we're going to do to clean it up. They want to know what we can commit to today. They want a solid plan for the future. Something has to change, and if change doesn't come quickly, then we believe that some people should be thinking about new careers.

We're particularly troubled by the implications that this has for the school lunch program. There is no room for error, especially when children are involved. What happens in the feedlot or the slaughter house ends up in school lunch rooms. As a starting point, Mr. Secretary, we want you to commit to something very specific, we want you to do an audit of every single plant, to make sure that they have language appropriate materials for their workers. We are only as good as the workers that we have at these plants. Plant workers must be properly trained so that there can be no confusion. We would like to have an audit of the plants who supply the USDA Nutrition Programs here, to this Committee, in 30 days or less.

Next, we want to put three specific items on the table and discuss exactly where USDA stands on these items. Number one, is a strict, bright-line, downer ban. Number two is stiffer penalties for inhumane treatment of animals. And number three is the need for continuous surveillance of live animals. We need a more fool-proof system, allowing plant personnel to signal one another when a USDA inspector is on his way, is simply not tolerable. There is a saying that the camera never blinks. USDA inspectors must have the capability to know that violations are not occurring behind their backs. Camera monitors would go a long way towards accomplishing that.

People need to understand this, while inspectors are always present in operating plants, there is no requirement that the live animals be continuously monitored for humane treatment or to determine downer status. It is interesting that one of the firsts step taken by Hallmark/Westland after they got caught, was to install live television monitors. In their case, it was a nice step, but one that came too late.

You may need to do things for which additional statutory clarification or authority is required. We are prepared, hopefully with you cooperation, to make those changes into law. We want a commitment that you will work with us to get it right, and craft changes that will work in the field. As we know, this is a very serious issue, it affects food safety, it affects our children, it affects our trade partners, and it affects our markets. There are things we can do to fix this problem. To strengthen our laws, and to protect our children, we're committed to doing this.

Mr. Secretary, USDA is often criticized for trying to regulate an industry it's also trying to promote. Here's an opportunity for USDA to be part of the solution, rather than part of the problem, and we hope that you will join us.

Senator Feinstein, a member of this subcommittee is not able to be here today due to a scheduling conflict with the Judiciary Committee, and she has asked me to read her following statement.

"I was appalled to hear of the incidence of animal cruelty documented by The Humane Society of the United States at the Westlands meat packing plant in Chino, California, and I am concerned about the United States Department of Agriculture's ability to keep sick animals out of the Nation's food supply. As we have seen, these cruel acts occur when the inspectors' backs are turned.

It is my view that inspection alone will not solve the problems in the food safety inspection system. The responsibility must also rest on the operators of these facilities. Any company that slaughters downed animals and knowingly violates the laws and regulations governing sick and downed animals, should have their operating licenses revoked immediately."

Senator Feinstein also provided question, which will be submitted for the record.

Senator KOHL. Following Secretary Shafer's testimony, we'll hear from Wayne Pacelle, President of The Humane Society of the United States, and Patrick Boyle, President of the American Meat Institute. We've also received written testimony by professor Temple Grandin of Colorado State University, that we will make part of the record.

At this time, I'd like to turn to my colleague, the ranking member in this committee, Senator Bennett.

STATEMENT OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you very much, Mr. Chairman, and thank you for framing the seriousness of this issue as carefully and thoroughly as you have.

I have some similar things to say, but I won't say them in the interest of time. I do want to congratulate The Humane Society for their role in bringing this to light. If The Humane Society had not produced the video—to which you've referred, and which is shocking to all who have seen it—we could very possibly still be going on with these violations happening, without them being picked up. And so, The Humane Society deserves our thanks and gratitude and congratulations for their work here.

I do want to note, so that we don't get undue panic, that this is a Class II recall, which means that the probability of getting sick from eating the meat is considered remote. That does not, in any way, diminish the seriousness of the problem, but it is something that I think consumers might want to know.

Also, I have been pleased to learn, as a result of the poking into this particular problem, that the Department does have a specific oversight set for the National School Lunch Program, and every lot of beef that is destined for the program, regardless of which facility it comes from, is inspected and tested by the Agricultural Marketing Service. Since January 2006, none of the samples have proved positive for E. coli, two tested positive for salmonella, and appropriate changes or steps were taken.

Any product that tests positive for either pathogen is immediately rejected for use in any Federal food assistance program.

This, again, does not alleviate the seriousness of the problem we're facing here. And the fact that Hallmark/Westland violated their contract with USDA for what appears to be a time of 2 years, treated animals inhumanely during that period of time, and broke the regulations, is ample reason for your calling the hearing, and the size of the recall is serious enough to cause us to give it the kind of attention that you have given it here.

I'm happy to join you in conducting the hearing, and join you in your request, that if we need additional legislative changes, we will do our best to do that. And if we need additional money, this is after all the appropriations subcommittee, we need to be told that as well in very clear terms.

Thank you, Mr. Chairman.

Senator KOHL. Thank you, Senator Bennett.

Senator Nelson.

STATEMENT OF SENATOR BEN NELSON

Senator NELSON. Thank you, Mr. Chairman. Unfortunately, I'm going to have to preside here rather shortly, and so I'd like to make some preliminary comments and have my full statement made a part of the record and then the questions made as a part of the record when I finish presiding, come back about 3 o'clock if the hearing is still going, then I'd pick up where I've left off.

First of all, Mr. Chairman, I appreciate so much your calling this hearing. We are—we're all just simply, I think surprised would be a very polite word, to the reaction that we—our reaction to the videos that we saw. Certainly animal cruelty is something to be avoided. If there is any silver lining here, it is that while the animal cruelty situation was so severe, it does not appear that the food safety situation was—that there was any contamination, no evidence of any contamination. And I think we're all—we're all very pleased about that and maybe surprised about that as well, because of the treatment and the fact that the animals were lying down in contaminated areas.

But, you know, I hadn't—I knew when I talked to the new Secretary, as when he was the nominee, that he was going to be inheriting some problems that were continuing. I don't think either he or I knew that he would inherit this one or some of the others that are out there, that may not involve food safety, but the U.S. Department of Agricultural sending out checks, payment checks to deceased individuals, contrary to what the law was under the Farm Program, and a number of other areas, particularly as it relates to trade.

This situation with Hallmark is not going to make our trade situation that much better, because it raises serious questions about—about the treatment of the food products, which then, of course, raises questions about the safety of the—of the facilities, as well as the safety of the processes. The concerns of my constituents are pretty clear. First, we want food safety and we believe we have the safest food in the United States. One of the reasons we believe that we have the safest food in the United States—in America—in the world, in the United States, is because of the inspection process. But when we see a complete failure and—of the process to detect even animal cruelty, it does raise questions then about what that

process—whether it’s sufficient to protect against food safety as well.

So it’s the complete breakdown of the system in this situation, or the inadequacy of the system in this situation to catch the treatment, which would then lead, of course, to the other animal safety questions.

So, we’ve experienced time and again, failures of the USDA, as it relates to trade. One of the most obvious areas of the trade has been, with respect to Korea, we can’t get the right shipments sent to them under the agreements we have with them.

PREPARED STATEMENT

So, I’m hopeful that my good friend and Secretary, who has his hands full right now, will be able to pick up the slack that you’ve inherited, and be able to straighten things out, so that we don’t have these questions continuing into the future. It’s a daunting task. We talked about it at the beginning, and I want to be as supportive of your efforts as I can possibly be, and of the agency. But I think we have to have a much better regimen of inspections and assurances from the Department that these things are not going to continue, if they’ve continued elsewhere.

Thank you very much, Mr. Chairman.
[The statement follows:]

PREPARED STATEMENT OF SENATOR BEN NELSON

I want to thank the Chairman for holding this important hearing today; providing us with an opportunity to hopefully sort out the myriad problems and disturbing actions that have led to this unprecedented recall.

Mr. Secretary, when you appeared before the Agriculture Committee—which I’m also a member of—for your confirmation I hearing, I mentioned my concern about all that had been left undone over the last 2 years.

I had not anticipated that the problems would show up this quickly; or in such a difficult manner.

At the outset, let me be very clear: I believe that our main focus in this matter should be on ensuring the continued safety of our food supply.

For too long, we have seen a pattern of mistakes and missteps that raise serious questions about the competence and effectiveness of USDA.

Inspectors fail to catch domestically-labeled boxes of beef before they are shipped to Korea—not once, but multiple times—giving Korea an excuse to halt imports of U.S. beef and further damaging the reputation of both the beef industry and our inspections system.

And now this situation with Hallmark, leaving us to wonder what other problems exist.

Since we can’t know what problems lie ahead, I want to take the time today to make certain that we recognize what has gone wrong and that we understand how best to make sure these mistakes do not happen again.

So, while I realize that many of the problems did not start on your watch, you are unfortunately faced with the task of fixing the problems that have been left to you.

Between the series of news stories on this matter, the concerns of my constituents and your comments here this afternoon, I am left with a lot of unanswered questions and I hope to get some answers today and in the very near future.

I am concerned about the continued safety of our food supply and the effectiveness of USDA’s system for safeguarding it, including the decisions that have been made in this situation; I am concerned about the detrimental impact this situation is having on our efforts to re-open important markets for U.S. beef, such as Korea and Japan; and, finally, I am concerned for the beef industry and its reputation both here and abroad and with the agency tasked with regulating the industry and safeguarding of our food supply.

Without playing armchair quarterback, here, I have to admit that I am concerned not only about the actions of this company and its employees but also about the decisions, employees and capabilities of USDA.

This was a massive recall of beef and it involved the past 2 years of production—much of the beef has been consumed and you have consistently stated that it posed no risk to human health or food safety.

Was this recall proportional to the amount of risk to the food supply or human health? Particularly since the recall has generated so much concern amongst parents and consumers.

Was this action wise considering the very delicate nature of our beef trade with nations like Korea and Japan? Does this add fuel to their unreasonable claims about the safety of U.S. beef and the effectiveness of our system of safeguards?

Was there another form of punishment for the company or another series of actions by USDA that would've better fit this particular situation without the corresponding fears and concerns and the implications for trade and the industry?

Although I am very concerned about the safety of our food supply—and particularly the health of our schoolchildren eating the foods in the school lunch program—I am also concerned about an overreaction that gives the appearance of a greater danger than actually exists.

Finally, this situation raises serious concerns about the agency responsible for our food safety:

- Do we have enough inspectors on the ground to handle the number of animals and amount of product that needs to be inspected?
- Are these inspectors properly trained and are the correct mechanisms in place to hold them accountable for mistakes?
- Is USDA wisely allocating the unfortunately limited amount of money that Congress is able to appropriate—or is too much money going to too many desk jobs in D.C. and not enough to those on the front lines?
- What is USDA doing to make sure vacancies are filled in a timely manner and that all responsibilities are covered?
- Are there enough safeguards in place to ensure that inspectors are independent from the facilities they inspect and that they are able to effectively do their jobs?
- Why are we witnessing so many missteps on the part of USDA for something as important as the safety of our food? What is it going to take for these problems to be corrected and what do you plan to do?
- Since you have come on board, have you initiated any formal review of on-the-ground capabilities and whether resources are being effectively allocated?

Thank you for appearing here today, Mr. Secretary, on this important matter. I hope you can help us help you fix the problems that you have inherited.

Senator KOHL. Thank you very much, Senator Nelson.

I'd like to call upon Senator Dorgan for his comments, and also some introduction on Secretary Shafer before he makes his testimony.

STATEMENT OF SENATOR BYRON L. DORGAN

Senator DORGAN. Mr. Chairman, thank you very much. I will be mercifully brief. I think you have really well outlined the purpose of the hearing and the challenges and problems, and I won't go over that again.

I was, in reading the briefing material, struck by the comments of someone that said, you know, we have 7,500 inspectors for 6,300 Federal plants. That's too few eyeballs watching too much meat. It seems like a perfectly apt description to me, too few eyeballs watching too much meat.

Secretary Shafer is here today, and we are—it's the first time he's had a chance to come before the appropriations subcommittee, and he is, of course, a North Dakotan, and we're enormously proud of his nomination and the support by the U.S. Senate for him to serve in this position. He's confronted now with a challenge, not of his making, and I think all of us agree there's a real problem here.

I also want to commend the organizations that were involved in bringing this to light. You know, this is—The Humane Society has done good work here and I think it's something all of us should pay a lot of attention to.

And so, again I appreciate your calling the hearing, Mr. Chairman, and I appreciate Secretary Shafer being here. This is a search for solutions.

I want to make one other point if I might, following some questions I will ask about the beef recall, I've sent Secretary Shafer a letter about the closing of a human nutrition laboratory, and I want to ask him to respond on the record to those at some point, in writing perhaps if necessary.

But, this issue is about the beef recall, and I appreciate your setting the stage in your opening statement.

Senator KOHL. Thank you, Senator Dorgan.

Mr. Secretary.

PREPARED STATEMENTS

The subcommittee has received statements from Senators Durbin and Johnson which will be placed in the record.

[The statements follow:]

PREPARED STATEMENT OF SENATOR RICHARD J. DURBIN

Thank you Mr. Chairman and Senator Bennett for holding today's hearing on the Westland/Hallmark Meat Company recall of ground beef. I would also like to thank the witnesses for being here today—Agriculture Secretary Schafer and the rest of the USDA team, Mr. Wayne Pacelle from The Humane Society of the United States, and Mr. Patrick Boyle from the American Meat Institute.

Last week's announced recall of 143 million pounds of ground beef stretching back over 2 years of production at Westland's Chino, California, facility is by far the largest recall in U.S. history. Included in that recall were 50 million pounds of ground beef sent to Federal nutrition programs like the School Lunch Program. To give the situation some context, these programs serve more than 30 million meals per day to the Nation's school children.

The video footage that brought this situation to light is alarming. Employees at a federally inspected facility were shown beating animals, lifting them on a fork lift, spraying water in their noses, and repeatedly using electric prods on them—all to force them to stand up and pass inspection.

The video evidence that these sickly, weak animals entered the human food supply caused the recall and enforcement actions we've seen over the past 3 weeks. Animals unable to stand on their own are prohibited from entering the human food supply because they present a higher likelihood of harboring disease and most importantly because they pose a risk of harboring BSE or mad cow disease.

To USDA's credit, the response has been swift and tough. USDA quickly suspended inspection and operations, opened an investigation, and worked with the company to announce a recall. I hope that the investigation into the individual criminal acts and the Inspector General report on why this failure occurred are conducted thoroughly.

However, the events that occurred at this federally inspected plant are alarming. USDA says that there were inspectors on the premises of this facility constantly and continuously. How could these events occur given USDA's in-plant presence?

There are many unanswered questions. There are also vague and misguided policies in place that need to be adjusted in order to prevent similar situations from occurring. Some of these issues can be resolved administratively and some may require congressional action.

First, I'd like to discuss the vacancy rate for USDA FSIS inspector positions. Through a FOIA request, we learned last year that vacancy rates hover around 10 percent on average. In Denver, that rate is 20 percent, and Chicago has seen vacancy rates around 15 percent. This means that there are somewhere in the neighborhood of 700 unfilled inspector positions according to what FSIS acknowledges it needs to do its job.

This translates into inspectors forced to cover more territory with less time to spend in facilities. The status quo is insufficient. To USDA's credit, it has submitted requests to this Committee to be allowed to assess and collect user fees for certain activities. Every year they're proposed and every year they're thrown aside.

In light of this episode and the strains on the Federal budget, I would like to hear USDA discuss these user fees and what USDA would do with the revenue generated from such fees to fill this inspector gap. I also encourage my colleagues to give these user fees a serious look. Today, taxpayers shoulder the full cost of meat, poultry, and egg inspection. In return, companies gain the marketing benefit of the USDA stamp and are able to sell their product. There are also public health benefits, of course, which is why taxpayers should continue to pay for the majority of these services.

The USDA proposal would be relatively small. There is a facility licensing fee depending on the size of the operation, and a fee for plants that perform poorly. The latter fee kicks in when facilities have sample failures that result in retesting or are linked to an outbreak. I can't imagine why the second fee should raise any objection. The licensing fee is a reasonable approach given the shared public and private benefits of the inspection program.

The second item I'd like to discuss is a troubling statement I heard during one of USDA's conference calls regarding this recall. The quote was from Dr. Clifford from APHIS who said that, "first and foremost animal ID within APHIS is for animal health purposes".

That statement is troubling given our current inability to trace back where these individual cows came from to determine whether there was a problem at the producer level, or to trace forward where this product was distributed. During the Topps recall this summer, USDA was confronted with similar limitations.

The inability to track and trace is bad for consumers and bad for the industry. For consumers, it's obvious—we need to be able to quickly assess where product is located and pull it from shelves. Not being able to trace back or forward puts consumers at risks and hinders our ability to target resources to the sources of contamination.

In a similar vein, I recently wrote to USDA and OMB to urge the promulgation of a final rule giving USDA the authority to publish retailer information in recalls. It does no good for consumers to know the packer that had a problem. Consumers need to know where contaminated product was sold in order to make informed decisions. I'd like to hear your comments on this long overdue rule.

Getting back to animal ID, there are a host of reasons why the current state of animal ID is a problem for industry. First, the size of these recalls is often multiple times larger than the actual affected batch, because we're unable to trace back to the source of the recall or trace forward where it's gone. That means bigger recalls that cost the industry more money and draw alarming newspaper headlines.

It is also troubling to our trade partners, many of whom have more robust ID and trace-back programs. New Zealand, Canada, and the EU all outshine us in this area. Over time, this will hurt the competitiveness of our products and our ability to deliver the highest value products to markets around the world.

Furthermore, the USDA has squandered millions of dollars on this taxpayer-funded program that USDA often refers to as a program run "in cooperation with industry". The results have been poor.

We've now spent about \$100 million on this program and we have fewer than 30 percent of all premises registered nationwide. That means that hundreds of thousands of premises are not even registered. We're not even talking about identification tags or traceability. Premise registration is only step one and we're failing miserably.

I hope to hear a clarification from Secretary Schafer that this program is not just for animal health purposes and is not a handout for industry cooperative programs. It has clear food safety and trade implications and it needs to be treated as such. In addition, USDA needs to get serious about registering 100 percent of premises and that means mandatory premise registration. It's not a big challenge to register a premise—it takes a couple of clicks on a website and it doesn't compromise privacy.

Lastly, I would like to discuss USDA's policy on the use of downer cattle. The feed ban and our requirement to remove specified risk material (SRM) are the primary methods for controlling BSE.

The third layer is USDA's ban on using non-ambulatory cattle in the human food supply. As I mentioned before, downed cattle have a higher likelihood of harboring disease. A number of the 15 cattle found to have BSE in North America were non-ambulatory animals.

It is inconceivable why we have a loophole that allows some downed cattle to enter the food supply. In the July 2007 USDA rule, the announced “ban” on downer cattle allow FSIS personnel to determine the disposition of downer cattle on a case by case basis. While some of these animals may be safe for the food supply and may have minor injuries, it is hard to imagine how FSIS personnel can assess the source of an injury on the spot with only visual observation. In addition, this policy assumes 100 percent compliance with the requirement that plant employees contact FSIS personnel whenever an animal goes down and that all employees are familiar with this requirement.

With faster and faster production lines in plants, a workforce with high turnover, and USDA vacancy rates exceeding 10 percent, it seems like the loophole in the downer rule presents a risk to our food supply. Industry can do the right thing here. If the packing plants raise the threshold for the condition of the animals coming into facilities, producers will ensure that they send animals that are young and healthy enough to comply with the standard.

We clearly need to tighten this policy up and I hope Secretary Schafer will make a commitment to review this issue and do what’s right for public safety. There are steps that USDA can take without legislative action that would enhance the safety of the food supply, including tightening the downer ban, requiring testing of animals that go down but pass inspection, placing cameras in pens, and getting serious about animal identification.

I thank the witnesses for being here and I look forward to hearing your testimony.

PREPARED STATEMENT OF SENATOR TIM JOHNSON

First and foremost, I would like to thank Chairman Kohl and Ranking Member Bennett for holding this afternoon’s hearing on the Hallmark/Westland meat recall issue. I appreciate your attention to this important issue and also thank today’s witnesses for their time.

We are here today to examine the largest beef recall in history, totaling 143 million pounds of beef. My office has been in contact with the United States Department of Agriculture (USDA) on the subject of this recall since January, and USDA’s communication in discussing and investigating the recall and inspection procedures is vitally important.

I am certain the United States has the safest food supply in the world, and our farmers and ranchers provide a steady stream of nutritious and wholesome U.S beef on kitchen tables across America. My confidence in our meat supply has not waned. I am pleased that the Agriculture Appropriations Subcommittee is addressing this recall so as to ensure our meat supply and the quality product our ranchers and farmers offer will not be compromised, nor will public perception be further impacted.

Roughly half of the beef obtained for South Dakota schools in the 2007 and 2008 school years was supplied through the Hallmark/Westland meat packing plant in Chino, California, and the majority of the beef that was distributed to South Dakota schools was fed. Schools in my home State received nine truckloads of Westland Company product, each truckload carrying roughly 40,000 pounds of beef.

Thankfully, we have not heard of a single illness reported in the State, or Nation for that matter, related to the consumption of this beef. The company voluntarily recalled the product, and the USDA’s Food Safety and Inspection Service (FSIS) has suspended the Hallmark/Westland meat packing plant. Schools in South Dakota did not expect any additional product from this plant and will not be faced with a product shortage during these upcoming months, as their beef demands were expected to be met through other suppliers.

FSIS did conduct ante-mortem inspections at the Hallmark/Westland meat packing plant in Chino, California. However, FSIS wasn’t contacted for evaluation of subsequently non-ambulatory cattle that had passed the ante-mortem inspections. The treatment of cattle at the packing plant sends a very negative image to consumers, consequently impacting public perception of the cattle industry.

USDA’s investigation is ongoing. Evaluating oversight to ensure this type of treatment does not occur in the future is a critical component of that investigation, for consumers and ranchers alike.

**STATEMENT OF HON. ED SCHAFER, SECRETARY OF AGRICULTURE,
DEPARTMENT OF AGRICULTURE**

ACCOMPANIED BY:

**AL ALMANZA, ADMINISTRATOR, FOOD SAFETY AND INSPECTION
SERVICE**

**KATE HOUSTON, DEPUTY UNDER SECRETARY, FOOD, NUTRITION,
AND CONSUMER SERVICES**

**DR. KEN CLAYTON, ASSOCIATE ADMINISTRATOR, AGRICULTURAL
MARKETING SERVICE**

Secretary SHAFER. Thank you, Mr. Chairman, and members of the committee. I'm pleased to be here today to address the ongoing investigation of the Hallmark/Westland meat packing company in Chino, California, and to assure you that I am deeply and personally concerned about the inhumane treatment of cattle in that facility.

I'm joined today by Ken Clayton, the Associate Administrator of the Agricultural Marketing Service, Al Almanza, the Administrator of the Food Safety and Inspection Service, and Kate Houston, the Deputy Under Secretary for Food, Nutrition, and Consumer Services. And we look forward to answering your questions.

The American people rely on the United States Department of Agriculture and thousands of front-line inspectors, and the safeguards we have developed through decades of experience, to ensure the meat, poultry, and processed egg products that they consume, are safe and wholesome. That is one of our fundamental missions, and it is a trust that we take very seriously.

I want to be clear and right up front, our food supply is safe. However, there are serious violations of USDA regulations that warranted action and we issued a Class II recall. The Class II recall means that the probability is remote that there is a risk to human health.

Mr. Chairman, you mentioned that—that cows were hit and rolled and jabbed and dunked before they went into the food supply. We see no evidence that that is a correct statement. We have seen animals that have been previously approved by a certified veterinarian, an employee of USDA, to go into the food supply, that then went down. But we have no evidence that there are sick animals that went into the food supply.

I also want to tell you now about how proud I am of leading USDA at this time. Our employees have shown their dedication to our food safety mission in the outstanding way that they have responded to this crisis. I have witnessed them working around the clock and sacrificing personal time with their families. They are committed, knowledgeable, and caring, and their performance has left me even more confident about the safety of our food supply than I was as a private citizen just a month ago.

I can only describe the video that was brought to the public attention on January 30, about the way cows were being handled at the Hallmark/Westland Plant, as alarming and disturbing. But I appreciate The Humane Society of the United States for exposing the rule violations that were taking place. No one wants to see animals treated that way. It is shameful and it is irresponsible.

We are determined to find out what went wrong at this plant, and to hold anyone involved in violations fully accountable for their

actions. We are also examining our inspection system, to make sure that we have the best possible policies and practices in place to deter future violations at the facilities under our jurisdiction and stop them if they do occur.

Once we had reviewed the Hallmark/Westland video, we immediately put the administrative and regulatory tools to our disposal at work. We launched investigations by our Office of Inspector General, to utilize its investigative resources and powers, and by our Food Safety and Inspection Service, and Agriculture Marketing Service as well. We also put an immediate administrative hold on the use of Hallmark/Westland products, by participants in the school lunch program or any of our other nutrition assistance programs.

Over the past 4 weeks, as more information has become available to us, we have taken further actions against Hallmark and Westland. After determining that there was evidence that animals had been egregiously mishandled at the plant, FSIS suspended inspection on February 4. While Hallmark/Westland had already stopped their slaughter operations, this action by FSIS collectively, effectively blocked the plant from operating until a corrective action plan is approved.

Based on evidence from the ongoing investigation, FSIS recommended to Hallmark/Westland that it recall all products produced at the plant since February 1, 2006. On February 17, Hallmark/Westland commenced a voluntary recall of 143 million pounds of fresh and frozen beef. The reach of this recall is broad and deep. It extends to school districts throughout this country, as well as to commercial distributors, processors, wholesalers, and retailers.

But I also want to stress to you that because USDA recommended this action, it is because of serious violations of our animal slaughter rules, and it is extremely unlikely that the mishandled animals pose a risk to human health.

We are going to pursue these investigations wherever they may lead, and promptly take whatever corrective actions are called for. But we believe there are actions that we can take now, before we have the full results of the investigations at hand. That will help strengthen our food safety system, and help deter and detect violations like these that we believe took place at Hallmark/Westland.

While the investigation proceeds, we are taking the following steps to enhance oversight policies and procedures of humane handling. I am directing our inspectors to be more resourceful in how they do their inspections. That will mean being more random when they are in and where they do the inspections, when they're making use of additional tools, such as off-site video surveillance at regulated establishments.

We are also prioritizing inspections, based on a set of objective criteria, so we gather the most information on plants, that we believe humane handling violations will most likely occur. We will be drawing on the data generated by our humane activities tracking system, to more precisely target our inspection and surveillance efforts.

In our purchasing activity, we will immediately increase the frequency of unannounced audits conducted at the 23 approved

slaughter facilities that provide beef under our Federal Purchase Program.

We have also asked our Inspector General to perform an audit to determine whether our rules and procedures for ensuring that only animals fit for slaughter enter the food supply were both being followed at Hallmark/Westland and other selected slaughter facilities that we oversee.

Mr. Chairman, I said at the outset that I take this issue very seriously, and I mean it. We recognize that these actions have—that we have taken in this case have caused and will cause a lot of pain. The shutdown of Hallmark/Westland means workers in an economically depressed area will lose their jobs. The recall means processors around the country will suffer losses because they use Hallmark as a supplier.

We believe we are taking the right actions, but we also recognize that they are difficult for those whose lives or businesses are being upset. But by taking these actions, we are also assuring the children around the country, who rely on us for their school lunches, that rules do matter. And we are assuring mothers that the food their kids eat at school and at home is safe. We are also sending a clear message to consumers, both our domestic and international markets, that we will continue to uphold the highest standards to protect our food supply, and these are very important things.

PREPARED STATEMENT

I look forward to coming back and visiting with you in the near future to share what we learn from the actions I have outlined, as well as from the investigation once it is complete. I appreciate the opportunity to be with you today. Our written testimony has been submitted for the record, and we look forward to answering your questions, Mr. Chairman.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF EDWARD T. SCHAFER

Mr. Chairman and Members of the Committee, thank you for inviting me to appear before you today to address the ongoing investigation of the Hallmark/Westland Meat Packing Company (Hallmark/Westland) in Chino, California. I want to assure you that I am deeply concerned about the inhumane handling of non-ambulatory disabled cattle in that facility.

I want to further assure you that, as soon as I learned of the problems at Hallmark/Westland, I took immediate steps to determine if the allegations made public by The Humane Society of the United States (HSUS) were accurate. I called on our Office of Inspector General (OIG) to work with USDA's Food Safety and Inspection Service (FSIS) and Agricultural Marketing Service (AMS) to conduct a thorough investigation into this matter and stated that any violations of food safety or humane handling laws would be immediately acted upon. In addition, product from Hallmark/Westland involved in the Federal nutrition assistance programs was put on hold pending further information from the investigation. An administrative hold prevents program operators from using the product until further notification from USDA.

To that end, as soon as FSIS determined that humane handling regulations were violated, plant operations were suspended. Additionally, immediately upon conclusive evidence that non-ambulatory animals were allowed into the food supply, FSIS worked with the company to initiate a voluntary recall even though the risk to public health is remote.

I remain confident in the safety of the U.S. food supply. To help ensure its safety, we take a number of steps to prevent food-borne illness. FSIS employs over 9,000 personnel, including 7,800 full-time in-plant and other front-line personnel pro-

protecting the public health in approximately 6,200 federally-inspected establishments nationwide. FSIS personnel must be continuously present for slaughter operations and must inspect processing plants at least once per shift per day. Under the FSIS verification sampling program, FSIS samples meat, poultry, and processed egg products and analyzes them for the presence of microbial pathogens. The agency has paid particular attention to *E. coli* O157:H7 in raw ground beef and *Salmonella* in raw meat and poultry products through the *E. coli* initiative announced last fall and its ongoing *Salmonella* strategy. To protect against bovine spongiform encephalopathy (BSE), the Federal Government also has an interlocking system of safeguards, which I will describe in more detail later.

USDA Agency Responsibilities

USDA takes very seriously its food safety mission. There are a number of agencies at the Department working together on this matter. FSIS is the public health regulatory agency in USDA responsible for ensuring that meat, poultry, and processed egg products are safe, wholesome, and accurately labeled. FSIS enforces the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act, which require Federal inspection and regulation of meat, poultry, and processed egg products prepared for distribution in commerce for use as human food. FSIS also enforces the Humane Methods of Slaughter Act, which requires that all livestock at federally inspected establishments be handled and slaughtered in a humane way.

AMS purchases food product for the USDA nutrition programs. In order to be eligible to sell meat or meat products to AMS, processors must derive the meat and meat products from livestock that are humanely handled and harvested in accordance with all applicable FSIS regulations, notices and directives. In addition to this requirement, AMS has specification requirements for food purchased for USDA nutrition programs that preclude the use of meat and meat products derived from non-ambulatory disabled livestock. In making commodity purchases, AMS relies on FSIS and Food and Drug Administration (FDA) food safeguards; explicitly incorporates FSIS and FDA requirements into procurement contracts, as appropriate; and requires good manufacturing practices for sanitation and food safety.

The Food and Nutrition Service (FNS) administers USDA nutrition programs. FNS programs affected by the recall include the National School Lunch Program, the Emergency Food Assistance Program, and the Food Distribution Program on Indian Reservations.

In the event of an administrative hold or a product recall, FNS is responsible for notifying each affected State agency through the FNS Rapid Alert System (RAS). The RAS is in place to communicate critical information to State Agencies and to ensure that action is taken quickly with as little disruption to normal operations as possible. State Agencies are responsible for working with schools and other operators of USDA nutrition programs at the local level to trace deliveries of affected product and to report the status of the product to FNS. In the event of a recall, State Agencies are responsible for working with schools to verify product destruction and for submitting records to FNS for reimbursement and product replacement. Throughout the process, FNS provides State Agencies with continual technical assistance and other support to ensure compliance with a hold or recall.

USDA Actions

On January 30, 2008, USDA learned about the original HSUS video regarding violations through the media. While needing to investigate the potential violations, we thought it prudent to immediately and indefinitely suspend Hallmark/Westland as a supplier to Federal nutrition programs. Hallmark/Westland was not permitted to produce or deliver any products under contract, and, under the suspension, no further contracts could be awarded to the company. In addition, USDA placed an administrative hold on all Hallmark/Westland products we identified that were in, or destined for, Federal nutrition programs since October 1, 2006. The October 1, 2006, date for the start of the initial hold period was chosen to capture a of Hallmark/Westland product that was in the Federal nutrition program supply chain.

On February 1, 2008, Hallmark/Westland voluntarily stopped slaughter operations. As a result of FSIS findings, FSIS suspended inspection at the plant on February 4, 2008. This action was based on FSIS findings that the establishment failed to prevent the inhumane handling of animals intended for slaughter at the facility, as required by FSIS regulations and the Humane Methods of Slaughter Act.

Through the ongoing investigation, FSIS obtained additional evidence that, over the past 2 years, this plant did not consistently involve the FSIS public health veterinarian in situations in which cattle became non-ambulatory after passing ante-mortem (prior to slaughter) inspection, as required by FSIS regulation. It is impor-

tant to note that older cattle can be ambulatory when they pass ante-mortem inspection, then become non-ambulatory from an injury or for other reasons. If such a situation occurs, FSIS regulations require the public health veterinarian to inspect the animal again before the animal is permitted to go to slaughter. In this case, the evidence demonstrates that the FSIS public health veterinarian was not consistently involved. This failure by Hallmark/Westland led to the recall of February 17, 2008, in which Hallmark/Westland voluntarily recalled 143 million pounds of fresh and frozen beef products produced at the establishment since February 1, 2006.

On February 17, 2008, FSIS amended the suspension to reflect the fact that Hallmark/Westland had allowed cattle passing FSIS ante-mortem inspection that subsequently became non-ambulatory to be slaughtered without further inspection by FSIS personnel. The suspension will remain in effect and the establishment will be unable to operate until corrective actions are submitted in writing and verified through a full review by FSIS. This verification process will ensure that animals will be handled humanely and not allowed to proceed to slaughter until Hallmark/Westland complies fully with FSIS regulations.

While it is extremely unlikely that these animals posed a risk to human health, the recall action was deemed necessary because the establishment did not comply with FSIS regulations. The recall was designated Class II because the probability is remote that the recalled beef products would cause adverse health effects if consumed. This recall designation is in contrast to a Class I recall, which is a higher-risk health hazard situation where there is a reasonable probability that the use of the product will cause serious, adverse health consequences or death.

As is the case for all recalls, FSIS is following its established procedures of conducting effectiveness checks to verify notification of the recall and product control and disposition. The recalling firm notifies all consignees of the recalled product and provides instructions for the control and disposition of products. If the recalling firm's consignees have used the recalled products in whole or in part for another product, those consignees must also notify their customers and remove these products from commerce. FSIS personnel are in the process of verifying that Hallmark/Westland has been diligent and successful in notifying its consignees of the need to retrieve and control recalled product, and that the consignees have responded appropriately.

Immediately following the FSIS announcement of the Hallmark/Westland recall, FNS issued instructions to States and program cooperators for the recall and destruction of the Hallmark/Westland beef placed on hold on January 30, 2008, as well as Hallmark/Westland beef dating back to February 1, 2006, the time period covered by the recall. Following FSIS requirements and procedures, FNS instructed State distributing agencies and other program cooperators to destroy all products covered by the recall in a manner compliant with local and State health agency requirements. The process of control and destruction is nearing the final phase. The State distributing agencies and other program cooperators are required to submit documentation to FNS when the destruction has been completed.

Since January 30, 2008, FNS has provided ongoing technical assistance to State distributing agencies, industry partners, and schools to assist program cooperators with the initial administrative hold and the ensuing recall. In addition, FNS collaborated with the U.S. Department of Education to disseminate information to school officials in every school district across the country. USDA thanks the Department of Education for supporting the FNS outreach efforts.

AMS is working to purchase ground beef from other eligible suppliers for schools and other domestic recipients to replace destroyed product. Purchases and deliveries of replacement ground beef products are being prioritized and expedited to ensure that sufficient products are available to local nutrition program operators.

USDA places high priority on providing safe and wholesome food to children served through the National School Lunch Program and other Federal nutrition assistance programs. We are proud of our record in this regard and believe that our purchase programs provide children and other program participants with safe and high-quality food.

Safeguarding Against BSE

I am aware that this situation has raised questions about the risk of BSE. I would like to take this opportunity to give you a brief summary of the safeguards against BSE that we have in place to protect our food supply.

Since the discovery of the first case of BSE in Great Britain in 1986, we have learned a tremendous amount about this disease. That knowledge has greatly informed USDA's regulatory systems and response efforts. It has also given us the opportunity to examine our own cattle herd, which is why we know that the risk of BSE in the United States is extremely low.

As noted earlier, non-ambulatory cattle are excluded from the food supply as part of the Federal Government's interlocking system of controls to protect the food supply from BSE. These BSE security measures include the ban on non-ambulatory cattle, but that is simply one of the multiple measures in place.

We have learned that the single most important thing we can do to protect human health regarding BSE is the removal from the food supply of specified risk materials (SRMs)—those tissues that, according to the available scientific evidence, could be infective in a cow with BSE. FSIS requires that all specified risk materials (SRMs), including the brain and spinal cord, are removed from carcasses so that they do not enter the food supply. Slaughter facilities cannot operate without the continuous presence of FSIS inspection personnel to ensure safe and wholesome product, including the removal and segregation of SRMs. According to the 2005 Harvard Risk Assessment, SRM removal alone reduces the risk to consumers of BSE by 99 percent. FSIS line inspectors are stationed at key points along the production line where they are able to directly observe certain SRM removal activities. Other off-line inspection personnel verify additional plant SRM removal, segregation and disposal.

Likewise, another significant step we have taken to prevent the spread of BSE and bring about its eradication in the animal population is the ruminant-to-ruminant feed ban. In 1997, the FDA implemented a mandatory feed ban that prohibits feeding ruminant protein to other ruminants. The feed ban is a vital measure to prevent the transmission of BSE to cattle.

BSE testing is best used as a surveillance tool. By testing animals that show possible clinical signs of the disease, we can document the effectiveness of our security measures.

USDA's Animal and Plant Health Inspection Service (APHIS) has conducted targeted BSE surveillance testing since 1990, including an enhanced surveillance effort that was initiated after an imported cow tested positive for the disease in December 2003. The goal of the enhanced effort, which began in June 2004, was to test as many animals in the targeted population as possible over a 24-month period. This intensive effort detected only two animals with the disease, out of over 759,000 animals tested. Both of those animals were born prior to initiation of the FDA feed ban and neither entered the food supply. This testing confirms an extremely low prevalence of the disease in the United States.

The enhanced surveillance program provided sufficient data to allow USDA to more accurately estimate the prevalence or level of BSE within the U.S. cattle population. Based on this analysis, we can definitively say that the incidence of BSE in the United States is extremely low. APHIS continues to conduct an ongoing BSE surveillance program that samples approximately 40,000 animals annually. This level of surveillance significantly exceeds the guidelines set forth by the World Animal Health Organization, which has affirmed that U.S. regulatory controls against the disease are effective.

It is because of the strong systems the United States has put in place, especially these essential firewalls, that we can be confident of the safety of our beef supply and that the spread of BSE has been prevented in this Nation.

Further Actions

The investigation led by OIG with support from FSIS and AMS is ongoing. Once the investigation has concluded, we will have additional information to determine the actions for FSIS oversight, inspection and enforcement that may be required. Furthermore, until that investigation is completed and reviewed, we are taking a number of steps to strengthen our inspection system and I expect to announce those steps in the near future.

In addition, the Department will make sure that all remaining Hallmark/Westland product provided to USDA food and nutrition programs is destroyed. Replacement product from other eligible suppliers is already being purchased and provided to schools and other recipients. Given the monetary implications of the recall on this firm, I have directed USDA's Grain Inspection, Packers and Stockyards Administration to closely monitor the company's financial status to ensure prompt payment to producers should Hallmark/Westland resume operations. Additionally, I have directed AMS to exercise every legal recourse possible under the terms of the contracts with Hallmark/Westland to recover the costs of the recall to States and other food program operators, as well as to the Department.

Conclusion

Mr. Chairman, the serious inhumane handling witnessed on the HSUS video is clearly unacceptable. Let me be clear that, as soon as we became aware of the conduct documented on the video, the Department took immediate action. We have worked expeditiously with our State partners to remove, destroy and replace prod-

uct in our Federal nutrition assistance programs. We have also reached out to all our stakeholders throughout the process.

We will continue to provide the public with an update of our actions at www.usda.gov/actions. Thank you and I will be happy to answer any questions that you have.

Senator KOHL. Thank you very much, Mr. Secretary. I want to make our position clear and see if we are on the same wavelength, my position, I'm not speaking necessarily for my colleagues.

I believe we would all agree that diseased or maimed animals should not be allowed to infiltrate the system, they're called downers, but diseased or maimed in one way or another. They should not be allowed to infiltrate the system. Then we need to have a set of procedures and regulations and manners in which we conduct ourselves, so that it doesn't happen.

It seems to me, the only way we can do this, is by having complete surveillance of the line that leads into the slaughter, not 50 percent of the time, not random, but that surveillance has to be like a 100 percent. Whether it's a person standing there or a camera which is being watched by a person, but that line needs to be under total surveillance.

And the third thing, is that companies that violate this policy should be, obviously, put to the most severe kind of penalty. So those are the three things. Do we agree with that? One, that we have no tolerance for animals that are downers into the food system. Number two, we have a surveillance system that assures that this does not take place. And number three, we have penalties for violators.

Secretary SHAFER. If I may take them in reverse order, Mr. Chairman. The penalties for the violators here are strong and swift, as we have shown through the actions we've taken, and this business is likely not going to survive. So, you know, I believe that those strong actions will be taken and should be, by recalling the meat in question, by the penalties that will take place, and financially for being responsible for the financial recall, the cost of the recall. And so, you know, yes, people need to be responsible, and from the USDA standpoint, they will be held responsible.

The second item is the stiff penalties. You know, the stiff penalties here, certainly are the recall basis. Employees are losing their jobs, as I mentioned, and financially I don't see how this company can survive.

As far as the, you know, downer cow situation goes, I would point that these animals were inspected by a veterinarian. That veterinarian views animals, both at rest and ambulatory, and when doing so, animals that are sick or aren't appropriate to be into the food supply are removed and put at the rendering facilities. The animals that are approved by a veterinarian go in—go into a pen to move into the processing plant.

I do believe there are cases in that scenario where downer animals can be approved by the veterinarian, as required by USDA rules, and put into the food supply. I think they are not sick and having a veterinarian there on—in every facility in place, allows a judgment on a case by case basis, whether they go in or do not.

Senator KOHL. Let's get back, because I think there's some imprecision there, in terms of my understanding. It is not a fact, according to my understanding, that there is a total surveillance of

every animal, to determine whether or not it's a downed or maimed animal. There is not a surveillance or an inspection, as that animal is led into the slaughtering activity, that there's an inspection that occurs prior to that, but there's—which is intended to determine whether or not there's a downed animal involved.

But as that animal then leaves the pen and makes its way towards the slaughtering activity, there is no inspection, it's a random inspection that takes—there are inspectors, but they do not—they're not operative at all times.

So that there is the opportunity for a downed animal to make its way into the system. It may be rare, it may not occur often, but the opportunity is there, and we have had, you know, a thing as serious as this recall, partly as a result of this kind of an inspection system, which as is—you might describe it as very good—but it's not total. I think we're all pretty certain that we can say the inspection system is not 100 percent. It may be close, but it's not there.

And I believe the American people want to know that the inspection system is 100 percent. So, are we on the same wavelength?

Secretary SHAFER. I agree with you, Mr. Chairman, that the surveillance doesn't take place 100 percent of the time. I outlined a couple of actions, which we're taking into consideration, but—

Senator KOHL. But you said you're going to increase—

Secretary SHAFER. We are.

Senator KOHL. But are you—are we prepared to say that we will work together to see to it that the inspection that takes place of these animals, to prevent downed animals from infiltrating the system, the system we put in place will be a 100 percent-type system?

Secretary SHAFER. Mr. Chairman, I believe where I'm coming from here, is that you know, I believe we have rules and regulations that need to be followed. It is correct to say that we do not have 100 percent supervision—surveillance.

It is also correct to say that the rules are if a cow goes down—after it's been approved into the slaughter pen, by a veterinarian—that a veterinarian must be called to make a judgment whether it goes in or out. That rule was violated. And we see the impact that this company—on violation.

Now, I would submit to you that there isn't a slaughterhouse facility in this country that doesn't understand now that we're going to play by the rules, and that the rules say, "If one goes down, you call the veterinarian," or—to make the judgment.

So, as we go through the investigation, and as we find out more how things happened, why it happened—why did employees feel the need to do this—we are going to take the proper corrective action.

And we're looking at different surveillance methods. Some facilities, as you mentioned, have put up cameras. I'm a technology guy, I kind of like that idea. But as we get through the investigation, we need to find out why it happened, how it happened, and what corrective procedures we have to take to make sure it doesn't happen again.

And, should we arrive that 100 percent surveillance is appropriate, I'd be glad to work with you to figure out how to do that. Today, I'm convinced that the rules in place are such to where

we're protecting the supply, and we have a safe entrance into the food supply. And if a downer cattle happens after a veterinary inspection, that the veterinarian will be called.

Senator KOHL. I think we can see where we're not exactly on the same wavelength with respect to what needs to be done, but I'm glad we've had this opportunity to have this exchange.

Senator BENNETT.

Senator BENNETT. Thank you, Mr. Chairman, and let me just go further down the road the Chairman has gone down.

As I understand it, what you're saying is, that an animal gets inspected by a veterinarian at the front-end of the chute?

Secretary SHAFER. Correct.

Senator BENNETT. Okay. The animal then goes down the chute—this is a virtual chute—

Secretary SHAFER. Right.

Senator BENNETT. I don't know what else to call it because I'm not in the business, but he goes down the chute, and if he stumbles and falls down, that's not necessarily an indication that he's sick—he may have just stumbled. I have stumbled and fallen down in front of the Capitol myself, and I'm glad no one took me out and shot me.

Senator BENNETT. But I—

Senator KOHL. But you should have been inspected by a veterinarian—

Senator BENNETT. I was inspected by the Capitol equivalent of a veterinarian—that is, I went into the Capitol physician and he checked me out, and all of the rest of it.

So, if I'm understanding you correctly the animal passes the first test that he's healthy stumbles somewhere along the way, and you're saying, the regulation requires that there must be a veterinarian called to make sure he passes the second time—that he didn't just stumble because he tripped, but maybe he was ill and just got missed the first time. Do I have that correct?

Secretary SHAFER. That's correct.

Senator BENNETT. So, you're saying that the proper enforcement of the rule would guarantee that any animal that was diseased wouldn't get into the food supply.

If I understand what the Chairman is asking, it's that you put a camera in the chute. If you have a camera in the chute—and I don't think it's going to cost all that much—you have evidence that can be examined if, in fact, a veterinarian was not called. If somebody said, "Oh, I'm competent to notice that the cow just tripped, and we don't need to bother calling a veterinarian, just push him along." And the Chairman is saying, "No, even at that point, you need some kind of surveillance."

And, unless the cost is somewhat prohibitive beyond a level that I can conceive of—cameras are everyday kinds of items that we have, certainly everywhere around the Capitol, just to have the record so that if something goes wrong, the Capitol Police can find out who did it? Who was there? Let's go back and re-run the tape. It strikes me that that's a very reasonable request that the chairman is asking for. Is that basically where we are?

Senator KOHL. Something like that.

Secretary SHAFER. And I appreciate the position, Senator.

Senator BENNETT. Yes.

Secretary SHAFER. You know, I understand it. I also know that putting up a camera—full surveillance—and having it on record, as you say, you can go back and review.

Senator BENNETT. Yes.

Secretary SHAFER. We went back and reviewed this case, fortunately, because The Humane Society pointed out the problem.

Senator BENNETT. Yes.

Secretary SHAFER. But—we went back and reviewed here. It doesn't mean that you have—it does mean you have to have a monitor someplace, and you have to have somebody sitting there watching the monitor. And while the rules here were violated, the rules for electronic surveillance can be violated, as well.

The point is, here, our strong actions in a Class II recall have shown that if you have full surveillance, if you have camera surveillance, if you have requirements to call the veterinarian, whatever it is—you've got to play by the rules.

Senator BENNETT. Yes. Well, I take your point—I'm sure that the chill has gone through the meat industry—this is one of USDA's biggest suppliers. And, as you have said here, its financial viability is now over.

If I were CEO of one of its competitors, I would be very, very careful not to get anywhere near a similar kind of activity in my facility, regardless of how I may have felt about The Humane Society or anybody else who was checking up on me. I mean, this would get my attention if I were running one of these businesses, so I can understand your point.

But, let's not micro-manage it. I just wanted to understand exactly where you were.

Secretary SHAFER. And, Senator, to be clear, you know, as I said, we have an ongoing investigation here. Something happened that pushed these employees to these egregious acts, why? How come? Something happened in the facility that they didn't call when the cow went down, our veterinarian, on site.

Senator BENNETT. Yes.

Secretary SHAFER. That has to be on site, or the plant can't operate. They didn't do that. We need to find out why that happened, and should a solution for 100 surveillance be appropriate, and the rules in place to—

Senator BENNETT. Okay.

Secretary SHAFER [continuing]. Watch the cameras and to review them and all of that kind of stuff, could we do it? You know, then I'm fully on board with working with you to make sure that happens.

Senator BENNETT. Yes.

Secretary SHAFER. The big issue here is what happened? What do we need to do to make sure it doesn't happen again?

Senator BENNETT. Well, I'm encouraged by the strong and swift action you have taken, because as I say, it would send a very strong message through the rest of the industry.

Having been a CEO myself, I know that one of the most fundamental questions you can ask in any organization is, what does it take to get fired around here? And somehow, the message went through the employees of that organization that breaking the FSIS

rules is not something it takes to get fired around here. You don't get fired if you do that.

Indeed, there may be a culture there—we're guessing, and probably at this point there is no point in finding out, because the company's going to disappear. Maybe it's a culture where you get fired if you don't break the rules. You get fired if you don't keep the line moving, at all costs. And if that was, in fact, the company culture, it came from the top, and the company deserves what it's gotten.

So, I think you have now sent the signal—what does it take to get fired around here? Break the FSIS rules, and you're going to get fired—that's a very good first signal. But, even as you were enforcing that rule and sending that signal, don't forget the suggestion that the chairman has made.

Secretary SHAFER. And I appreciate that. And I also appreciate that our Office of Inspector General that we recommended do an audit, hopefully will give us the results as to what that culture was in that plant. Was the culture to break the rules, and keep your job? Or was the culture, if you break the rules, you lose your job?

Senator BENNETT. Right.

Secretary SHAFER. We don't know, but we're going to find out.

Senator BENNETT. Right. The only other comment I would make is to have you confirm what I said in my opening statement, that in spite of the egregious behavior, in all likelihood, this is not a major health problem.

Secretary SHAFER. That's correct.

Senator BENNETT. Okay, thank you. Thank you, Mr. Chairman.

Senator KOHL. Thank you.

As I turn it over to Senator Dorgan, I just want to say to you—and I'm sure you agree—the worst message we, collectively, could send from this hearing, is that we don't think that we have a serious problem. The American people would recoil, if they thought that we had this hearing and concluded—without an accord on the seriousness of the problem and the requirement that strong actions be taken.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much. I want to, Mr. Secretary, focus on this issue of too few eyeballs watching too much meat.

Assume, for a moment, there was not a Humane Society, and not a camera, and no presence there, at that moment. We probably wouldn't be having this hearing, we wouldn't know what had happened. And, my question is, is this a self-assessment kind of approach at these plants? Would we expect to have meat inspectors at the plants in sufficient numbers, to be able to observe, watch, catch some of these things? Or is it a self-assessment, in which the plant tells its employees, "Look, here are the rules, we expect you to abide by them," and only if at some point a Humane Society person or somebody else shows up with a camera, do you see the infraction and do you see the cruelty to the animals.

So, tell me about this issue, and that relates to the too few eyeballs watching too much meat.

Secretary SHAFER. You know, I believe that, you know, first of all, Senator, the responsibility of this is from the industry. I mean, the people that operate these facilities have the responsibility for

operating them properly, et cetera, our inspection service is there to oversee it, and to make sure that that gets done.

With your permission, I'd like to ask Mr. Almanza to answer that process, because he is a person who has actually worked in a facility, and you know, and is now the Administrator for FSIS.

Senator DORGAN. All right.

Mr. Almanza.

Mr. ALMANZA. Thank you, Senator.

I would say that we have an adequate number of inspectors in those facilities. Recently, we have seen the number of facilities throughout the Nation decrease by about 300, 350—in that neighborhood—of Federal establishments. And, whenever we have inspection personnel in, well, continuous presence in slaughter facilities, we expect them to perform certain activities that will confirm that what they're telling us that they're going to do, that they are, in fact, doing them.

Such as the HATS, or the Humane Activities Tracking System that the Secretary mentioned in his opening remarks. We monitor those areas, in the pens and in the alleys, at random times throughout the day. We try to vary those, because—or and also—the places that we come through, sometimes we'll come through the outside area, sometimes we'll come through the facility—and try to vary those different things that we're doing, to inspect or to do ante mortem inspection.

Senator DORGAN. Mr. Almanza—

Mr. ALMANZA. Yes, sir?

Senator DORGAN [continuing]. How many inspectors were at this plant, that we're talking about?

Mr. ALMANZA. We had five, sir.

Senator DORGAN. You had five? How many were on duty that day when someone captured on camera what was going on?

Mr. ALMANZA. We have five assigned there, but we weren't short-handed at that location. We had three line inspectors, an off-line inspector, and a veterinarian.

Senator DORGAN. What I'm trying to get at is, is it dumb luck that we know this? Just, somebody was there with a camera, and shows the world, and we're all aghast? Would we have known it as a result of inspectors being on this site? I mean, that actually is the way we should catch circumstances where rules are not being followed—we shouldn't rely on somebody with a hidden camera posting to YouTube or something, it should be our inspection. So, is it kind of dumb luck that we're now understanding this happened?

Mr. ALMANZA. Well, certainly the investigation will turn up the reasons why this occurred. But, we are increasing our level of monitoring those situations in the slaughter facilities, and I think as Senator Kohl stated, as well, that we need to be more vigilant in those areas, and so those are some of the things that we immediately started to do.

Senator DORGAN. And your position is that we do not need additional inspectors, you think the number of inspectors is sufficient? Because there are many who feel strongly that we're short of the number of inspectors, given the number of Federal plants they are required to inspect.

Mr. ALMANZA. Yes, sir. Well, we're continuing to hire, but we also have about 200 more inspectors today than we had a year ago, at this same time. And so we continue to hire, we have about a 4.1 percent vacancy rate at the slaughter level—

Senator DORGAN. But, my question is how many do you have relatively—how many, relative to how many do you think you really need? That's the question. Do you think we have sufficient inspectors, given the need out there?

Mr. ALMANZA. Yes, sir, I certainly do.

Senator DORGAN. All right.

My time is almost up, Secretary Shafer, I had sent you a note because I—and I know this is about meat inspection and—but I did want to have the opportunity while you testified, to discuss the issue of the human nutrition laboratory.

The proposal in the budget, and this was not on your watch—because you've come on after this was all prepared—is to close a very important human nutrition lab and move the functions—to California and to Maryland. And there are some internal studies and observations about this suggesting it's going to end up costing us more money.

I'm not going to ask you to go at length on the record today to answer that, but I would like—if you could—to submit answers to me, in writing, so that at least we have a base of understanding as we consider the President's budget request on this, in terms of whether it makes sense or not for the future.

Secretary SHAFER. I will do so, Senator.

Senator DORGAN. All right, that will be helpful. Can you do that within the next couple of weeks? That would be helpful.

Secretary SHAFER. Yes.

Senator DORGAN. Mr. Chairman, I think this is a really important issue. That the meat supply in this country is a very important issue, and I think the one thing that we don't want to come out of this hearing is some suggestion or some notion that we don't have a safe supply of meat. One—the important element that comes out of this is that we are determined to do everything we can to make certain that the supply of meat remains safe, and that the rules that we have are followed, and strengthened, if necessary.

I think the proposition that you mentioned, Mr. Chairman, makes some good sense. It is very simple, and not very costly, these days, to have detection cameras in a plant like a slaughterhouse. And I think that might well be a pretty useful thing—going back and investigating this circumstance, one would have a really interesting and complete record, wouldn't they? Of what has happened at this plant. So, Mr. Chairman, I think you've made a pretty useful suggestion.

Senator KOHL. Thank you, Senator Dorgan.

Senator CRAIG.

Senator CRAIG. Mr. Chairman, thank you for holding this hearing.

Mr. Secretary, thank you. Do you have reason to believe—or not to believe—that what occurred at this facility is an isolated situation in the slaughter industry?

Secretary SHAFER. We don't know that, Senator. Our investigation is ongoing, and we are trying to find out the reasons why,

what incented these folks to treat animals in this manner. And, as was mentioned here, we may not have known this had not The Humane Society of the United States brought this to our attention.

We're trying to get to the bottom of that during the investigation. We've asked our Office of the Inspector General to pursue that, and as you know, that's a arms' length entity within the organization. And we anticipate that one of the answers that we will receive is, as they do that audit of other facilities, is this been happened elsewhere? We hope to get that answer, and I can share with you the results.

Senator CRAIG. In that context, do you believe that the rules and regulations that are on the books today, as it relates to how animals are handled and how they're slaughtered, is adequate?

Secretary SHAFER. I do, sir. I believe that the regulations on the books today clearly state that if an animal goes down, after it has been inspected by a veterinarian and approved, and assigned a tracking number that goes through all the way, you know, the carcass, all the way through the process, that a, that veterinarian must be called. They broke the rules. That doesn't mean the rules are wrong, we've got to figure out why this facility broke the rules.

So, I believe that the rules are adequate, I believe that if you look at the record of USDA, we've had many plant shutdowns because of inhumane treatment, we have had many incidences in this very plant, where veterinarians were called to make judgments of whether an animal goes, you know, into the process, or is pulled back. So, when the rules are followed, they are adequate, and I believe those rules are adequate.

Senator CRAIG. It's my understanding that, due to the violations, the beef is unfit for human consumption. But is it necessarily unsafe?

Secretary SHAFER. We do not believe that this a food safety issue. We've issued a Class II recall, which says there is no apparent health food risk here. The reason for the Class II recall was because this was not a sick animal, this was an animal that went down after it had been inspected by a veterinarian, so we believe that there is no reason to be concerned about the safe food supply here, as well.

Does anybody else want to answer?

Senator CRAIG. While I was late in coming, and did not—and I've not read your full testimony, and I will—you did, I hope, define a downer cow versus mad cow, and the difference, did you not?

Secretary SHAFER. Yes.

Senator CRAIG. Good. Because there are very clear differences, and I think there's a frustration in the public eye as to what all of this means, based on the visuals of the video—not the reality of what is safe versus unsafe. And I think it's very important that that be clarified, if it is in any way frustration of the consuming public.

Secretary SHAFER. And it was frustrating to myself, personally, Senator. These were difficult videos to watch. And, importantly, there must be a distinction made of animals that are downed, that are sick, that we saw being pushed around with forklifts and things like that—that were not approved by the veterinarian to go into the meat supply.

The animals that were approved to go in, we do have evidence—video and otherwise—that cows that were approved, and afterward went down, that do have tracking systems on them, all the way to the process that shows they are, they are approved, you know, that's where the rule violation took place.

Senator CRAIG. That's right.

Secretary SHAFER. But I'm confident that the veterinarian on staff approved or disapproved the appropriate animals to go into the system.

Senator CRAIG. Well, catching the bad guys is always important, but helping create a culture in which bad guys cannot exist is more important. And I think Senator Bennett is clear—we can put all kinds of cameras up, we could line things, line the runways with inspectors. If you have a culture out there that will fudge, then you've got a problem. And, obviously enforcement is one thing—establishing or insisting on a culture that plays by the rules is critically important. Do you believe the American beef supply, currently on the shelves, for the consumers, is safe?

Secretary SHAFER. Senator, we issued a Class II recall, which is a rule violation, not a food safety issue—

Senator CRAIG. I wanted you to repeat that, for the record. It's important that the American public know exactly what you've said.

Secretary SHAFER. We believe that's important, as well. And while this is not a food safety issue, we don't need/want to duck the point that this was a violation. And our suppliers our there now—our slaughterhouses and processes—know that rule violations count.

You know, this isn't—you know, we have a lot of interlocking inspections for food safety—one of which is downer cows. We have a feed ban that's been put in place by the FDA, we have inspections ongoing on every carcass that goes through a facility—they check for bacteria, and other signs of ill health. So, we're pretty sure that the meat that gets on the market, and on the shelves of this country, is safe. And we continue to operate in that manner.

Senator CRAIG. Well, I appreciate the way that you have handled this. You know, most people who know me, know I have a bias—I grew up in the livestock industry. At the same time, I want it to be what it is—a supplier of high-quality beef to the marketplace, that is healthy and in all ways, desirous of the consumer.

And I've watched over the years—with great frustration—when something like this happens and these sweeping attitudes happen, or there's been a failure to clearly communicate what, in fact, was happening, did happen, and did it, in any way, impact the food supply. And, I think you've been as clear as possible in this. I think the American consumer was simply over-powered by a video—that's not to condemn it, at all—that's simply the reaction.

Your due diligence is going to be very important here, thank you.

Secretary SHAFER. Thank you.

Senator KOHL. Thank you, Senator Craig.

Senator Harkin.

Senator HARKIN. Thank you, Mr. Chairman. I would just ask that my statement be made as part of the record.

[The statement follows:]

PREPARED STATEMENT OF SENATOR TOM HARKIN

Thank you to Chairman Kohl and Ranking Member Bennett for holding this timely hearing on the Hallmark/Westland meat recall. The circumstances surrounding this particular recall are unique: the recall was triggered because of an undercover video released by a non-profit organization.

Most people have seen the video in question, where Hallmark/Westland employees are seen inhumanely handling cattle as well as forcing nonambulatory—or downer—cattle to stand, apparently to get these animals to pass inspections conducted by the Department of Agriculture (USDA). USDA regulations expressly prohibit downer cattle from entering the human supply because the inability to stand or walk can be a clinical sign of Bovine Spongiform Encephalopathy (BSE). This regulation, made permanent last year, is one of USDA's safeguards to keep cattle that may be infected with BSE out of the food supply. Because of the violations by this company of USDA regulations, the company was forced to recall 143 million pounds of beef, covering beef produced from February of 2006 through January of 2008. To make matters worse, about 50 million pounds of the recalled beef went to Federal nutrition programs such as the National School Lunch Program, the Emergency Food Assistance Program, and the Federal Distribution Program for Indian Reservations.

This incident raises numerous questions that I hope the Department of Agriculture can answer for us today. I am especially concerned about whether our food safety inspections are adequate and if existing regulations are being enforced. It is frustrating for me to see that USDA's Food Safety and Inspection Service (FSIS) has many of the tools necessary to ensure the safety of our food supply, but in this case, did not adequately use them. I expect to learn more details about what happened at the Hallmark/Westland establishment, including actions that USDA is taking to prevent this from happening again, what kind of assurances USDA can provide that this is not a systemic problem in our food safety inspection system, and whether USDA's FSIS has the resources it needs to continue its mission of protecting public health.

Senator KOHL. It will be done.

Senator HARKIN. And then, let me dissent a little bit from my friend from Idaho. If there was no safety problems, why did we destroy 143 million pounds of beef, Mr. Secretary?

Secretary SHAFER. I appreciate the question, Senator, and it's nice to see you in a different arena than the farm bill, by the way.

But, the meat has been recalled—

Senator HARKIN. Yes.

Secretary SHAFER [continuing]. And has to be destroyed because the Federal law says that rule violated declared the meat "adulterated," and adulterated meat is to be recalled.

Senator HARKIN. Right.

Secretary SHAFER. This is not—and that's why we have different classes of recalls. We have a Class I recall, which is a food safety issues, and we've certainly had that and overseen those at the agency, and at the Department. We have Class II recalls which say, "Rule violations are important, there's no health risk, but we must pull it back," and there's a Class III recall, as well.

Senator HARKIN. But, the fact is—

Secretary SHAFER. So, that's why we have the different variations of the recall.

Senator HARKIN. But the fact is, that we don't know if these animals that were portrayed on this video were, indeed, sick or not. Do you know that?

Secretary SHAFER. I would submit, you know, Senator—I want to say Mr. Chairman—

Senator HARKIN. Not here.

Secretary SHAFER. Yeah, not here.

I would submit, Senator, that we believe, and the USDA has deemed through the process that the food supply is safe.

Senator HARKIN. Listen, Mr. Secretary—I agree with you. But, the fact remains, there are rules in place to protect the safety of food.

Secretary SHAFER. Yes.

Senator HARKIN. Now, you do have Class II recalls for rule violations, but the fact is, unless you can inform me differently—or someone else, maybe Mr. Almanza or someone can—the fact is, we don't know if those animals that we saw that were being scooped up by a forklift and stuff, that couldn't stand—we don't know if they were sick or not. We don't know that. And because we don't know it, we had to recall 143 million pounds of beef, because we don't really know.

Secretary SHAFER. Senator, what we do know is that the cows that go—went into processing facility that are suspect for being downer cows—were passed by a veterinarian and approved to go into the food supply. They did not—

Senator HARKIN. Was this before—was this before the animals were depicted on the video?

Secretary SHAFER. I would say from watching the video and I—

Senator HARKIN. Yes.

Secretary SHAFER [continuing]. You know, I wasn't there, I watched it, like you did. I would say that there were some cows on that video—this is my opinion—

Senator HARKIN. Yes.

Secretary SHAFER. There were some cows on that video that, when I saw them on the ground being rolled around with a forklift, I—my thought is, they were not approved by the veterinarian, and that there were cows that went down after the inspection. And we saw one cow, in the video, that was pushed, tugged, pulled, into the knock box right at the entrance—not laying in the field, not being rolled around, not being pushed or prodded—but it went right into the knock box, it went down. That was the violation, a veterinarian is supposed to be called there, and was not.

So, I don't see any evidence to the effect that—

Senator HARKIN. Yes.

Secretary SHAFER [continuing]. There were sick cows that went into the food supply.

Senator HARKIN. But, I think the facts are—at least what we do know, already—I think what we know is that the company did not call any veterinarian, did not call for veterinarian inspections after that.

Secretary SHAFER. That's correct.

Senator HARKIN. Well, we know that, so therefore we don't know if they were sick or not.

Now, faced with that, and faced with the possibility that people could become sick, the reason for the rule, as you know, on downer cattle, is because downer cattle are susceptible to salmonella, E. coli, who knows what else? And that's why we have these rules on downer cattle.

It's nothing new, I remember something that happened on this back in Colorado 30 years ago, with the Stankey boys. Well, I won't get into that right now. Do you remember that?

Secretary SHAFER. Sure.

Senator HARKIN. So this is nothing really new. But you'd think we'd have learned our lesson from that—that was almost 30 years ago, if I'm not mistaken. I went out there and held a hearing at the time, in Colorado on this. So, when I saw this again, I thought, "Wait a minute, I thought we took care of this, 25 years ago. Here it comes back again."

But, look, I'm as strong as anyone, wanting to reassure the American people that our food supply is safe, but we cannot keep saying these things if we don't really know. And I think we do a disservice to our own honesty and truthfulness if we aren't level with the American people. That, in fact, there are rules, and the reason those rules are there is because downer cattle can be sick, and if they aren't inspected afterward, we don't know if that meat that got into the food chain was safe or not. And that's why 143 million pounds of beef was recalled.

If you are there, Mr. Secretary, saying, "Absolutely, that meat was all okay for everyone to eat," then I've got to ask, "Why was it recalled?"

Secretary SHAFER. Okay, and that's a fair question.

First, let me point out that a downer cattle—and the reason for, to call a veterinarian for further inspection, is because some animals do go down after they've been inspected. I would point out to you, sir, that there are interlocking inspection services and procedures in place to make sure that a BSE concern—which is a downer cow concern—is not a factor to the American public.

And I want to assure the people here that the specified risk materials are removed from carcasses as they go to the plant. Those have been deemed, maybe, possible for BSE, and we have inspectors that make sure they are removed properly from the meat supply.

We have an FDA food ban in place, and the feed for cattle has been suspect as a BSE issue, and that has been in place. And also, that the cows going into this facility were younger cows, and the BSE symptoms and infections show up later in life in animals. So, with the interlocking concerns that are in place here, we have deemed this food supply as being safe.

Now, my point with asking the slaughterhouse here, the Hallmark/Westland Plant, to pull back their beef for rule violations, is because I believe it's important. And as I mentioned in my opening statement, I believe that the schoolchildren who are eating this must know that rules count, that rules matter.

And I had lunch with kids in California last week. So, you know, I think that's important. I think it's important for moms to know that their food supply is safe, and good, and that the rules are being enforced, and we are making sure that happens.

Senator HARKIN. Well—

Secretary SHAFER. And I think it's important for our consumers—both here and internationally—to know that we're going to enforce our rules very strongly, whether it's a health food risk, whether it's a downer cow risk, or whether these are—you know, whatever the rules are, they're there for a reason. And it's not a food safety case here, but we're going to follow the rules.

Senator HARKIN. Well, we can parse words and we can try to, but the fact is, downer cattle, the reason we have the rules is because

downer cattle are more susceptible. And as I understand it, there was not a veterinarian called in to examine these cattle afterwards, so we don't know. Unless some evidence proves me wrong on this, we don't know, and therefore, for public safety and public health, we do a recall on this.

I agree that recall ought to be done, but I don't know, I think we're parsing words to say, "Well, it's done, not because it was a safety reason, just because someone violated a rule."

Secretary SHAFER. That's a—

Senator HARKIN. When they violate a rule, and there is concern that violation could be harmful to the public health and public safety of people who eat that beef—we don't know then there is a recall. And that's why it's done. Better to be safe than to be sorry.

But, my point is—so, I just want to make that clear. I dissent from just the fact that you say, "Well, there was absolutely no risk to the public health at all,"—we don't know. And because we don't know, we act on the safe side.

Now, now that gets me back to the—the whole inspection service itself, and I heard you say, Mr. Almanza, that you had a 4.1 percent vacancy rate. Well, I was told, as of September 2007, the vacancy rate for in-plant inspectors was about 9 to 10 percent nationwide—11 percent in the Alameda District, where this took place. Dr. Peterson told reporters on February 21, the vacancy rate is 9 percent, and that to be at full employment, USDA would have somewhere north of 8,000 inspectors. Well, you've got about 7,500 inspectors now. So, we have a shortage of about 500.

The budget that you've sent down to us doesn't include any money for any new hires, so—is the vacancy rate 4.1 percent? Is it 9 percent? What is it?

Mr. ALMANZA. When I was referring to 4.1 percent, Senator Harkin, I was talking about in the slaughter plant, the slaughter line positions. And even though those positions are vacant, we still fill them everyday, by taking offline inspectors, and we also have relief inspectors that are roving inspectors that fill those line positions. So, never do we have a line position that's not filled on a daily basis, but we have those backups to substitute when they're there.

So, when I—and I'm sorry if I misled you—but the 4.1 percent was just the slaughter vacancy rate. So, it is higher in the offline inspections positions, Consumer Safety inspector positions, but—that's why I thought we were focusing more on the slaughter end of it, and that's why I used that.

Senator HARKIN. I just don't know if I understand that. You're short 500 inspectors, but you say you're not short any inspectors in the slaughter lines, whatsoever. Is that what you're telling me?

Mr. ALMANZA. Well, we have vacancies, yes sir, we have vacancies—but we fill those vacancies with offline and also inspection personnel that we have to back up when people go on vacation, when people—when some of our inspectors are off for other things. And we use those inspectors to substitute for them. So, we always have our slaughter lines fully staffed with USDA inspectors.

Senator HARKIN. Do you need 500 more inspectors, or not?

Mr. ALMANZA. We'll—certainly if we can hire—

Senator HARKIN. Are you short 500 inspectors?

Mr. ALMANZA. To be at 100 percent, yes, we are. However, we've never been at that level before.

Senator HARKIN. What's the highest level you've ever been at?

Mr. ALMANZA. I think where we are today—at 7,500, today.

Senator HARKIN. Well, it would just seem that, lines being faster, more meat products—not just beef, but poultry, also, going through lines faster than we ever have before, and with the safety concerns that we've seen here, that perhaps we ought to take another look. And I don't know whether we have the money for it or not, but we ought to have more inspectors.

The last thing I wanted to bring up is this case, here, about the video. And I think my staff told me that the chairman had recommended maybe a permanent type of a surveillance system or something like that out there, which seemed to make some sense to me, that we might do that.

But, I just want to ask you, Mr. Secretary, if an inspector—if an inspector had seen these violations, what would have been the normal course of action to be taken by the USDA? Or maybe Mr. Almanza can answer that.

Secretary SHAFER. Go ahead.

Mr. ALMANZA. We would suspend them immediately.

Senator HARKIN. You would have suspended?

Mr. ALMANZA. Yes, sir.

Senator HARKIN. The plant?

Mr. ALMANZA. Yes, sir.

Senator HARKIN. And stopped their operations right there?

Mr. ALMANZA. Yes, sir. And we did that 12 times last year in other locations.

Senator HARKIN. Let me ask, let me delve a little further.

Let's say an inspector had been out there and had seen this, and had stopped operations, would there have been a recall? Or would the company simply have been required to take corrective action, so it wouldn't happen again?

Mr. ALMANZA. Actually, they would be required to submit preventative and corrective measures, in order for us to allow them to begin operations again. And then we would have set up some verification activities, which we would monitor on a daily basis, to make sure that they are adhering to those.

Senator HARKIN. One of the points I'm getting to here is if an inspector had been out there, and had seen this, and had stopped everything, we would have been assured that none of those downed animals went through the facility.

Secretary SHAFER. That's not—that's not totally correct.

Senator HARKIN. Oh.

Secretary SHAFER. Because a veterinarian is called after the ante mortem inspection. And if there's a downed cow, the rules say an inspector is called, and observes an animal, and either further approves it, or rejects it.

Senator HARKIN. But the company would have been shut down during this period of time, the line would have been shut down, Mr. Secretary, is that right?

Secretary SHAFER. That's my understanding.

Senator HARKIN. So, the inspector would have seen this happen, and he would have shut everything down—you've got to stop all of

your operations. They would have called in a veterinarian. The veterinarian then would have done his inspection, and would have certified that the animal was not sick?

Secretary SHAFER. Correct.

Senator HARKIN. And could have gone through?

Secretary SHAFER. Correct.

Senator HARKIN. That's what did not happen here.

Secretary SHAFER. That's what did not happen here, the veterinarian was not called.

Senator HARKIN. No, what didn't happen here was, also, that the inspector wasn't outside to stop it, either.

Secretary SHAFER. What happened here is that, that the veterinarian was not called, the rules and regulations that the USDA set for that plant were not followed.

Senator HARKIN. But the inspector was not out there to stop it. If the inspector had been there, he would have stopped it.

Secretary SHAFER. The inspector was to be called, and was not.

Senator HARKIN. To be called by whom?

Secretary SHAFER. By anybody that saw the downed animal.

Senator HARKIN. But why isn't the inspector out there? There were four inspectors, I understand, at this plant.

Secretary SHAFER. Five, I believe, sir.

Senator HARKIN. What? Five?

Secretary SHAFER. Five, I believe.

Senator HARKIN. But not one was outside?

Secretary SHAFER. The—the process is, the ante mortem takes place and cows are rejected or approved for processing.

Senator HARKIN. Yeah?

Secretary SHAFER. The approved go into a facility after the veterinarian does that, and then the veterinarian goes onto other inspection services in the plant.

Senator HARKIN. So, you leave it up to the company, if they see a downer animal, to call the veterinarian or to get the inspector out there, I guess.

Secretary SHAFER. We don't leave it up to them, we require them to do so, and as seen here—you know, the penalties have been severe.

Senator HARKIN. Well, I think that's a very poor requirement. You know? Talk about the fox guarding the hen house, boy this is a classic case of it.

I think what we've got to do, Mr. Chairman, is ensure—I'll work with you on this, as both authorizing and appropriating committee, to ensure that in these facilities, that we have on-site inspectors. I think the public requires it. I think the safety of our food requires that. And we can't just rely upon the company, I mean, they—what the heck? They may not want to call them. They may say, "Ah, it's okay, just shove it in there," you know how that goes.

As I said, I saw this 20—what year was that thing there out in Colorado? That must have been about 1981 or 1982 or 1983—somewhere in that timeframe out there.

Mr. ALMANZA. That was that the Stanko—

Senator HARKIN. Stanko thing.

Mr. ALMANZA. Yes, that was in about 1978.

Senator HARKIN. Okay, it was even before that. I was chairing the Livestock Subcommittee on the House side, on the Agriculture at that time.

Mr. ALMANZA. Yes, sir.

Senator HARKIN. That's what they were doing.

Mr. ALMANZA. Well, first—

Senator HARKIN. They were dragging in downer cattle, and slaughtering them, and stuff, at the same time. They actually went to jail for it.

Mr. ALMANZA. Yes, they did.

Senator HARKIN. And I thought, you know, you'd think through the years we'd learned our lesson on that, but evidently we haven't. I just think that we've got to re-think about our inspection system, there have to be on-site inspectors that are there, and that they aren't just all in the building at one time. And I've heard all talk about, well, people did walkie-talkies, and warned people when they were coming out, and stuff like that—and you can't rely on the company to do it. You've got to have inspectors, and by the way, if I don't mind saying so right now—inspectors who are paid for by the taxpayers of this country, and not paid for by user fees put upon companies.

I, to me, I've fought this all my life here, this idea—and every administration, you aren't the first, one before you tried it, too, so it's Democrats and Republicans both, so it's not one party or the other—they keep trying to put user fees on there. And I said, no. This is for the public health, and they ought to be public employees and paid for by the public, and not by the companies. Then you get back into that old fox in the hen house again. So, I just wanted to make that statement.

But, I really think that we've got to reexamine the number of inspectors, and how those inspectors are assigned to do the ante mortem type of inspection. Post-mortem seems to be okay, the ante mortem, though, now I'm concerned about what's going on in other places.

Mr. ALMANZA. If I may?

Senator HARKIN. Yes, sir.

Mr. ALMANZA. I started my career as a slaughter inspector, and did ante mortem on thousands of animals, and so I understand where you're coming from.

However, there is—the inspectors go out there with the veterinarian, they go out there and they do ante mortem inspection of 100 percent of the animals that are presented for inspection. So, every single animal that's going to come in, gets viewed by either an inspector, or a veterinarian.

Now, what we were—what you're alluding to in that area of the alley way, as they refer to it in the meat establishments—is the area between the pens and the knock box. And it's a very narrow passageway to keep the animals from being disturbed, and try to turn around in these areas. And so that area is where that cow went down, the cow that the Secretary was talking about. It was after it had received ante mortem inspection, in the pen, and it was being run through the alley, down to the knock box. And that animal went down in that area, which is in close proximity to the knock box.

So, it had received inspection. And so what should have occurred was, someone from the plant should have come and notified the veterinarian that an animal went down, and then the veterinarian should have come out there and looked at the animal, and if it was an acute injury of some sort, then he would make the determination of whether it would go into the food supply, or not. That's the way it's supposed to work.

Senator HARKIN. Well, it obviously didn't work that way, because in the video I saw, there was no way you could get a four-wheel forklift in that narrow passageway.

Secretary SHAFER. Yes, and we should be clear that that video had animals in it that obviously would not have passed veterinary inspection for further processing. There were many animals that were shown here that were not approved by this veterinarian.

We have evidence of, cows after the inspection, that went down in the alley way that Al talked about. But everything in that video did not—

Senator HARKIN. The animals I saw in that video were approved by the inspector before that, is that what you're saying?

Secretary SHAFER. No, no sir. That's not what I'm saying.

Senator HARKIN. Okay, then let's be clear, I think people need to know what we're talking about, I think there's some confusion.

Before those animals, when they were in the holding pens, before they were sent down that chute, you just told me that each one of them was visually inspected by some inspector, each one of them, is that what you said?

Secretary SHAFER. Senator, Senator—I think the issue here is we are not aware, and we have The Humane Society here, and maybe could answer this question. We're not aware that every animal in that video went into the food supply. It's my contention that some of those animals that were being rolled around, did not—and were not passed by the veterinarian. Some that did, were passed, went into the alley way and went down before it went into the knock box.

So, I think we have to investigate, and part of our investigation is to be clear about the video, and which animals did go into the food service, and did not.

I believe that there were some efforts in The Humane Society's video that mixed cattle that were sick and inappropriate to go in, and cattle that were not sick, and were deemed, that would have been deemed to go in.

So, I think—I think we have to be careful that everything on that video doesn't show animals that went into the food supply.

Senator HARKIN. Thank you.

Senator KOHL. Thank you, Senator Harkin.

Senator HARKIN. I went over my time. Thank you very much.

Senator KOHL. We're going to move on to the next panel. I just want to make this comment, I said to you about an hour ago—the last thing we want, I think, any of us, is to leave the impression with the American people that we don't have a serious problem. We need to be careful.

Secretary SHAFER. Thank you, Senator.

Senator KOHL. A 143 million pounds of product were recalled. People across the country saw those pictures—they recoiled. They

said, "There's a problem, somewhere, somehow, that is serious." And we don't want this hearing to give the indication that the problem isn't a serious problem, that requires some strong action.

Isn't that true, sir?

Secretary SHAFER. That is true, Mr. Chairman, and I think that we've shown that we are—it is a serious problem—and we're taking strong action.

I also don't want to leave this hearing with the impression that this is not a Class II recall—which is not a public health issue. A Class II recall says there's a remote possibility of a problem—

Senator KOHL. But isn't it also true that this whole problem was uncovered by a camera that wasn't even yours? It was from The Humane Society.

Secretary SHAFER. Absolutely.

Senator KOHL. Shouldn't you be responsible for uncovering these situations yourself? Isn't that serious? Do we need an implant, or somebody who figures out a way to get in, and unnoticed, and then takes these pictures, and the American people see them?

Secretary SHAFER. I—

Senator KOHL. Why don't you have a system that uncovers this kind of inhumane treatment of animals? Which is—what you call—a violation of rules, call it whatever you want. That's your responsibility to deal with, isn't it, sir?

Secretary SHAFER. It is, sir. And—

Senator KOHL. That's all we're saying—

Secretary SHAFER. And the point is we have—

Senator KOHL. We keep on coming back to the fact that this is not really a—this is a rule two violation, which means, "Hey, it's not all that serious." But, the American people don't feel that way.

Secretary SHAFER. Well, and neither does USDA. We've taken it seriously, which is why we asked the meat be recalled. But I would point out that it is a Class II recall. And the American people should not be concerned about the safety of their food supply.

You are right. The Humane Society brought this to our attention, and that is inappropriate for USDA. We need to be on top of these inspections, we need to understand it, and I'm confident that our—now-investigation will lead us to finding out how it happened, why it happened, and what corrective measure we have to take for the future to make sure it doesn't happen again. And we are committed to doing that.

Senator KOHL. That's great. Thank you, we appreciate your coming today.

Secretary SHAFER. Thank you.

Senator KOHL. Thanks, Tom.

Thank you so much.

Secretary SHAFER. Thank you, Mr. Chairman.

Senator KOHL. And now we will, we will go to second panel, we'll take testimony from Wayne Pacelle, who is President of The Humane Society, and from Patrick Boyle, who is President of the American Meat Institute.

Mr. Pacelle, go right ahead.

STATEMENT OF WAYNE PACELLE, PRESIDENT AND CEO, THE HUMANE SOCIETY OF THE UNITED STATES

Mr. PACELLE. Mr. Chairman, I want to thank you and your colleagues for not only having this hearing today but also for this committee's consistent—I want to thank this committee for its consistent attention to the issues of ante mortem inspection, and the humane treatment of animals at slaughterhouses.

You—also full committee Chairman Byrd, Ranking Member Bennett—since 2001, have added \$39 million to the budget for ante mortem inspections, because you've long been concerned about this, and we deeply appreciate that at The Humane Society of the United States.

It was in 1956, 1957, and 1958 that Fred Myers, who was the founder, the first CEO of The Humane Society of the United States, first testified on the problem of cruelty in American slaughterhouses before congressional committees—including this, this same subcommittee.

It was 50 years ago, this summer, that the Congress passed the Humane Slaughter Act, codifying the point that there are certain practices—at that time, the use of clumsy, long-handled, pull-axe hammers—that are repugnant to the Nation's moral code, that were used.

Half a century has passed, and we are once more before you, to draw your attention to certain other cruelties that, we believe, are not only repugnant to our Nation's moral code today, but also a threat to the safety of the food supply.

Mr. Chairman, you spoke movingly about the video and the cruelty that occurred. And I won't regale the subcommittee with all of the details of all of this cruelty. But I will tell you, addressing the comments of the Secretary of Agriculture who, I think, has taken this matter very seriously, and it's very much appreciated by The Humane Society—that this notion that there's some great safety net here, that these veterinarians are doing very close inspections of these animals—is false.

Let me tell you about this plant, according to our investigator. This was a small, to medium-sized, plant—really on the smaller side. They're doing 500 cattle a day, almost all of them were spent dairy cows.

And the veterinarian would come at 6:30 in the morning, and then he would come back at 12:30 and he approved about 350 in the morning, and then 150 in the afternoon. He would make a visual inspection, at a distance, of 25–30 animals at a time. The idea that there's some, you know, very close scrutiny that's occurring with each individual animal, that we're really safeguarding the food supply is just not the reality of what is happening on these plants.

And you can imagine, if we're talking about a higher volume of animals going to slaughter, and you have one ante mortem inspector who is there for 2 or 3 hours a day, making a distant visual inspection—we should not provide false assurances to the public of the food supply. Nor do we need to be alarmists, but we need to be cognizant of, really, the situation on the ground, and how the inspections are occurring.

And that's why, you know, we are concerned—not about just exposing this particular company—but what this case illuminates about the larger circumstances in American slaughterhouses, and what's happening on the ground.

Mr. Chairman, we heard—I think—real parsing of this issue, on the whole issue of downers, and I just wanted to make it clear what's going on, on the whole downer issue.

For years, we were allowing downers into the food supply—for years. Not only 30 years ago, in 1976, but just up until a few years ago. The only reason it changed is we had the first case of a BSE-positive cow in the United States. There have been several in Canada, but finally we had one in the United States. It was a downer cow, and it was precisely the circumstance that we had warned against for years, that the downer cows—as Senator Harkin has indicated—are more susceptible to certain pathogens than ambulatory, or walking cattle.

So, this downer cow found its way into the food supply—44 nations closed their markets to American-produce beef within a couple of weeks. The Nation was scared, then Agriculture Secretary Veneman passed a rule—an emergency rule—to ban any downer cows in the food supply. We supported that, it was the right policy—it would have been the right policy 10 years before, it would have been the right policy 30 years before. But it took a crisis to precipitate action.

Yet, unbelievably, USDA didn't make that rule final until July 2007. Doing the math, that's 3.5 years later, after they published the emergency rule. They didn't finalize it, and when they finalized it, they weakened it.

And they weakened it to allow this notion, which is still mystifying to me, that if the animal goes down later in the process—after the ante mortem inspection, which I mentioned, is not all that vigorous—that somehow the veterinarian can be called back, and make a judgment, again, with a visual inspection, not a lot of tests going on here, and then allow that animal to be slaughtered.

Well, the animal is down for a reason. And the idea that somehow you can detect an acute physical injury by a broken leg, and say that's the sole reason that the animal is down—Senator Bennett is not here, but he said he fell and, you know, one time, and went down.

Well, people may fall because they're ill—they just don't fall out of nowhere. They may fall because they have a neurological problem, they may not be feeling well, they may be dizzy. The reason that they fall is because there's an underlying medical problem. And some animals may slip and fall, and maybe no medical problem at all with the animal, but you have many animals that may fall because they're injured. And you cannot separate the acute injury from a longer-standing illness, and that's why we need a “no downer” policy—as you said, Mr. Chairman, that's a bright-line policy that doesn't allow any of these animals into the food system, because we're being penny-wise, and pound-foolish.

They want to squeeze these animals, they want to squeeze every last dime out of them, and what's the consequence? Our export markets are closed, consumer confidence is diminished, companies

go out of business—does this make any economic sense, except in the narrowest terms?

We need to strengthen enforcement in addition to dealing with the downer issue. We need more inspectors observing live animals, we need rotations of the inspectors, we need actual criminal penalties for forcefully striking an animal with an object, dragging an animal, ramming, or otherwise attempting to move an animal with heavy machinery, using electric shock, water boarding the animals—putting a hose in their mouth and their nostrils and attempting to simulate a drowning effect, to get these poor, hapless animals up, because they're in such a state of torment, that they will try to get away and get up? Those should be criminal penalties. We shouldn't just have to shut down the plant for an hour or two hours. These people should be subjected to criminal penalties.

We also, we need a comprehensive animal welfare set of farm animal policies that we don't have. And I just wanted to say that this issue of isolated case—you know, if USDA had known about this, which obviously they did not, as Secretary Shafer, I'm sure, would have done something if he had known about it—if they had known or the industry had known, they would have shut this plant down. Now, they're telling us that there are more than 600 other cattle slaughterhouses—while they didn't know about this one, in Chino, but they know about all of these others?

This was a random selection. Our investigator chose this site at random. This was not some broad risk assessment of 50 plants, and then we said, "Okay, here's the highest-risk plant, let's do a deeper dive, and find out what's going on," we chose this at random. That is a troubling fact in this circumstance.

And I'll also tell you—going to the point that it is probably not an isolated case—that it was the USDA's own Office of Inspector General that chastised the agency in January 2006, for its inconsistent application of policies and regulations related to downed animals, after observing downers processed at two facilities.

I just wanted to remind you, it was January 2004—right after the mad cow case—Veneman passed the rule. Yet, FSIS issued this, this inspection guideline that told inspectors that they could approve animals that went down, after ante mortem inspection. FSIS was violating their own rule that USDA had publicly promulgated, and assured the public that the product was safe.

So, it was the OIG that found this, so it's not isolated—and we can submit the OIG report. I know that your staff has seen it.

You know, we need a rigorous inspections program, because reckless behavior by a single company can have national and global implications. How many other crises, recalls and public scares will we tolerate, before we adopt an unambiguous policy banning downer cattle in the food supply?

You know, we went through this with the mad cow case, and now are we going to fine-tune this again, we're going to allow, you know, a little more inspection of downers? But, we're still going to have them get into the food supply? We need a bright-line on this.

You know, we are pleased to work with the USDA, we'll offer honest criticism, when warranted, but at the end of the day we want the agency to do better in, an admittedly difficult assignment,

of assuring humane handling of so many animals that go to slaughterhouses. That's why we worked hard with your committee to get more funding for this program.

PREPARED STATEMENT

But today, we need a new commitment, and perhaps new approaches to handling the questions before us today. We need to apply innovations, such as surveillance cameras, and humane handling, because there's a moral imperative to do so. What happened to these animals is unconscionable. We should not tolerate this abuse of living, suffering, feeling creatures.

These animals are killed so that people can eat them. And the least we can do is to see that their suffering and fear are minimized to the greatest extent possible.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF WAYNE PACELE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify in the wake of a hidden-camera investigation of a dairy cow slaughter plant in southern California conducted by The Humane Society of the United States. The Humane Society of the United States, as you know, is the Nation's largest animal protection organization with 10.5 million supporters nationwide, and I serve as president and CEO of the organization.

Our undercover investigator worked at the Hallmark/Westland Meat Packing Company for approximately 6 weeks at the end of 2007. The investigator witnessed and documented egregious mistreatment of animals, particularly downed cows too sick or injured even to stand or walk. He filmed workers ramming cows with the blades of a forklift, jabbing them in the eyes, applying painful electrical shocks often in sensitive areas, dragging them with chains pulled by heavy machinery, and torturing them with a high-pressure water hose to simulate drowning, all in attempts to force crippled animals to walk to slaughter. In one case, he videotaped a cow who collapsed on her way into the stunning box. After she was electrically shocked and still could not stand, she was shot in the head with a captive bolt gun to stun her and then dragged on her knees into slaughter.

This investigation has done more than expose one company's abusive practices. It has led us to the inescapable conclusion that there are serious shortcomings in the U.S. Department of Agriculture's (USDA's) policy on handling downer cattle and the agency's ante-mortem inspection program.

Downed cattle are more likely to be infected with BSE—bovine spongiform encephalopathy or "mad cow disease." Studies also suggest that they may be more likely to harbor foodborne bacteria, such as *E. coli* and *Salmonella*, which kill hundreds of Americans every year, as these non-ambulatory animals often lie in bacteria-laden waste and may have higher levels of intestinal pathogens due to stress. Children and the elderly are more likely to fall victim to severe illness requiring treatment and hospitalization as a result of both of these pathogens. For a more detailed discussion of the human health risks associated with the slaughter of downed cattle, please see the addendum to this testimony.

The Investigation

In fall 2007, our investigator applied for a position with the Chino, California-based Hallmark Meat Packing Company, a federally inspected slaughter plant, which supplied carcasses to Westland Meat Company, which, in turn, processed the carcasses into ground beef. The companies were affiliated and essentially treated as one entity; they operated from the same building and shared the same USDA registration number. From USDA's own records, we learned that in 2007 Westland was the second-largest supplier of beef to USDA's Agricultural Marketing Service (AMS). As you know, AMS purchases beef for distribution to needy families, the elderly, and also to schools through programs, including the National School Lunch Program, administered by the Food and Nutrition Service. Westland was named the USDA "supplier of the year" for the 2004–2005 academic year.

It is critical to point out that we did not do a broad risk assessment of a large number of plants and then conduct a more thorough examination of a high-risk fa-

cility. The plant was selected at random, and during the course of the investigation, we learned that Westland was the number-two beef supplier to the National School Lunch Program and to other USDA commodity distribution programs. We learned after the field portion of the investigation that Hallmark/Westland had previously been cited for mishandling animals.

The investigator's job at Hallmark was to help drive cattle from transport trucks and holding pens into a chute that led to the killing floor. He regularly worked grueling 10-hour days, 5 or 6 days a week. The job of getting tired, bewildered, and hungry cattle to move is challenging and made even more difficult when the animals are primarily end-of-production, or "spent," dairy cows, who are often sick, injured, and suffering.

Every day, he witnessed blatant and commonplace cruelties inflicted on animals by employees who purposefully ignored regulations meant to prevent the torment and abuse of downed animals simply so they could get these cattle who could not even walk into the kill box. These were not isolated incidents of mistreatment of downed cattle, but deliberate acts that happened routinely at the plant. They were part of the culture of the operation.

A USDA inspector was only present in the live animal area twice daily at 6:30 a.m. and 12:30 p.m.—predictable times at which he merely noted those animals who could not stand and then approved the remainder for slaughter. Let me emphasize the lack of rigor in the approval-for-slaughter process. The veterinarian did not make an animal-by-animal inspection, but simply took a look at large groups of animals, 30 or 35 at one time, as they passed by him, and if the animals could stand or walk, he would approve them. The inspector typically approved 350 animals for slaughter in the morning and then about 150 animals in the afternoon inspection.

The horrific treatment of animals we documented is being downplayed as an unconscionable aberration—the work of just a handful of rogue employees. We do not believe this is an accurate characterization. It has come to light that Hallmark/Westland had a long, documented history of abusing downed cattle. In fact, the Food Safety and Inspection Service (FSIS) cited Westland in 2005 for mishandling animals, and the local Pomona Valley Humane Society and SPCA notified USDA three times about possible violations in 1996 and 1997. In 1996, the Pomona Valley Humane Society sent a letter to Hallmark, with a copy to USDA, stating: "We have had numerous incidents with your facility in the past involving downer animals and loose animals creating public safety issues." In 1993, Farm Sanctuary produced undercover footage of downers being lifted by forklift at Hallmark, prompting introduction of a California downer cattle law the next year. Either management provided instructions to get the downers moving or was asleep at the wheel and let employees run wild—in either case, it's an indictment of management.

USDA Policy

In terms of the larger picture of USDA oversight, we also know that slaughtering nonambulatory cattle was not isolated to this plant. It is, in fact, allowed under current USDA rules. A shift in policy to allow downed cattle in the food chain marks a retreat from a strict no-downer policy that USDA had in place on the books since the beginning of 2004.

Specifically, on December 30, 2003, USDA announced: "Effective immediately, the USDA will ban all downer cattle from the human food chain." This announcement came 1 week after public disclosure of the first U.S. case of BSE—a dairy cow in Washington State who was identified by a USDA veterinarian as downed due to calving injuries and later tested positive for BSE.

USDA has broadcast its no-downer policy as a key protective firewall against BSE. Most Americans had no idea that meat from animals too sick or injured to walk on their own could end up on their dinner plates. The agency's announcement helped ease public panic in the United States over the first domestic BSE case and maintain consumer confidence both in the safety of the food supply and in the basic humane treatment of animals at slaughter plants. The announcements were also widely publicized to provide assurances to America's trading partners, dozens of which had closed their markets to U.S.-produced beef after the BSE finding.

Unacceptable Loophole

In January 2006, the USDA's own Office of the Inspector General (OIG) chastised the agency for its inconsistent application of policies and regulations related to downed animals after observing downers processed at two facilities. The use of a forklift was observed to transport the animals to the slaughter area. The OIG found that 29 downer cattle were slaughtered for human food at a sample of 12 slaughter plants checked during a 10-month period. If this were a representative sample it would suggest that more than 100 slaughter plants may be processing downed cattle

across the country. The OIG audit noted the lack of documentation on the animals' fitness for consumption.

For years, USDA has publicly boasted about its comprehensive no-downer policy but circumvented it behind the scenes with a loophole that permitted slaughter of some cattle unable to walk. The agency has failed to follow its official interim policy published on January 12, 2004, which specified that all downer cattle would be excluded from the human food supply, "regardless of the reason for their non-ambulatory status or the time at which they became non-ambulatory. Thus, if an animal becomes nonambulatory in route to the establishment due to an acute injury, it must be humanely removed from the truck, humanely euthanized, and the carcass properly disposed of. Likewise, cattle that become nonambulatory on the establishment premises, such as an animal that breaks its leg as it is unloaded from the truck, are also required to be humanely moved, humanely euthanized, and the carcass properly disposed of."

The agency's January 12, 2004 regulation defined "nonambulatory disabled" cattle as any who "cannot rise from a recumbent position or . . . cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions."¹ Since BSE can result in an animal going down either directly, because of brain damage, or indirectly, by predisposing an animal to injury, these downed cattle were to be euthanized rather than slaughtered for human consumption.

The same day that the regulations were published, however, the USDA issued Notice 5-04 behind-the-scenes, instructing inspecting veterinarians how to carry out the regulations. In contrast to both the public claims by USDA and the interim rule itself, the agency instructed inspectors to allow downed cattle to be slaughtered for human consumption if they initially appeared otherwise healthy but went down within the slaughter plant itself due to an acute injury.²

In July 2007, USDA finally made permanent its so-called "ban" on slaughtering downer cattle. But instead of closing the loophole identified by the OIG, the agency codified it, acknowledging that some downer cattle have been, and will continue to be, processed for human food. USDA's final rule specifies that "FSIS inspection personnel will determine the disposition of cattle that become non-ambulatory after they have passed ante-mortem inspection on a case-by-case basis." In other words, those who are able to walk when initially inspected by USDA but then keel over and cannot stand up again can nevertheless be slaughtered, and the meat can be sold.

This loophole is reckless from a public health perspective and promotes the inhumane handling of downer cattle. It is unacceptable on both counts.

A food safety system that relies on inspectors evaluating downers on a case-by-case basis is unworkable. Determining why an animal is down is challenging if not impossible for inspectors because injury and illness are often interrelated—e.g., a broken leg may simply be the observable result of the weakness, abnormal gait, or disorientation associated with an underlying disease. At least three of the documented cases of BSE in North America were identified as downers due to injury, not illness, showing how difficult it is for inspectors to reliably sort out which non-ambulatory animals are "safe." The first case of BSE discovered in Canada was thought to be "suffering from a broken leg."³ The first identified case in the United States similarly did not seem to display any BSE symptoms, but was reported down due to a calving injury.⁴ She was seemingly picked at random as one of perhaps

¹U.S. Department of Agriculture Food Safety and Inspection Service. 2004. Prohibition of the use of specified risk materials for human food and requirements for the disposition of non-ambulatory disabled cattle; meat produced by advanced meat/bone separation machinery and meat recovery (AMR) systems; prohibition of the use of certain stunning devices used to immobilize cattle curing slaughter; bovine spongiform encephalopathy surveillance program; interim final rules and notice. Federal Register 69(7):1861-74. <http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/03-025IF.pdf>. Accessed February 19, 2008.

²U.S. Department of Agriculture Food Safety and Inspection Service. 2004. Notice 5-04. Interim guidance for non-ambulatory disabled cattle and age determination, January 12. <http://www.fsis.usda.gov/OPPDE/rdad/FSISNotices/5-04.htm>. Accessed February 19, 2008.

³Campbell D. 1993. Killer mad cow disease strikes in Alberta. Calgary Herald, December 9, p. D1.

⁴U.S. Department of Agriculture. 2003. USDA BSE update (press release), December 27. http://www.usda.gov/wps/portal/ut/p/s.7_0_A/7_0_1OB/cmd/ad.ar/retrievecontent/c/6_2_1UH/ce/7_2_5JM/p/5_2_4TQ/.d/7/th/J_2_9D/s.7_0_A/7_0_1OB?PC_7_2_5JM_contentid=2003/12/0445.html&PC_7_2_

5JM_navtype=RT&PC_7_2_5JM_parentnav=TRANSCRIPTS_SPEEC. Accessed February 19, 2008.

less than 1 percent of the downed cattle tested for mad cow disease in the United States up until that time.⁵ Another Canadian case was suspected of injury rather than disease. The farmer reportedly “didn’t suspect anything was seriously wrong when one of his cows slipped on the ice and hurt itself . . .”⁶

Even if “only” a broken leg is involved, dragging an animal with a fracture is just as cruel, if not more so. If you’ve ever suffered a broken bone, you can imagine the pain of being pulled by chains or rammed with a forklift in that condition.

Lack of Enforcement

The problems engendered by USDA’s loophole are exacerbated by its lax enforcement of the downer rules. As documented by our undercover investigation, USDA inspectors may only conduct cursory observations, coming to check on animals just once or twice a day and disregarding their condition for the remaining hours. While USDA inspectors are required to monitor and verify humane handling in connection with slaughter, including offloading, holding and driving animals in pens and chutes, a USDA inspector was rarely present during offloading and never observed by our investigator in the pens, except during the aforementioned predetermined twice-daily times of 6:30 a.m. and 12:30 p.m., or by the chutes.

Despite all the media attention surrounding our investigation and the subsequent beef recall and criminal charges against plant workers, sick and injured cattle can and likely will still be slaughtered and put into the American food supply unless changes are implemented to protect animal welfare and protect human health and that of the Nation’s most vulnerable citizens.

Needed Steps

—*Close Loophole.*—An unequivocal, truly comprehensive ban on the slaughter of downed animals for human consumption is needed to protect food safety and animal welfare. The current protocol that allows inspection personnel to “determine on a case-by-case basis the disposition of cattle that become nonambulatory after they have passed ante mortem inspection” is unrealistic and unworkable, and places an impossible expectation on the inspector. It also creates financial incentives for precisely those abuses that we witnessed in the undercover footage.

A highly visible and vigorously enforced total no-downer rule is the right policy. For the animals, removing current incentives that encourage workers to try every cruel tactic imaginable to move downers to the kill box would alleviate suffering. If crippled animals cannot be sold for food, slaughter plants have no reason to prolong their misery to try to get them through the slaughter process. Closing the loophole would also help create an incentive for all involved in the production chain to minimize hazards that can cause animals to become downed in the first place.

USDA can revise its rule immediately, restoring the language it promulgated in January 2004. And the Congress can pass the Downed Animal and Food Safety Protection Act (S. 394/H.R. 661) to codify a national no-downer policy.

—*Strengthen Enforcement.*—The USDA must rework its inspection program to ensure meaningful compliance. We recommend a combination of measures. More inspectors observing live animals are needed, and all inspectors should be trained and directed to monitor the treatment of live animals to ensure that they are handled humanely. Inspectors must understand that their oversight responsibilities begin at the moment animals arrive at slaughter premises, including when the animals are on trucks at slaughter facilities. An inspector should meet each truck when it arrives on the premises and should order the immediate humane euthanasia and condemnation of any cattle who are non-ambulatory. Egregious conduct such as forcefully striking an animal with an object, dragging an animal, ramming or otherwise attempting to move an animal with heavy machinery, or using electric shock, water pressure, or other extreme methods, should be explicitly prohibited and those policies established in a formal rule to take effect immediately. Inspections should be unannounced and not on a predictable schedule. They should include undetectable inspections on hidden catwalks close enough to the animals to allow accurate observation or through video surveillance accessible for viewing by independent third par-

⁵Assuming an incidence of 500,000 nonambulatory cattle a year [Stull CL Payne MA Berry SL and Reynolds JP. 2007. A review of the causes prevention and welfare of nonambulatory cattle. *Journal of the American Veterinary Medical Association* 231(2):227–34] and that such cattle represent 75 percent of the those tested over the 14 years of USDA testing as was the case in 2002–2003 [USDA Release No. 0457.04 Office of Communications 202 720–4623 BSE Update January 2004. www.usda.gov/wps/portal/ut/p/s.7_0_A/7_0_1OB?contentidonly=true&contentid=2004/01/0457.html. Accessed February 19, 2008.].

⁶Johnsrude L and Richards G. 2005. Feed bought after ban fed to latest mad cow: 104 other calves had access to same feed in spring of 1998, Innisfail-area farmer says. *Edmonton Journal*, January 14, p. A1.

ties. Slaughter plants should be encouraged to install video cameras that would allow for viewing of all of the animal handling prior to slaughter. Finally, it would be helpful to rotate inspectors to ensure that they do not become too close with plant personnel.

—*Establish Criminal Penalties.*—Current Federal law does not provide for criminal penalties, even in cases of repeat or egregious offenses, for violations of humane handling standards.

—*Ensure Humane Federal Procurement.*—H.R. 1726, the Farm Animal Stewardship Purchasing Act, would set basic animal welfare standards for producers who sell food to the National School Lunch Program and other Federal programs, including requiring veterinary treatment or humane euthanasia for downed animals.

Thank you for the opportunity to testify here today on this important food safety and animal welfare issue.

ADDENDA

Timing of HSUS Contact with USDA on Case

HSUS conducted a thorough investigation that took several months, with our investigator undercover at the plant for 6 weeks during October and November 2007, and then the investigation continuing after he left the site as we analyzed documents and compiled further evidence. These are long-term investigations, and we don't parachute in and know everything there is to know in a single day. If we are going to accuse a company of wrongdoing, with broader implications for the public, we want to make sure we collect as much evidence to support our claims as possible, and we want to be sure to present a fair and accurate picture of what went on at the plant.

Because USDA has rarely taken action against slaughter plants for violating humane handling protocols, and also because few local law enforcement agencies have ever taken on animal cruelty cases involving the mistreatment of farm animals, we thought it essential to amass a preponderance of evidence at this plant before terminating the field portion of the investigation. There were fundamental humane treatment and food safety issues at issue, and we did not want to see the proper authorities dismiss the investigation as incomplete or inconclusive, and to decide not to take corrective action.

As soon as the field portion of the investigation concluded and our team assessed and organized the enormous volume of video and other research materials, we met with staff from the San Bernardino District Attorney's office in mid-December. At that time, we provided them the evidence of criminal conduct and encouraged them to prosecute the perpetrators. Animal cruelty crimes are typically prosecuted by local and State law enforcement, and we knew the unacceptable abuses captured in the video footage showed that California animal cruelty and downer protection laws had been violated.

The D.A.'s office asked for extra time to assess this information before we released it. Staff at that office indicated to us that they planned to take action but they were unable to provide a specific time line. Because of our history of working cooperatively with local law enforcement on animal cruelty cases, and the obvious intention of the personnel in the D.A.'s office, we acceded to their request. But at the end of January, we decided that we had an obligation to make the information public and could wait no longer, even if the D.A.'s office was about to take enforcement action and file charges against the perpetrators. Although the D.A.'s office had indicated that they planned to share the information with USDA, before we released the information to the press, I personally called a senior official at USDA to make sure the agency knew what was about to be brought to public attention.

Frankly, we did not turn to the USDA first because the agency has too often ignored complaints about serious animal welfare abuses, even when they are associated with known public health risks. We didn't want to turn down a dead end with so much at stake. In fact, it's been reported during the past few weeks that other animal protection organizations had investigated downer cases at this same Hallmark plant and brought the information to USDA's attention on several occasions, yet the mistreatment persisted.

Moreover, USDA was directly implicated in the problems we uncovered at this plant. The agency has day-to-day oversight responsibility, and was complicit in the failures there. Not only was USDA on site throughout every shift when these abuses occurred, the agency was a primary purchaser of meat from the plant and had awarded the company the honor of being named USDA "Supplier of the Year" for the 2004–2005 academic year. Westland was the #2 beef supplier to the National School Lunch Program and to other USDA commodity distribution programs.

We're glad that USDA is taking this matter seriously now, and we're cooperating fully with the agency as it considers this case and the broader implications for industry oversight. I also note that we have led the effort to marshal substantial congressional support each year since 2001 to increase funding for USDA to better enforce the Federal humane slaughter law and prevent this type of animal cruelty.

Human Health Risks Associated with the Slaughter of Downed Cattle

The slaughter of downed cattle raises several serious food safety issues. Some studies have shown that nonambulatory cattle may suffer from higher rates of foodborne pathogens.⁷

Texas A&M University researchers were among the first to alert the medical community of the potential for downed cattle to present a vehicle to contaminate the human food supply with bacterial pathogens. They studied 30 downed cattle who had no outward signs of illness, except for inability to rise, and had all passed ante mortem inspection. Even though these nonambulatory animals appeared otherwise healthy, when the researchers took bacterial cultures, they found cows infected with Salmonella and E. coli. The researchers concluded: "Results of this study of 30 cattle indicate that pathogens may be circulating in the blood of some recumbent cattle at the time of slaughter."⁸ Commenting on areas of concern, the scientists noted:

It should be remembered that much of the meat from recumbent cattle goes into the production of ground beef, which, because of the grinding process and extra time it spends at a temperature higher than the whole carcasses, usually attains a high bacterial cell count per gram by the time processing is finished. Contaminated meat used to make ground beef would also contaminate subsequent clean meat exposed to common machinery (e.g., grinders) and, thus, would increase the danger of contamination.⁸

This research shows that even when downed animals appear otherwise healthy, they may be harboring dangerous pathogens.

The majority of nonambulatory cattle are dairy cows.⁷ Virtually all dairy cows are ultimately slaughtered for human consumption in the United States.⁹ Annually, 6 million culled dairy cows enter the food chain as ground beef,¹⁰ accounting for at least 17 percent of the ground beef produced in the United States.⁹ Since the muscles of dairy cows have a lower fat content, they are commonly used in producing the more expensive "lean" hamburger.¹¹

According to a 2003 review, downed dairy cattle "may harbor greater numbers of pathogens, and their slaughter may increase spread of pathogens at the slaughter establishment."¹² In Meat & Poultry, research is cited to explain why nonambulatory cattle tend to have higher levels of bacteria on their carcasses: "Lame animals spend more time lying down, which increases the likelihood they will be contaminated with fecal matter."¹³ In addition to the potential for contamination of the meat with fecal pathogens, when dairy cows are slaughtered, "[k]nives, carcasses and the hands of personnel may be contaminated by contents of the mammary gland when this is removed from the cow during processing."⁹ Intramammary infections (mastitis) affect up to nearly two-thirds of cows in U.S. dairy herds¹⁴ and are one of the most common reasons dairy cows are sent to slaughter.⁹ Inappropriate excision of the udder during the slaughter process can contaminate the rest of the carcass with milk that could contain Listeria and other milk-borne pathogens. A 1997 review of the microbiological hazards of eating meat from culled dairy cows concluded: "In the USA, dairy cattle are raised and managed with increasing inten-

⁷ Stull CL, Payne MA, Berry SL, and Reynolds JP. 2007. A review of the causes, prevention, and welfare of nonambulatory cattle. *Journal of the American Veterinary Medical Association* 231(2):227-34.

⁸ Edwards JF, Simpson RB, and Brown WC. 1995. A bacteriologic culture and histologic examination of samples collected from recumbent cattle at slaughter. *Journal of the American Veterinary Medical Association* 207(9):1174-6.

⁹ Troutt HF and Osburn BI. 1997. Meat from dairy cows: possible microbiological hazards and risks. *Revue Scientifique et Technique de l'Office International des Epizooties* 16(2):405-14.

¹⁰ Hussein HS and Sakuma T. 2005. Prevalence of shiga toxin-producing *Escherichia coli* in dairy cattle and their products. *Journal of Dairy Science* 88(2):450-65.

¹¹ Spika JS, Waterman SH, Hoo GW, et al. 1987. Chloramphenicol-resistant *Salmonella* Newport traced through hamburger to dairy farms: a major persisting source of human salmonellosis in California. *New England Journal of Medicine* 316(10):565-70.

¹² Vanbaale MJ, Galland JC, Hyatt DR, and Milliken GA. 2003. A survey of dairy producer practices and attitudes pertaining to dairy market beef food safety. *Food Protection Trends* 23:466-73.

¹³ Grandin T. 1999. A.M.I. sponsors stunning and handling conference. *Meat & Poultry, March*, p. 48.

¹⁴ Nickerson SC, Owens WE, and Boddie RL. 1995. Mastitis in dairy heifers: initial studies on prevalence and control. *Journal of Dairy Science* 78(7):1607-18.

sification, and this intensification may promote the maintenance of a variety of micro-organisms which could be pathogenic to humans through food.”⁹

E. coli O157:H7

In 2003, a study funded by the USDA was published that investigated the “potential impact to human health that may occur following consumption of meat derived from downer dairy cattle” by measuring infection rates of one of the most virulent foodborne pathogens, *E. coli* O157:H7. The investigators found that downed cows were 3.3 times more likely to harbor the potentially deadly *E. coli* strain than walking culled dairy cows. The researchers concluded that “downer dairy cattle harboring *E. coli* O157:H7 at slaughter may be an important source of contamination and may contribute to the health risk associated with ground beef.”¹⁵ The results of this study led USDA Microbial Food Safety Research Unit Research Leader John B. Luchansky to question whether, based on *E. coli* alone, nonambulatory cattle should be excluded from the U.S. meat supply.¹⁶

E. coli O157:H7 infects tens of thousands of Americans every year, causes dozens of deaths,¹⁷ and may be the leading cause of acute kidney failure in previously healthy U.S. children.¹⁸ Speculatively blamed in part on the increasing intensification of dairy farming,¹⁹ prevalence rates in U.S. dairy herds have ranged up to 100 percent.²⁰ Quoting USDA researcher Caitriona Byrne and colleagues: “Due to the ubiquity of *E. coli* O157:H7 among cattle, as well as its low infective dose and the severity of the resistant illness in humans, effective control of the pathogen may be possible only by eliminating this microorganism at its source rather than by relying on proper food handling and cooking thereafter.”¹⁵

A 2005 review in the *Journal of Dairy Science* likewise concentrated on the risk of contracting virulent strains of *E. coli* from eating ground beef from dairy cows that may be tainted with fecal material. These toxin-producing strains can cause hemorrhagic colitis and progress to kidney failure, coma, and death, particularly in young children.¹⁸ Dairy cattle “enter the food chain as ground beef,” the review reports, and “[a]s a result, downer dairy cows harboring STEC [Shiga toxin-producing *E. coli*] at slaughter can be a health risk to humans.”¹⁰ Meat from diseased and disabled cattle has also been implicated in a similar life-threatening disease in dogs.¹⁹

Salmonella

Salmonella infection hospitalizes thousands of Americans every year, kills hundreds, and can lead to chronic conditions such as arthritis, bone infections, cardiac inflammation, and neurological disorders.²¹ According to the Centers for Disease Control and Prevention, *Salmonella* strains in the United States are growing resistant to nine different antibiotics.²² One strain, known as *Salmonella* Newport MDR-AmpC, is even growing resistant to ceftriaxone, a powerful antibiotic vital for combating serious infections in children.²²

¹⁵ Byrne CM, Erol I, Call JE, et al. 2003. Characterization of *Escherichia coli* O157:H7 from downer and healthy dairy cattle in the upper Midwest region of the United States. *Applied and Environment Microbiology* 69(8):4683–8.

¹⁶ Luchansky JB. 2002. Pathogen Reduction Dialogue Panel 4. Characterization and Control of Food Borne Pathogens. May 7.

¹⁷ Centers for Disease Control and Prevention. 2006. *Escherichia coli* O157:H7. National Center for Infectious Diseases Division of Bacterial and Mycotic Diseases, December 6. http://www.cdc.gov/ncidod/dbmd/diseaseinfo/escherichiacoli_g.htm. Accessed February 19, 2008.

¹⁸ Razzaq S. 2006. Hemolytic uremic syndrome: an emerging health risk. *American Family Physician* 74(6):991–6.

¹⁹ Armstrong GL, Hollingsworth J, and Morris JG Jr. 1996. Emerging foodborne pathogens: *Escherichia coli* O157:H7 as a model of entry of a new pathogen into the food supply of the developed world. *Epidemiologic Reviews* 18(1):29–51.

²⁰ U.S. Department of Agriculture. 1997. An update: *Escherichia coli* O157:H7 in humans and cattle. www.aphis.usda.gov/vs/ceah/cei/taf/emerginganimalhealthissues_files/ecoupdat.pdf. Accessed February 19, 2008.

²¹ D’Aoust JY. 1994. *Salmonella* and the international food trade. *International Journal of Food Microbiology* 24(1–2):11–31.

²² Centers for Disease Control and Prevention. 2002. Outbreak of multidrug-resistant *Salmonella* newport—United States, January–April 2002. *Morbidity and Mortality Weekly Report* 51(25):545–8.

Multiple outbreaks of this new multidrug-resistant Salmonella strain have been tied to dairy farms,²³ ground beef made from dairy cows,²⁴ and dairy products.²⁵ Investigating one deadly outbreak of antibiotic-resistant Salmonella involving hundreds of people, California public health officials traced the cases back to meat from infected dairy cows slaughtered for hamburger. In their report published in the *New England Journal of Medicine*, they were able to correlate risk of contamination with the slaughter plants that received the most moribund and dead cattle. The researchers noted: “Stressed animals are more likely to shed Salmonella in large numbers.”¹¹

In addition to the immunosuppressive effect of stress, nonambulatory animals may also be more likely to shed pathogenic bacteria, “[s]ince animals going to slaughter are generally in a temporary state of starvation, and it is known that starvation causes *E. coli* and Salmonella to proliferate” due to changes that occur in the animal’s rumen. By the time most cattle are slaughtered, they have been starved for variable periods of time, in part because empty rumena are easier to eviscerate.¹⁹ This may be particularly relevant to downed cattle populations who may be left to starve for extended periods before they are finally slaughtered.

Carolyn Stull of the University of California-Davis School of Veterinary Medicine has studied Salmonella infection in downed cows and reported results at a 2004 American Meat Institute conference. Fifty downed cows were sampled and seven were found to be infected with Salmonella. Despite infection, however, five of the seven infected cows, including at least one cow who was septicemic, were known to have passed USDA ante mortem inspection for human consumption.²⁶ Stull and colleagues reportedly identified 6 out of 20 nonambulatory cattle sent to a slaughter facility to be fecal shedders of Salmonella.²⁷

Anthrax

Anthrax is a farm animal disease that can infect, though very rarely, the human meat supply.²⁸ In 2000, 32 farms were quarantined for anthrax in the United States.²⁹ That summer, at least five people were exposed to meat “highly contaminated” with anthrax from a downed cow who was approved for slaughter and human consumption. These cases were reported by the Centers for Disease Control and Prevention as “Human Ingestion of *Bacillus Anthracis*-Contaminated Meat.”³⁰ Had a ban on the slaughter of downed cattle been in effect, these people may have been spared. Subsequently, a family stricken with gastrointestinal, oropharyngeal, and meningeal anthrax tied to the consumption of a sick sheep was reported,³¹ suggesting it may be prudent to exclude all nonambulatory animals—not just cattle—from the human food supply.

Frank Garry, the coordinator for the Integrated Livestock Management Program in the College of Veterinary Medicine and Biomedical Sciences at Colorado State

²³ Gupta A, Crowe C, Bolstorff B, et al. Multistate investigation of multidrug-resistant Salmonella serotype Newport infections in the Northeastern United States, 2000: human infections associated with dairy farms. Centers for Disease Control and Prevention, Atlanta, GA, Massachusetts Department of Public Health, and Vermont Department of Health.

²⁴ Gupta A, Fontana J, Crowe C, et al. 2003. Emergence of multidrug-resistant Salmonella enterica serotype Newport infections resistant to expanded-spectrum cephalosporins in the United States. *Journal of Infectious Diseases* 188(11):1707–16.

²⁵ McCarthy T, Phan Q, Mshar P, Mshar R, Howard R, and Hadler J. 2002. Outbreak of multidrug-resistant Salmonella Newport associated with consumption of Italian-style soft cheese, Connecticut. International Conference on Emerging Infectious Diseases. Atlanta, GA, March. http://www.cdc.gov/enterics/publications/184-mccarthy_2002.pdf. Accessed February 19, 2008.

²⁶ Stull C. 2004. Handling non-ambulatory cattle. International Meat Animal Welfare Research Conference, February 17. <http://www.meatami.com/Content/PressCenter/IMAWRC/Presentation3STULL.pdf>. Accessed February 19, 2008.

²⁷ Stull CL, Payne MA, Berry SL, and Reynolds JP. 2007. A review of the causes, prevention, and welfare of nonambulatory cattle. *Journal of the American Veterinary Medical Association* 231(2):227–34, citing: Maas J, Stull C, Oliver M, et al. 1995. Pilot study to determine the medical etiology of disabled dairy cattle at slaughter facilities. In: Proceedings: Production Food Safety Workshop, U.S. Animal Health Association.

²⁸ Swartz MN. 2001. Recognition and management of anthrax—an update. *New England Journal of Medicine* 345(22):1621–6.

²⁹ Centers for Disease Control and Prevention. 2001. Human anthrax associated with an epizootic among livestock—North Dakota, 2000. www.cdc.gov/mmwr/preview/mmwrhtml/mm5032a1.htm. Accessed February 19, 2008.

³⁰ Centers for Disease Control and Prevention. 2000. Human ingestion of *Bacillus anthracis*-contaminated meat—Minnesota, August 2000. *Journal of the American Medical Association* 284(13):1644–6.

³¹ Babamahmoodi F, Aghabarari F, Arjmand A, and Ashrafi GH. 2006. Three rare cases of anthrax arising from the same source. *Journal of Infection* 53(4):e175–9.

University, reportedly suggests that the slaughter of nonambulatory farm animals may present a threat to national security:

The threat of bioterrorism adds one more reason to end the use of nonambulatory animals in human food. An animal that is unable to walk because of illness should probably not be processed for human food consumption, regardless of whether the animal was intentionally or unintentionally contaminated. As long as the USDA continues to slaughter diseased livestock, it is possible that a bioterrorist attack could make people very sick and undermine confidence in American agriculture.³²

Culled dairy cows may present particularly vulnerable agroterrorist targets as they are slaughtered and ground into hamburger. "Given that only a single infected carcass can contaminate a large lot of ground beef," wrote USDA researchers in a 1996 review, "it is possible that, whereas in the past an infected animal would produce only a small number of cases, such an animal could now cause a large, widespread outbreak."¹⁹ According to Robert Tauxe, Chief of the Foodborne and Diarrheal Diseases Branch of the Centers for Disease Control and Prevention, each burger may reportedly be made from the flesh of hundreds or even thousands of different cows.³³ One hypothetical model suggests that a single downed cow infected with a pathogen such as *E. coli* O157:H7 could theoretically contaminate more than 100,000 hamburgers with an infectious dose.¹⁹

Bovine Spongiform Encephalopathy

Bovine spongiform encephalopathy is a transmissible spongiform encephalopathy (TSE) of cattle that may manifest with behavioral symptoms, earning the disease its colloquial name "mad cow disease." The rendering of sheep infected with an ovine spongiform encephalopathy (known as scrapie) into cattle feed may have led to the emergence of BSE.³⁴ In modern animal agriculture, protein concentrates, or "meat and bone meal"—terms that encompass "trimmings that originate on the killing floor, inedible parts and organs, cleaned entrails, fetuses"³⁵—are fed to dairy cows, for example, to improve milk production.³⁶ According to the World Health Organization, nearly 10 million metric tons of slaughter plant waste is fed to farm animals every year.³⁷

Although the first case of BSE was documented in the United Kingdom in 1986, there reportedly exists "very sound" evidence that a rare form of the disease was already circulating in the United States.³⁸ One year before BSE was initially reported in Britain, Richard Marsh, chair of the Department of Veterinary Science at the University of Wisconsin-Madison, was alerting dairy producers of the possibility that a "previously unrecognized scrapie-like disease in cattle" existed in the United States³⁹—a concern borne out of investigations of sick mink.

Mink have proven to be sentinel animals, like canaries in coal mines. They were reportedly the first, for example, to show toxicity from the vaginal cancer-causing synthetic estrogen diethylstilbestrol (DES) and the industrial carcinogens polychlorinated biphenyls (PCBs).⁴⁰ Since 1960, there have been four outbreaks of mink spongiform encephalopathy known as transmissible mink encephalopathy (TME) on U.S. fur farms.⁴¹ This was perplexing, as researchers had been unable to orally infect mink with scrapie-infected sheep brains.⁴²

³²The Humane Society of the United States. 2002. HSUS calls on FDA, USDA and Congress to halt slaughter of diseased livestock (press release), January 31.

³³Public Broadcasting Service. 2002. Modern meat: interview Dr. Robert Tauxe. Frontline, April 18. <http://www.pbs.org/wgbh/pages/frontline/shows/meat/interviews/tauxe.html>. Accessed February 19, 2008.

³⁴Kimberlin RH. 1992. Human spongiform encephalopathies and BSE. *Medical Laboratory Sciences* 47:216–7.

³⁵Ensminger ME. 1990. *Feeds and Nutrition* (Clovis, CA: Ensminger Publishing Co.).

³⁶Flaherty M. 1993. "Mad cow" disease dispute: U.W. conference poses frightening questions. *Wisconsin State Journal*, September 26, p. 1C.

³⁷World Health Organization. 1999. WHO consultation on public health and animal transmissible spongiform encephalopathies: epidemiology, risk and research requirements with the participation of Office International des Epizooties, Geneva, Switzerland, December 1–3. <http://www.who.int/csr/resources/publications/bse/whocdscsrgraph20002.pdf>. Accessed February 19, 2008.

³⁸McNair J. 1993. BSE: a ticking time bomb in downer cows? *Agri-View* (Iola, WI), June 17.

³⁹Marsh RF and Hartsough GR. 1985. Is there a scrapie-like disease in cattle? *Proceedings of the United States Animal Health Association Eighty-Ninth Annual Meeting* (p. 8).

⁴⁰1992. BSE risk seen in rendered cow protein used in cattle feed. *Food Chemical News* 15:13–4.

⁴¹Robinson MM, Hadlow WJ, Huff TP, et al. 1994. Experimental infection of mink with bovine spongiform encephalopathy. *Journal of General Virology* 75(9):2151–5.

⁴²Marsh RF and Bessen RA. 1993. Epidemiologic and experimental studies on transmissible mink encephalopathy. *Developments in Biological Standardization* 80:111–8.

A clue to the origin of the disease came in 1985, when TME devastated a population of farmed mink in Wisconsin who had reportedly not been fed any sheep.⁴³ The meat portion of their diet evidently consisted almost exclusively of downed dairy cows.⁴⁴ Marsh hypothesized that there was a form of BSE in the United States that manifested itself as more of a “downer” cow disease than a “mad” cow disease.⁴²

Mink were found to be experimentally susceptible to BSE; when mink were fed BSE-infected brains from British cattle, they died from a spongiform encephalopathy.⁴¹ The disease was experimentally spread from mink to cows and from cows back to mink.⁴⁴ The critical experiments, though, involved inoculating the brains of U.S. sheep infected with scrapie into U.S. cattle.⁴⁵ In England, scrapie-infected cows go “mad,” twitching and kicking. But, in the United States, the “real surprise,”³⁸ as Marsh recounted, was that scrapie-infected cattle instead developed difficulty in rising and terminal recumbancy⁴⁶ like downed cattle do.⁴⁵ “The signs that these cattle showed were not the widely recognized signs of BSE—not signs of mad cow disease,” Marsh reportedly said. “What they showed was what you might expect from a downer cow.”⁴⁷ Scientists have identified multiple strains of scrapie.⁴⁸ Marsh posited that one of the U.S. strains may have jumped to cattle, creating a form of BSE native to the United States.⁴⁰ Said Marsh to a reporter: “That’s the only conclusion you can draw.”³⁸

Every year in the United States, estimates range from 195,000⁴⁹ to 1.8 million⁵⁰ cattle who collapse for a variety of metabolic, infectious, toxic, and/or musculoskeletal reasons and are too sick or injured to rise.⁷ Extrapolating from the proportion of nonambulatory cattle found in European⁵¹ and United States⁷ surveys, the number of nonambulatory cattle in the United States may be on the order of 500,000 a year. A governmental survey of dairy producers across 21 States reportedly found that 78.2 percent of dairy operations had nonambulatory cows during 2004.⁵² Though these animals may not have been fit enough to stand, a limited investigation of USDA slaughter plant records between January 1999 and June 2001 showed that most were still ruled fit for human consumption.⁵³

Based on findings in Europe⁵¹ and the speculative evidence of a rare form of mad cow disease striking downed cows for decades in the United States,⁵⁴ nonambulatory cattle should be considered to be a particularly high-risk population. According to the Food and Drug Association (FDA): “Experience has shown that nonambulatory disabled cattle . . . are the population at greatest risk for harboring

⁴³ Beardsley TM. 1990. Tainted feed, mad cows: could a British cattle disease infect U.S. herds? *Scientific American* 262(5):34.

⁴⁴ Marsh RF. 1991. Risk assessment on the possible occurrence of bovine spongiform encephalopathy in the United States. In: Bradley R, Savey M, and Merchant B (eds.), *Sub-Acute Spongiform Encephalopathies* (Dordrecht: Kluwer Academic Publishers, pp. 41–6).

⁴⁵ Cutlip RC, Miller JM, Race RE, et al. 1994. Intracerebral transmission of scrapie to cattle. *Journal of Infectious Diseases* 169(4):814–20.

⁴⁶ Hourigan JL. 1990. Experimentally induced bovine spongiform encephalopathy in cattle in Mission, Tex, and the control of scrapie. *Journal of the American Veterinary Medical Association* 196(10):1678–9.

⁴⁷ Bleifuss J. 2004. How now mad cow? In *These Times*, February 16.

⁴⁸ Lasmezas CI, Fournier JG, Nouvel V, et al. 2001. Adaptation of the bovine spongiform encephalopathy agent to primates and comparison with Creutzfeldt-Jakob disease: implications for human health. *Proceedings of the National Academy of Sciences of the United States of America* 98(7):4142–7.

⁴⁹ U.S. Department of Agriculture Office of Inspector General. 2004. Animal and Plant Health Inspection Service and Food Safety and Inspection Service: bovine spongiform encephalopathy (BSE) surveillance program—phase I, August 18. www.oig.usda.gov/webdocs/50601_9-final.pdf. Accessed February 19, 2008.

⁵⁰ Livestock mortalities: methods of disposal and their potential cost. http://nationalrenderers.org/Economic_Impact/MortalitiesFinal.pdf. Accessed February 19, 2008.

⁵¹ European Commission. 2002. Report on the monitoring and testing of bovine animals for the presence of bovine spongiform encephalopathy (BSE) in 2001. http://ec.europa.eu/food/food/biosafety/bse/bse45_en.pdf. Accessed February 19, 2008.

⁵² Stull CL, Payne MA, Berry SL, and Reynolds JP. 2007. A review of the causes, prevention, and welfare of nonambulatory cattle. *Journal of the American Veterinary Medical Association* 231(2):227–34, citing: U.S. Animal Health Association. 2006. Report of the Committee on Animal Welfare. In: *Proceedings of the 110th Annual Meeting of the U.S. Animal Health Association*, pp. 137–43.

⁵³ Farm Sanctuary. 2001. A review of USDA slaughterhouse records for downed animals (U.S. District 65 from January 1999 to June 2001). Farm Sanctuary, October.

⁵⁴ Marsh RF, Bessen RA, Lehmann S, and Hartsough GR. 1991. Epidemiological and experimental studies on a new incident of transmissible mink encephalopathy. *Journal of General Virology* 72(3):589–94.

BSE.”⁵⁵ The FDA cites Swiss data showing a 49–58 times higher chance of finding BSE in downed cattle than in cattle reported to veterinary authorities as BSE-suspect under passive surveillance.⁵⁶ Indeed, 12 of the 15 BSE-infected cattle discovered in North America by February 1, 2008, have reportedly been nonambulatory.³ And the 16th BSE-infected case found in North America, a cow in Canada reported on February 26, 2008, was reported to the HSUS as being a downer.

Though the riskiest tissues—the brains, eyes, and spinal cords—of most cattle are now excluded from most food items in the United States,⁵⁷ there may be contamination of muscle meat via aerolization of the spinal cord during carcass splitting.⁵⁸ Significant amounts of central nervous system debris found accumulating in the splitting saws used to halve the carcasses may have the potential to then transfer contagion from one carcass to the next.⁵⁹ Although, technically, processors are instructed to knife-trim “material grossly identifiable as brain material, spinal cord, or fluid from punctured eyes,”⁶⁰ researchers have reported finding nervous tissue contaminating muscle in a commercial slaughter plant.⁶¹ Contamination of meat derived from cattle cheeks with brain tissue can also occur if the cheek meat is not removed before the skull is fragmented or split.⁶²

Captive bolt stunning, the predominant method used to render cattle insensible before exsanguination,¹ may blow a shower of embolic brain tissue into the animals’ bloodstream. In one experiment, a biological marker applied onto a stunner bolt was later detected within the muscle meat of the stunned animal. The researchers concluded:

This study demonstrates that material present in . . . the CNS [central nervous system] of cattle during commercial captive bolt stunning may become widely dispersed across the many animate and inanimate elements of the slaughter-dressing environment and within derived carcasses including meat entering the human food chain.⁶³

Captive bolt stunning may also lead to ejection of brain tissue into the abattoir from the hole made by the captive bolt onto slaughter plant equipment, as well as the hands and aprons of workers removing the animals’ heads.⁶¹ A follow-up study published 2004 in the *Journal of Food Protection* determined that “this method of slaughter of an animal infected with bovine spongiform encephalopathy would be likely to contaminate edible parts of the carcass with infective material.”⁶⁴ Texas A&M University researchers found bodily brain fragments as large as 14 cm (5.5

⁵⁵ U.S. Food and Drug Administration. 2004. Use of materials derived from cattle in human food and cosmetics; and recordkeeping requirements for human food and cosmetics manufactured from, processed with, or otherwise containing, material from cattle; final rule and proposed rule. *Federal Register* 69(134):42255–74. www.fas.usda.gov/info/fr/2004/071404BSEFDA1.htm. Accessed February 19, 2008.

⁵⁶ Doherr MG, Heim D, Fatzner R, Cohen CH, Vandeveld M, and Zurbriggen A. 2001. Targeted screening of high-risk cattle populations for BSE to augment mandatory reporting of clinical suspects. *Preventive Veterinary Medicine* 51(1–2):3–16.

⁵⁷ *Federal Register*. Docket No. 03–038IF. <http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/03-038IF.htm>. Accessed February 19, 2008.

⁵⁸ Harvard Center for Risk Analysis and the Center for Computational Epidemiology. 2001. Evaluation of the potential for bovine spongiform encephalopathy in the United States, November 26.

⁵⁹ Helps CR, Fisher AV, Harbour DA, O’Neill DH, and Knight AC. 2004. Transfer of spinal cord material to subsequent bovine carcasses at splitting. *Journal of Food Protection* 67(9):1921–6.

⁶⁰ U.S. Department of Agriculture Food Safety and Inspection Service. 2004. Questions and answers for FSIS Notice 4–04 regarding FSIS’s BSE regulations, January 14. <http://www.fsis.usda.gov/OPPDE/rdad/FSISNotices/7-04.pdf>. Accessed February 19, 2008.

⁶¹ Prendergast DM, Sheridan JJ, Daly DJ, McDowell DA, and Blair IS. 2004. Dissemination of central nervous system tissue during the slaughter of cattle in three Irish abattoirs. *Veterinary Record* 154(1):21–4.

⁶² U.S. Department of Agriculture Food Safety and Inspection Service. 2002. Current thinking on measures that could be implemented to minimize human exposure to materials that could potentially contain the bovine spongiform encephalopathy agent, January 15. http://www.fsis.usda.gov/oa/topics/BSE_thinking.htm. Accessed February 19, 2008.

⁶³ Daly DJ, Prendergast DM, Sheridan JJ, Blair IS, and McDowell DA. 2002. Use of a marker organism to model the spread of central nervous system tissue in cattle and the abattoir environment during commercial stunning and carcass dressing. *Applied and Environmental Microbiology* 68(2):791–8.

⁶⁴ Coore RR, Love S, McKinstry JL, et al. 2004. Dissemination of brain emboli following captive bolt stunning of sheep: capacity for entry into the systemic arterial circulation. *Journal of Food Protection* 67(5):1050–2.

in). The researchers concluded that it was likely that BSE pathogens could potentially be “found throughout the bodies of animals stunned for slaughter.”⁶⁵

Despite the potential for CNS contamination and the fact that peripheral nerves⁶⁶ and blood⁶⁷ found in all muscles may carry infection, the USDA⁶⁸ and the National Cattlemen’s Beef Association⁶⁹ have attempted to assure consumers that beef is safe to eat, arguing that the infectious agent is not found in muscle meat. However, Stanley Prusiner, the director of the Institute for Neurodegenerative Diseases at the University of California, San Francisco, and winner of the Nobel Prize in Medicine for his discovery of prions, the cause of the BSE and other TSEs, proved in mice that muscle cells themselves were capable of forming the potentially infectious agent.⁷⁰ “I found prions in the hind limb muscles of mice,” Prusiner stated, “at a level approximately 100,000-fold higher than that found in blood.”⁶⁷ Prusiner reportedly described the studies relied upon by the Cattlemen’s Association as “extraordinarily inadequate,”⁷¹ and follow-up studies in Germany confirmed his findings, showing that animals who are orally infected may indeed end up with prion contamination throughout the muscles of their bodies.⁷²

Although the risk of contracting BSE appears vanishingly small in the United States given how few cattle have tested positive, the neurodegenerative disease it can cause in the consumers of contaminated beef is likely invariably fatal. Because cooking temperatures do not adequately destroy prions, the onus of responsibility must rest with the beef industry or, if unable or unwilling to police itself, the Federal Government, to ensure infected cattle are not slaughtered for human consumption. There is evidence that the infectious proteins that cause BSE can survive incineration⁷³ at temperatures hot enough to melt lead.⁷⁴ In response to a question from Cornell University’s Food Science Department asking what food preparation methods could eliminate the risk of contracting BSE, then National Institutes of Health Laboratory of Central Nervous System Studies chief Joseph Gibbs remarked tongue-in-cheek that one of the only ways to ensure a BSE-free burger would be to marinate it in a concentrated alkali such as Drain-O™.⁷⁵

Senator KOHL. Good job.

Mr. Boyle.

STATEMENT OF J. PATRICK BOYLE, PRESIDENT, AMERICAN MEAT INSTITUTE

Mr. BOYLE. Thank you, Mr. Chairman, Senators Harkin, and Senators Craig. I want to say at the outset, I found a number of aspects of Mr. Pacelle’s testimony to be quite compelling, particularly the final concluding remarks, relating to the moral imperative. Forget the regulatory and the economic imperative, but the moral imperative, and I would agree with that aspect of his remarks before the committee.

⁶⁵ Garland T, Bauer N, and Bailey M Jr. 1996. Brain emboli in the lungs of cattle after stunning. *Lancet* 348(9027):610.

⁶⁶ Herzog C, Sales N, Etcheagaray N, et al. 2004. Tissue distribution of bovine spongiform encephalopathy agent in primates after intravenous or oral infection. *Lancet* 363(9407):422–8.

⁶⁷ Prusiner SB. Declaration of Stanley B. Prusiner, M.D. United States District Court for the District of Montana Billings Division Cause No.CV–05–06–BLG–RFC.

⁶⁸ 2003. First US case of mad cow disease found in WA. *The Bulletin’s Frontrunner*, December 24.

⁶⁹ National Cattlemen’s Beef Association. 2003. National Cattlemen’s Beef Association Statement. December 23.

⁷⁰ Bosque PJ, Ryou C, Telling G, et al. 2002. Prions in skeletal muscle. *Proceedings of the National Academy of Sciences of the United States of America* 99(6):3812–7.

⁷¹ 2003. Mad cow disease in Canada. KQED forum hosted by Angie Coiro on May 23 at 9:00 a.m.

⁷² Thomzig A, Kratzel C, Lenz G, Kruger D, and Beekes M. 2003. Widespread PrPSc accumulation in muscles of hamsters orally infected with scrapie. *EMBO Reports* 4(5):530–3.

⁷³ Brown P, Liberski PP, Wolff A, and Gajdusek DC. 1990. Resistance of scrapie infectivity to steam autoclaving after formaldehyde fixation and limited survival after ashing at 360 degrees C: practical and theoretical implications. *Journal of Infectious Diseases* 161(3):467–72.

⁷⁴ Bentor Y. 2008. Chemical Element.com: Lead. <http://www.chemicalelements.com/elements/pb.html>. Accessed February 19, 2008.

⁷⁵ Gibbs CJ. 1994. BSE and other spongiform encephalopathies in humans and animals: causative agent, pathogenesis and transmission. Fall 1994 Food Science Seminar Series, Department of Food Science, Cornell University, December 1.

Since HSUS released its undercover video last month, I've met and spoken to dozens of leaders from the American Meat Institute and from all segments of our livestock supply chain. Universally, they agree that the images of animal abuse are shocking, gruesome, and atypical in the extreme.

Proper and humane handling of livestock is not just a priority for AMI and its members, it is part of our culture. Nearly 20 years ago, AMI created an Animal Welfare Committee, which began working with the country's recognized animal welfare expert, Dr. Temple Grandin.

With Dr. Grandin, the Institute developed animal handling guidelines and an audit guide, for packing houses. These guidelines not only meet regulatory requirements, they exceed them, they are utilized throughout our industry, we recommend them to our members, and they are frequently required of our customers with whom we do business.

In addition, they have been endorsed by the American Humane Association, and been certified humane, in fact, HSUS International outreach programs have relied upon the AMI guidelines, although they refer to them as "Dr. Grandin's guidelines," which from our perspective, is fine. We don't care how they're characterized, but as long as progress is being made, we don't really care who gets the credit.

Despite the industry's record of measurable progress, we confront the tragic reality of Hallmark/Westland Plant, and we must ask ourselves how this happened, and what steps we can take to ensure that it does not happen again.

First, failures occurred at many levels, here. The first of the failures occurred in the livestock production and transportation system that supplied cattle to this plant. Our industry must lead efforts to minimize the arrival of downers at plants, by enrolling all beef and dairy producers, as well as livestock dealers into existing quality assurance programs. And we must audit the results on those farms and in those feed lots, against the standards contained in the audits.

Secondly, failures occurred at the slaughter facility. Plant personnel did not comply with the Humane Slaughter Act, and the Federal Meat Inspection Act. In the future, all processing plant employees handling live animals should be certified for proficiency in proper animal handling procedures, and have a thorough knowledge of the regulations. To that end, we strongly recommend that plants use our AMI Handling Guidelines, and our audit program.

Thirdly, failures occurred within USDA's Food Safety and Inspection Service. USDA must require that every inspector performing ante mortem inspection, be certified for proficiency in animal handling, have a thorough knowledge of the Humane Slaughter Act and other FSIS guidance materials.

I also believe that a failure occurred in The Humane Society of the United States, despite its efforts to document the practices and bring them to our attention. Its failure to alert, immediately, Federal authorities to the practices captured on their video, in a federally-inspected plant, in violation of Federal laws, only prolonged, for a period of time, an illegal, inhumane practice.

One can reasonably ask, how could such gross abuse could go on, unnoticed by so many, for so long? And in that regard, I commend HSUS for exposing it. But one could also ask The Humane Society, how could it allow this abuse to continue for almost 4 months, while it edited its video for release—not to the Federal investigatory authorities, but to the Washington Post.

Finally, I feel compelled to comment upon USDA's record-setting recall request. The Department classified it as a Class II recall, which Secretary Shafer has said, on previous occasions and reaffirmed today, carries a very, very remote risk.

USDA also reports that the plant had effective food safety interventions, and that all products distributed to the school lunch program tested negative for pathogens.

That being said, and as Senator Harkin asked of the Secretary—how do we find ourselves in the midst of the largest beef recall in the history of our country?

Well, the impact on Hallmark/Westland will be profound, the recall will have effect on their customers who use the meat as an ingredient in further process products, which were also inspected, and passed, by USDA. So, these middlemen—many small, family-owned businesses—will bear a large part of the economic cost of this recall.

And the American consumer, and our foreign trading partners are needlessly alarmed, and understandably confused by the anomaly of this large recall of safe product. In the face of higher food prices in America, the ongoing need for food donations to help feed the hungry, and the rationing of food aid through international relief organizations—I'm astonished at the specter of hundreds of millions of pounds of safe food being destroyed.

Having said that, there is no doubt that rules and regulations matter, and violations should have consequences. For Hallmark/Westland, there are severe consequences, indeed, and to Mr. Pacelle's point, there are potential criminal sanction, as well, that could portend jail time.

PREPARED STATEMENTS

But from a public health perspective, risks should matter, too. In the future, under these circumstances, I believe USDA would be better advised to conduct an appropriate risk assessment before determining whether it should require a nationwide recall of a product when, again, according to Secretary Shafer, and I'll quote, "There is no reason to believe that there is anything wrong with the beef."

Thank you very much.

[The statements follow:]

PREPARED STATEMENT OF J. PATRICK BOYLE

Mr. Chairman, Ranking Member, and Members of the Committee, thank you for the opportunity to appear before this Committee. My name is Patrick Boyle and I am the President and CEO of the American Meat Institute (AMI). AMI has provided service for more than 100 years to America's meat and poultry industry—an industry that employs more than 500,000 individuals and provides more than \$100 billion in sales to the Nation's economy.

AMI's members include America's most well-known meat and poultry manufacturers. Collectively, they produce more than 90 percent of the beef, veal, pork and lamb food products and 75 percent of the turkey food products in the United States.

Among AMI's member companies, over 60 percent are small family-owned businesses employing fewer than a hundred individuals and some are publicly traded and employ tens of thousands. These companies operate, compete, sometimes struggle and mostly thrive in one of the toughest, most competitive and certainly the most scrutinized sectors of our economy—meat and poultry packing and processing.

I have spoken over the past 10 days with dozens of industry leaders from all segments of our supply chain. Universally they agree that the images of animal abuse shown in an undercover video taken at the Hallmark/Westland facility in California are shocking and unacceptable. The gruesome treatment of animals depicted in the video stands in sharp contrast to the humane animal handling standards that are practiced in slaughter plants every day across the United States. Our members condemn the practices the video projects.

Proper and humane handling of livestock is not just a priority for AMI—it is part of our culture. I believe that our Institute's Animal Welfare Committee has been an unquestionable force for change. Their business cards may carry the brands of many meat products you enjoy, and their titles may say plant manager or vice president of operations, but they are as much animal activists as any of the groups with "humane" in their name that try to discredit these businesses.

Beginning in 1991, our animal welfare committee had the foresight to recognize the unique abilities of a rising star in the field of animal welfare: Dr. Temple Grandin of Colorado State University. Dr. Grandin's autism provides her the unique ability to understand the world from an animal's perspective and we have learned much from her insights. Dr. Grandin has crawled through our chutes and alleys, designed and sat in our cattle holding pens, ridden our trucks and seen the world and our plants as animals do. There is nothing she will not do to improve welfare and there is no recommendation from her that we don't take seriously.

In partnership with Dr. Grandin, we sought not only to meet regulatory requirements, but to exceed them. Grandin authored the first ever industry-specific "Recommended Animal Handling Guidelines" in 1991. They are distributed throughout our industry in both Spanish and English.

In 1997, after Dr. Grandin audited plants for USDA, she proposed an idea that was at the time considered radical, though it is now routine. She argued that welfare could be measured objectively using criteria like vocalizations, slips and falls, prod use and stunner accuracy. She declared that we could "manage what we measure." I will confess that at the time, the idea of "counting moos" sounded almost silly. Still, our forward-thinking Animal Welfare Committee agreed that the idea had merit, and Dr. Grandin again did a first for us: she wrote the first animal welfare audit ever developed.

Today, self audits and third party audits are part of our routine operations. Our audit guide is endorsed by groups like the American Humane Association and Certified Humane and is widely used as a condition of business by major restaurant and retail chains for their suppliers.

The meat industry's commitment to animal welfare was underscored when AMI's members voted to make animal welfare a non-competitive issue in 2002. As a result, AMI member plants share good ideas and assist each other in developing and refining animal handling programs and solving challenges. I have seen staunch competitors exchange plant visits to share best practices and I am proud that we help each other in this way. All of our ideas, our guidelines and our audits are available free on our dedicated web site www.animahandling.org.

Both ethical and economic imperatives exist to handle animals humanely. Study after study shows that optimal animal handling results in better quality products. However, most importantly, it's simply "the right thing to do." Dr. Grandin's own data shows dramatic and measurable improvements in animal handling in federally inspected meat plants since our audit was developed.

Despite this industry track record of proven progress, we confront the tragic reality of the Hallmark/Westland incident, and we must take necessary steps to ensure this does not happen again. Federal and State investigations are still underway and I will refrain from prejudging their outcome or any judicial proceeding, but it certainly appears that multiple failures occurred at many levels.

—First, failures occurred in the livestock production and/or transportation system that supplied livestock to the plant. All efforts must be taken to minimize the arrival of non-ambulatory animals, or so-called "downers," at the slaughter facility. Livestock producers must recommit to culling animals from their herds before they become ill or disabled, and would unnecessarily suffer. They must market only those animals from their dairy and beef operations that will meet Federal meat inspection requirements, and they have an ethical responsibility to euthanize on the farm those who are not able to be transported.

- Secondly, failures occurred at the slaughter facility. Plant personnel apparently did not comply with the Humane Slaughter Act and the Federal Meat Inspection Act. Humane animal handling violations caused USDA to withdraw Federal inspectors from the plant, which resulted in the plant being closed on January 30, 2008. After further investigation by Federal authorities, a Class II recall of beef products was initiated on February 17, 2008. This recall stemmed from the plant not being in full compliance with Federal meat inspection procedures when it processed cattle.
- Third, failures occurred within USDA’s Food Safety and Inspection Service. A total of eight Federal inspectors were stationed at the Hallmark/Westland facility. By Federal law, Federal inspectors must be present for the plant to operate. Apparently, Federal inspectors failed to observe or ignored animal handling violations and failed to enforce agency meat inspection policies and procedures.
- And finally, failures occurred at The Humane Society of the United States by not immediately alerting Federal authorities to the practices captured on their video. Months of delays in notifying Federal authorities prolonged a bad practice, complicated the Federal investigation and created weeks of uncertainty and needless concern for school districts and consumers nationwide. When AMI became aware of the incident on January 5 after Dr. Grandin received the tape, we tried to identify the plant based upon her description, but we were unable to do so. Inquiries to AMI members who handle cows asking them if they used fork lifts to move non-ambulatory livestock were greeted with responses of “You must be kidding. No one does that.” One can reasonably ask how such gross abuse could go unnoticed by so many for so long. But one can also ask of The Humane Society how it could stand idly by and allow this abuse to continue for almost 4 months.

These multiple failures surrounding the Hallmark/Westland incident have severely damaged the beef industry. Strong action is needed to right the ship and reassure customers that everything possible is being done to establish safeguards that will prevent such a deplorable incident from occurring ever again. AMI is considering several improvements that make it clear that animal welfare is a shared responsibility, and only a systems approach will ensure that all proper procedures are followed.

Producers.—Our industry must lead an effort to enroll all beef and dairy producers in the Beef Quality Assurance and Dairy Quality Assurance Programs to maintain herd health and assure that only those animals that will pass Federal inspection requirements are sent to slaughter. The use of audits to measure welfare at these points should be encouraged.

Handlers.—Sellers of livestock to slaughter facilities, including livestock dealers and brokers, should be required to provide documented training for employees in proper animal handling and transportation of animals.

Processing Plants.—Employees handling live animals in federally inspected slaughter facilities should be certified for proficiency in proper animal handling procedures and a thorough knowledge of the Humane Slaughter Act.

USDA.—The Department should require that all FSIS inspectors performing ante mortem inspection be certified for proficiency in animal handling and have a thorough knowledge of the Humane Slaughter Act and other FSIS guidance material.

Congress, the regulatory agencies and the industry must carefully evaluate all proposals that can prevent a problem like this from occurring in the future. Changes should not be made for political or cosmetic reasons. The improvements must focus on process design and changes that rely on sound animal handling practices throughout the chain.

It is important to remember that the recall is a Class II recall, and not a Class I recall that is implemented when a clear public health risk exists. Federal officials have said that the beef supply is safe and there have been no illnesses associated with the recalled meat.

As one who has overseen the evolution—perhaps better described as a revolution—in our approach to animal welfare since 1990, I want to offer my personal assurance that the members of this industry abhor what has happened and are committed to optimal animal welfare because it is both ethically appropriate and economically beneficial. Unfortunately, the media have not reported the story this way, and there have been numerous baseless linkages made to food safety.

I understand that high profile stories are upsetting, but I assure you that I remain confident in the safety of the U.S. beef supply, of our children’s school lunches, and in the welfare of animals in our care.

Thank you for allowing me the opportunity to present our views before this distinguished committee.

PREPARED STATEMENT OF TEMPLE GRANDIN, PH.D., PROFESSOR, ANIMAL SCIENCE,
COLORADO STATE UNIVERSITY

Thank you for the opportunity to provide testimony. I've committed my life's work to livestock welfare in the meat industry. The Hallmark/Westland video was atrocious and made me sick.

I have some thoughts about what lessons can be learned from this situation. I'd like to share the practical knowledge that I've gained by working in meat plants in the United States and around the world since the 1980s.

I have stressed for three decades the importance of working with, and not against, an animal's natural instincts. By understanding animal behavior, you minimize stress. This approach improves animal welfare and meat quality. For example, animals, by their nature, are curious. Circular chutes encourage them to move forward to see what is around the curve. This minimizes the need to drive animals. Designing lighting so it does not shine in an animal's eye and ensuring that animals walk into well lighted spaces instead of what looks to them like a dark hole helps move an animal in a less stressful way.

I visit many different plants in the United States and estimate that 50 percent of the cattle and 25 percent of the hogs are slaughtered in a plant that use my designs. I also have conducted a survey for the USDA, trained commercial auditors and do audits for clients like major restaurant chains.

The American Meat Institute Guidelines that I wrote have helped the industry and their customers measure welfare consistently. They were developed in 1997 and later came to be required as a condition of doing business by major restaurant chains beginning in 1999. Since that time, I have seen dramatic changes. People in the industry focus much more heavily on animal welfare as part of the daily routine. Plants invest time in training on site and by sending people to the AMI Animal Care & Handling Conference each year in February. Some plants use the American Meat Institute videos to train their workers and other companies have developed their own.

Federal inspectors could use the same level of training as the industry provides. In my experience, USDA inspectors are not well-trained and are very inconsistent in how they enforce the humane slaughter regulations. One person is super strict and unreasonable, another is just right, and another is totally lax. The inspectors working in the field often do not get clear directions on what is acceptable and what is not acceptable. You only need to look at the NRs written for Humane Slaughter violations to see inconsistencies even when they come from the same plant but different shifts with different inspectors.

In my view, you manage what you measure and know to be true—not what your opinion or interpretation tells you is true. Welfare must be measured over time so that you can evaluate plants in the big picture. You cannot look at a single failure on a given day—like a missed stun—and make sweeping conclusions that plant is a failure when it comes to welfare. That's a snapshot in time, not a complete picture. Shutting a plant down won't undo the rare stun that goes wrong.

The criteria I developed recognize that no one can be perfect all the time. Equipment fails despite the best maintenance programs. Animals move when you want them to stand still. Thunderstorms scare cattle and make them hard to handle some days. Animals that haven't had a lot of human interaction at the farm may arrive at a plant and be fearful and difficult to move. Electricity fails. New and inexperienced employees may invade an animal's flight zone and cause it to balk. And the list goes on.

Along the same lines, if pigs are slipping and falling on a ramp, does a plant take actions to regroove the floor? If a handler is prodding an animal at a level that exceeds what the standards I developed allow, is the plant offering additional training and teaching that handler how to use a less stressful driving tool? The important factor when these problems occur is how a plant responds. Responses to problems speak volumes about a plant. The effectiveness of these responses can be determined by collecting more data to see if it worked.

And the data show that animal welfare is better than it has been at any time since I've been measuring it. They are endorsed by the American Humane Association and by Certified Humane. My first graduate student, Dr. Jennifer Lanier, used the guidelines while employed by The Humane Society of the United States, and these were part of her training of the Central American meat industry through HSUS' international outreach program. McDonald's, Burger King, Wendy's and many other chains use them to evaluate suppliers.

Given their widespread support, I strongly recommend that the USDA use the American Meat Institute guidelines as a measurement of welfare. This would help make enforcement more uniform.

The AMI guidelines have a zero tolerance for the worst practices and use numerical scoring to assess animal handling and stunning. Dragging non-ambulatory animals has a zero tolerance on both USDA regulations and the AMI guidelines. Acts of animal abuse that are outlined in the AMI guide are also automatic failed audits. There is an absolute zero tolerance for starting dressing procedures such as scalding, leg removal, and skinning on an animal showing signs of return to sensibility. Hanging a sensible animal on the rail is also an automatic failed audit.

NUMERICAL OBJECTIVE SCORING

For variables such as stunning efficacy and electric prod use, doing everything perfectly every time is impossible. This is a concept that some people have a hard time understanding because they do not work in the world of practical things. I developed the AMI scoring system from data I collected during a survey I conducted for the USDA in 1996. The numerical objective scoring system was developed from my USDA funded research. That report is on www.grandin.com in the survey section.

Plant managers know that they have to score specific hard numbers to pass. People manage the things that they measure. A plant can be held to a high standard, but perfection is impossible. To download the complete AMI guide and audit forms, go to www.animalhandling.org

The present system of USDA inspection is like having traffic police giving out speeding tickets when they think cars are speeding. Our traffic laws work to ensure the police MEASURE a car's speed with radar and the drivers know what the speed limit is because it is posted on signs.

The following variables are scored with numerical scoring on the AMI guideline.

- Percentage of animals stunned with one captive bolt shot.
 - 95 percent acceptable
 - 99 percent excellent—missed animals are IMMEDIATELY shot again before hanging on the rail.
- Percentage of animals with correct placement of an electric stunner
 - 99 percent to pass
- Percentage rendered insensible before hanging on the rail must be 100 percent.
- Percentage of animals moved with electric prod.
 - 25 percent acceptable
 - 5 percent excellent
- Percentage of animals slipping and falling.
 - 3 percent slipping
 - 1 percent falling acceptable
- Percentage of animals vocalizing (squeal, moo, bellow) during handling and stunning.
 - Cattle 3 percent acceptable
 - Pigs 5 percent in the restrainer acceptable

Vocalization is a sensitive indicator of aversive or distressing events such as missed stuns, sharp edges sticking into them and excessive pressure from restraint equipment. In my original USDA survey, the worst plant had 35 percent of the cattle vocalizing.

People who care about animals are concerned that many animals will suffer because mistakes are allowed. Even though the guidelines allow 1 percent of the animals to fall, most plants have less than one in a thousand falling. Numerical scoring is going to reduce suffering because inspectors will do a more uniform job of enforcement

There is a reality in meat production. The process involves (1) people (2) who handle animals and (3) who use equipment and (4) all this is overseen by more people in the form of Federal inspectors. Without thorough training, and without clear measurable criteria, people, whether they are inspectors or employees, are prone to make subjective and inconsistent judgments.

The Chino video is shocking and abusive. It is truly one of the worst things I've ever seen. But it is not representative of what I have observed in meat plants. It is simply not "typical," though some groups and some media reports have tried to say it is.

I received the tape showing this handling on January 5. I immediately alerted industry officials that horrible handling was happening at a plant but I didn't know where. I know that AMI officials called plants to try to figure out who was using a forklift to move live cows, which is appalling, a violation of the law and a violation of industry guidelines. In the week after I received the video, I called HSUS and asked them to name the plant so I could stop it. They would not tell me because they were working with the State to bring charges.

I was very angry that the plant was not identified until January 30 and then, it was because the Washington Post had the video. When the Post reported the story, I learned that the abuse was observed starting in October. I live in a practical world outside the beltway. Inside the beltway, too many people are focused on how they might lose or win in certain situations. I care about animals, and I see and think in plain terms. I'm sick that this went on for as long as it did in a federally inspected plant and that people who knew about this behavior waited until January 30 to announce it publicly.

This has got to stop. We need to measure animal welfare objectively throughout the industry without exception, show no tolerance for bad actors, train our inspectors and commit ourselves to welfare in its truest sense and report abuse when we see it.

Thank you for the opportunity to submit testimony.

[From the Riverside Press Enterprise, February 21, 2008]

CHINO MEAT PLANT DREW INLAND HUMANE SOCIETY SCRUTINY YEARS BEFORE VIDEO

(By Janet Zimmerman and Ben Goad)

Inland animal welfare officers alerted government officials to the inhumane treatment of cows at Hallmark Meat Co. in Chino more than a decade before a recent undercover investigation led to the plant's closure and the largest beef recall in U.S. history, records show.

The Inland Valley Humane Society and the Society for the Prevention of Cruelty to Animals in Pomona investigated 13 cases between 1996 and 2004—11 of them substantiated—involving Hallmark's treatment of "downer" cows, which are those too sick or injured to stand up or walk on their own.

"It tells you they have a long, ongoing history of not tending to downer animals in a prompt and humane manner," said Brian Sampson, the society's supervisor of animal services. The Inland Valley group provides animal control services for the city of Chino.

The U.S. Department of Agriculture was notified three times about possible violations of regulations regarding treatment of downer cows, twice in writing and once verbally, in 1996 and 1997, according to The Humane Society's file on Hallmark.

"We forwarded a lot of stuff to the USDA of our findings, but what action they took I don't know," said Sampson, who was a field officer at the time.

Agriculture Department officials said they would not be able to comment on the Inland Valley Humane Society's assertions until today.

A woman who answered the phone at Hallmark on Thursday said the company has no comment.

Steve Mendell is president and a current owner. Donald Hallmark, of Ontario, said Thursday that he sold the plant 5 years ago and that earlier problems with the handling of downer cows were corrected.

Federal Investigation

Hallmark and its affiliated meat-packing operation, Westland Meat Co., have been under fire since The Humane Society of the United States released an undercover video last month showing plant workers ramming downer cows with forklifts, shooting water up their noses and repeatedly zapping them with electric prods to get them upright to pass USDA inspection.

The two Humane Society organizations are not affiliated.

The meat company, which shut down operations early this month, is under Federal investigation, and the San Bernardino County district attorney's office has filed animal cruelty charges against a Hallmark supervisor and an employee.

On Sunday, Hallmark/Westland recalled 143 million pounds of beef processed at the Chino plant from February 2006 through this month.

Just over 50 million pounds of the recalled beef went to Federal nutrition programs, including the National School Lunch Program, said Eric Steiner, associate administrator of the USDA's Food and Nutrition Service. Of that meat, 19.6 million pounds has been eaten, 15.2 million has been located and is "on hold" and officials are still working to track down an additional 15.5 million pounds, Steiner said.

The whereabouts of the other 93 millions pounds have not been traced.

Hallmark/Westland Meat Co. produced roughly 20 percent of the beef that went into the school lunch program, said Bill Sessions, associate deputy administrator for the USDA's Agricultural Marketing Service.

The agency has no plans to test any of the recalled meat, said Ken Petersen, assistant administrator for the department's Food Safety and Inspection Service.

Petersen said the meat already is being removed from the food supply, so there is no reason to test it.

"Testing it isn't going to tell me anything," he said.

Petersen and other officials said the chance that people became ill from eating the meat is "very remote."

"There's been no reported illness, and we certainly don't envision any illness," Petersen said.

Cows are inspected before slaughter. The Humane Society of the United States investigation revealed that some cows were not re-inspected after they went down. That revelation—not a concern that the beef was dangerous—prompted the recall, Petersen said.

Non-ambulatory animals are not to be used in the human food supply to prevent the spread of bovine spongiform encephalopathy, commonly called mad cow disease, a neurological disorder that can be fatal to humans.

California law enacted in January 1994 prohibits non-USDA inspected facilities from receiving downer animals. It requires that downers be immediately euthanized and not dragged or pushed with equipment. The USDA banned non-ambulatory cattle from the human food chain in 2003.

Petersen, in a telephone briefing Thursday, said both that violations were a "very rare occurrence" at the plant and that they happened "with some frequency going over a course of 2 years."

He declined to elaborate, citing the ongoing investigation. He also declined to say exactly how the on-site inspectors missed the violations.

Cows Seen Suffering

Inland Valley Humane Society documents reveal a history of problems. Sampson said the agency's then-supervisor did not seek charges because it was assumed the USDA would address the problems. At most, there may have been failure to quickly euthanize, which is a misdemeanor, he said.

On May 20, 1998, a humane society investigator found three downers not signed off by the USDA official on site for an hour. One of the cows was "semiconscious and hyperventilating" and the other two, though apparently uninjured, "were breathing with difficulty," according to the report.

A week later, the officer returned and inspected 5 days of logs on downers. He found that the average time span for them to be euthanized was 2 to 3 hours, a violation of the State law, Sampson said.

On a spot check on May 11, 1998, a humane society officer found a cow with its right hoof "hanging by a thread," wandering in the parking lot for 15 minutes before the euthanasia was signed off by a USDA vet. The officer recommended installing a bar across the downer shed when no one was around to prevent future escapes.

Handled Too Roughly

A week later, the field supervisor checked the plant again. She noted that she spoke to USDA brand inspector David Wall about "unloading problems and mishandling of animals generally at the plant."

"Cows are handled too roughly," she wrote.

Oct. 8, 1996, a citizen complained about workers repeatedly prodding downer cows in the face and allowing other cows to trample them. The USDA veterinarian on site refused to speak to The Humane Society investigator, who was ordered to leave by the owner when he refused to divulge who made the complaint, according to the report.

That incident prompted an Oct. 10, 1996, letter from The Humane Society's then-supervisor of field services, Marsha Wyatt, to the plant's owners. It said: "We have had numerous incidents with your facility in the past involving downer animals and loose animals creating public safety issues. There is not another slaughterhouse in this area that has created more problems for the police department and our agency than yours."

The letter was copied to the USDA and the city.

A December 16, 1997, letter followed up a meeting with The Humane Society and the two owners, Donald W. and Donald R. Hallmark, detailing conditions they agreed to. Among them, that any downer in distress—marked by vocalization, panting, teeth grinding, broken legs, serious wounds or split pelvises—will be reported to the USDA vet or inspector for immediate euthanasia.

The letter, copied to the USDA, concluded: "We all know that continued mishandling of downers is unethical and will only lead to further complaints from the public and possibly interference from the media."

[February 21, 2008]

INSPECTORS SAY MEAT SAFETY IS THREATENED

(By Gillian Flaccus)

Los Angeles (AP)—Sometimes, government inspectors responsible for examining slaughterhouse cattle for mad cow disease and other ills are so short-staffed that they find themselves peering down from catwalks at hundreds of animals at once, looking for such telltale signs as droopy ears, stumbling gait and facial paralysis.

The ranks of inspectors are so thin that slaughterhouse workers often figure out when “surprise” visits are about to take place, and make sure they are on their best behavior.

These allegations were raised by former and current U.S. Department of Agriculture inspectors in the wake of the biggest beef recall in history—143 million pounds from a California meatpacker accused of sending lame “downer” cows to slaughter.

The inspectors told The Associated Press that they fear chronic staff shortages in their ranks are allowing sick cows to get into the Nation’s food supply, endangering the public. According to USDA’s own figures, the inspector ranks nationwide had vacancy rates of 10 percent or more in 2006–2007.

“They’re not covering all their bases. There’s a possibility that something could go through because you don’t have the manpower to check everything,” said Lester Friedlander, a former USDA veterinary inspector at a plant in Wyalusing, Pennsylvania.

Amanda Eamich, a spokeswoman for the USDA’s Food Safety and Inspection Service, acknowledged that the department has been struggling to fill vacancies but denied the food supply is at risk.

“Every single animal must pass ante mortem inspection before it’s presented for slaughter, so only healthy animals are going to pass,” she said. “We do have continuous inspection at slaughter facilities.”

Similarly, Janet Riley, a spokeswoman for the American Meat Institute, defended the meatpacking industry’s safety record. “It is interesting to keep in mind how heavily regulated we are,” she said. “Nobody has this level of inspection.”

The current and former inspectors and other industry critics charged that the staff shortages are also resulting in the mistreatment of animals on the way to slaughter, and may have contributed to the recall announced earlier this week.

U.S. Sen. Herb Kohl, D-Wisconsin, said Thursday that his Senate Agriculture, Rural Development and Related Agencies Appropriations Subcommittee will hold a Feb. 28 hearing on the recall.

Secretary of Agriculture Ed Schafer and the presidents of The Humane Society and the American Meat Institute, among others, will testify, he said in a printed statement.

The USDA recalled the beef after The Humane Society of the United States released undercover video that showed slaughterhouse workers at the Chino-based Westland/Hallmark Meat Co. kicking and shoving sick and crippled cows and forcing them to stand with electric prods, forklifts and water hoses.

Wayne Pacelle, The Humane Society’s president and chief executive, said the video was filmed over a 6-week period last fall and all the abuse happened when USDA inspectors were not present.

“The inspection system obviously has enormous gaps if these routine abuses could happen,” he said. “The inspector would show up and if there were downed animals, the workers would try to get them up before the inspectors got there.”

Generally, downer cows—those too sickly to stand, even with coaxing—are banned from the food supply under Federal regulations. Downer cows carry a higher risk of mad cow disease. And because sickly animals typically wallow in feces and have weakened immune systems, downer cows are more likely to carry E. coli and salmonella, too.

Veterinary inspectors look for such symptoms as an unsteady gait, swollen lymph nodes, sores and poor muscle tone.

Industry critics say the staff shortages are compounded by a change in USDA regulations in the late 1990s that gave slaughterhouses more responsibility for devising their own safety checklists and for reporting downer cows to the USDA when inspectors are not present.

That policy places slaughterhouses on an honor system that can lead to abuse in an industry that thrives on close attention to costs, said Stan Painter, chairman for the National Joint Council of Food Inspection Locals, which represents 6,000 inspectors nationwide.

“The fox is guarding its own henhouse,” said Painter, who also works as a part-time inspector at hog and poultry packing plants in the South. “If you throw a 3-pound chicken away, so what? But if you throw a cow away that’s 300 pounds of meat, and you can’t get any money out of it, that’s a big issue.”

Inspectors whose job is to make sure that the cattle are treated humanely said staff shortages mean they are forced to adopt routine hours for their checks, removing the element of surprise.

USDA numbers show anywhere between 10 and 12 percent of inspector and veterinarian positions at poultry, beef and pork slaughterhouses nationwide were vacant between October 2006 and September 2007. In some regions, including Colorado and Texas, a major beef-producing State, the rate hovered around 15 percent. In New York, vacancy rates hit nearly 22 percent last July.

To bolster its ranks, the department is offering big signing bonuses of at least \$2,500 to inspectors willing to relocate to 15 States. The agency has 7,800 inspectors covering 6,200 federally inspected establishments, 900 of which slaughter livestock.

USDA’s Eamich blamed the vacancies on competition with private-sector wages, high costs of living and the often-undesirable rural locations of many slaughterhouses.

The agency hired 200 new inspectors in the past year, bringing staffing levels to their highest point since 2003, and cut veterinarian vacancies by half through hiring incentives, the spokeswoman said.

Felicia Nestor, a policy analyst with Washington-based Food and Water Watch, said the food supply may be at risk.

“I have talked to so many inspectors who used to work for the industry, and part of the training is how to get around the inspection. They’ve got alkies-talkies to alert each other to where the inspector is, they double-team the inspector,” she said.

At two packing houses in Nebraska, veterinarians monitor up to 700 head of cattle at a time for signs of illness—just enough to make sure all the cows are standing, said one veteran inspector who spoke on condition of anonymity for fear of losing his job.

The inspector has worked for 15 years as an inspector at two plants in Lexington and Grand Island, Neb. One-quarter of the inspection positions at one of his plants have been vacant now for 2 years, he said.

“There are so many vet shortages out in the field right now, they can’t keep it properly staffed,” the inspector said. “When they come into these big slaughter facilities, they’ll put 200 head in a pen. All you can tell is they’re moving.”

Friedlander, who left the USDA in 1995, said he recalled checking up to 220 cows an hour by standing on a catwalk above a pen of hundreds of animals. He would also check to see if cows could walk by having workers drive them from one pen to another, six or seven cows abreast.

“If you’re a vet, you see the first cow, you might see the second cow, but the fourth, fifth, sixth, seventh cow you might not see,” he said. “How can we tell if there’s any facial paralysis or droopy ears? You can’t tell.”

USDA’s Eamich said that there is no limit to the number of animals an inspector is allowed to look at one time, “but they have to look at every single one.”

PREPARED STATEMENT OF THE WESTON A. PRICE FOUNDATION

The recent revelation of cruel treatment to downer cows at the Hallmark/Westland Meat Company has brought important focus on the flaws in our industrial food system.

Many individuals and agencies will be requesting that USDA put an end to the practice of cruelly prodding downer cows to make them stand up so that they can be slaughtered for human food. It is good to close this loophole but in so doing, USDA will not be addressing the fundamental problem, namely, the policies that favor the industrial production of animal foods and the effects of this system not only on the health and well-being of animals but also on the health and well-being of human beings. (The downer cow that we have all seen on television and the Internet, by the way, was a dairy cow. It is unfortunate that the resultant publicity has focused on the safety of beef. Shouldn’t we be looking into the safety and nutrient levels of milk from confinement dairy facilities?)

The Weston A. Price Foundation promotes the restoration of nutrient-dense foods to the American diet, and puts particular emphasis on the fat-soluble vitamins A, D and K2. The research of nutrition pioneer Weston A. Price, DDS, revealed that the diets of healthy non-industrialized peoples contained very high levels of these vitamins. Food sources include certain types of seafood (shell fish, fish eggs, fish livers and certain oily fish) and the organ meats, fat and butter fat of grass-fed ani-

mals. When our cattle, sheep, goats, pigs and poultry are raised outdoors in the sunlight, their fat, butterfat, yolks and organ meats will provide vitamin D; and when their main food is green grass, their fat, butterfat, yolks and organ meats will provide vitamins A and K2. These vitamins are essential for numerous roles including growth, learning capacity, immunity, fertility and protection against cancer, heart disease, diabetes, osteoporosis and auto-immune disease.

Through its 400 local chapters worldwide, the Foundation facilitates the direct purchase of these animal foods from farmers engaged in pasture-based agriculture. Through our resource guides, buying groups and food co-ops, we have brought 11-hour rescue, and indeed prosperity, to hundreds of small farms and in so doing have provided nutrient-dense animal foods to tens of thousands of individuals seeking optimal health for themselves and their families.

The reason that most Americans do not have access to nutrient-dense animal foods from pastured animals today, as they did until the middle of the 20th century, has to do with a USDA farm policy that favors centralized agriculture and the confinement system. Public policy that includes subsidies for large operations, lax environmental laws, closing down of small meat processing plants, misleading agenda-driven nutrition advice and health and labeling laws that strongly discriminate against the direct sales of farm product—these policies have led to the current system. USDA's proposed National Animal Identification System (NAIS), promoted under the spurious guise of animal and human health, would, if implemented, even further discriminate against small farmers in favor of large confinement operations. Proponents claim these policies necessary to control the increasing risk of food-borne illness, the major source of which is the industrial confinement food system; yet these one-size-fits-all policies militate against the very practices that can solve the problem, namely small, grass-based farms.

The Weston A. Price Foundation strongly urges the Senate Agriculture Committee to examine the policies that have led to industrial agriculture's current hegemony. This system has led to an enormous increase in food-borne illness—not only from the animals themselves, but also from produce contamination due to runoff water from confinement facilities—as well as the proliferation of chronic disease, including our biggest killer, heart disease.

Researchers in Holland have discovered that vitamin K2 protects against atherosclerosis, and they are predicting that in 20 years, heart disease will be defined as a deficiency of vitamin K2. We also now know that vitamin D protects against heart disease. The great increase in heart disease in this country has exactly paralleled the trend to confinement agriculture and the disappearance of vitamins D and K2 from the traditional animal foods that formerly supplied them—liver, butter, cheese, egg yolks and meat fat. Vitamins D and K2 are also essential for neurological development and fertility.

The confinement animal system is not only cruel to animals and hard on the environment; not only does this system deplete our animal foods of vital nutrients; not only does the centralization of animal production make our food supply vulnerable to terrorism; but it also raises the specter of actual starvation. The genetic pool of animals used for industrial food production is extremely narrow and many veterinarians have expressed concern about the possibility of a kind of "animal dust bowl" in which this limited genetic range is wiped out by an opportunistic organism for which these animals have no natural immunity. Several years ago the confinement poultry operations in the Shenandoah were obliged to remove 1,000 tractor trailer loads of chickens wiped out by bird flu; and as the average lifespan of dairy cows declines (now at about 42 months, compared to 12 years for a cow on pasture), the dairy and industry will continue to feel the economic pressures that allow increasing numbers of sick animals into the food chain.

These examples are harbingers of greater dangers to come. Antibiotics and arsenic added to feed can only stave off a mass die-off for so long, a die-off that could have drastic consequences for everyone in the country, including your own children and grandchildren. The only protection against mass animal die-off is a transition back to small pasture-farms raising a genetically diverse range of animals that have natural immunity thanks to healthy, traditional animal husbandry practices. Our farm policy should favor these types of farms as a matter of human survival.

I would be happy to testify on this subject and request that the Weston A. Price Foundation be included at future hearings.

The Weston A. Price Foundation is a 501C3 nutrition education foundation with the mission of disseminating accurate, science-based information on diet and health. Named after nutrition pioneer Weston A. Price, DDS, author of *Nutrition and Physical Degeneration*, the Washington, DC-based Foundation publishes a quarterly journal for its 10,000 members, supports 400 local chapters worldwide and hosts a

yearly conference. (202) 363-4394, www.westonaprice.org <[http://www.westonaprice.org/>](mailto:info@westonaprice.org),info@westonaprice.org.

Sally Fallon, MA, is founding president of the Weston A. Price Foundation and author of the best-selling nutritional cookbook *Nourishing Traditions* (with Mary G. Enig, PhD). An articulate communicator, she is a widely quoted expert on traditional diets and a frequent contributor to holistic health publications.

Senator KOHL. Thank you.

Senator CRAIG.

Senator CRAIG. Thank you very much, Mr. Chairman.

Gentlemen, thank you for being with us today.

Mr. Pacelle, you mentioned in your testimony that the videoing that went on and the observation by a member of The Humane Society was a random selection at Hallmark?

Mr. PACELLE. That's correct.

Senator CRAIG. Would you expand on that for us? Is that a practice that The Humane Society gets involved in on a regular basis? They select different slaughter environments, and video for that purpose?

Mr. PACELLE. We've—we've been very concerned, I mean, the organization has always been concerned, and as I mentioned, the founder of the organization, in the 1950s, focused on slaughterhouse abuse and helped stimulate the passage of the Humane Slaughter Act.

But we have a big charge, at The Humane Society, to protect pets, and wildlife, and many other creatures, and I'd say we've redoubled our commitment to address concerns about the mistreatment of animals in industrial agriculture. So, we were putting more resources into that, and this investigation was a bit of a novel one for us.

Senator CRAIG. That does not help me in—oh, so—maybe it does help me, help me understand it. So, the randomness of the particular action was that, on this day you chose a slaughterhouse, whereas you might not choose other slaughterhouses over a period of time, you would look at other opportunities—or I should say, situations—where there might be inhumane treatment of animals?

Mr. PACELLE. Our investigators are busy looking at puppy mills—

Senator CRAIG. Yes.

Mr. PACELLE [continuing]. Looking at the trade in dogs and cats in the Philippines for meat—for so many different reasons, they're spread thin. We chose to take a look at a place in the Southwest United States, and again, we didn't do a broad risk assessment and say, "Okay, let's zero in on this one," our guy just applied for a job at that facility and got it, they were happy he didn't leave after 4 or 5 days, because a lot of the employees do. He stuck around for 6 weeks, and he stuck around because he did see terrible things going on.

But, because there are very few cases made on farm animal cruelty, and because it is rare for USDA to take serious action on an animal-welfare related issue, we felt we had to amass a preponderance of evidence before we released this publicly. And when we did release it, we gave it to the District Attorney of San Bernardino County.

Senator CRAIG. That is my next question, if what you saw, or what your personnel saw to be so egregious—and a clear violation

of current rules and regulations of USDA—why did you not immediately come to USDA or the U.S. Attorney General? You chose a local, elected law enforcement officer, who had no jurisdiction over that slaughterhouse?

Mr. PACELLE. The District Attorney of San Bernardino County does have jurisdiction in the sense that California does have a strong animal cruelty statute—

Senator CRAIG. That's a local, not a State official, then why did you not go to the State officials?

Mr. PACELLE. The way enforcement occurs in California is at a county level.

Senator CRAIG. Okay, all right.

Mr. PACELLE. The State Attorney General doesn't really have much authority. We believe that the most serious penalties could be meted out with the prosecution of individuals who perpetrated these crimes, through the Office of the District Attorney. Obviously—and we work on a lot of dog fighting, and cock fighting, animal cruelty cases—we work with D.A.'s all the time. Generally speaking, and this one is no different, they want to keep the information quiet, while they conduct an investigation. We support—

Senator CRAIG. No, I appreciate that. But, what this has spiraled into is a very real question of the quality and safety of the food supply. And if you are simply working over months to make a case, and you are only going to choose to prosecute, and not to stop the food supply from being contaminated by downer cows, was there not a sense of urgency, here?

Mr. PACELLE. Senator Craig, we have a great sense of urgency, and that's why we—

Senator CRAIG. But it isn't demonstrated by the period of time—

Mr. PACELLE. Well, I'm going to—

Senator CRAIG [continuing]. You took to expose this.

Mr. PACELLE. I'm going to tell you why—I'm going to tell you why it's urgent, and why this case is not so unusual.

We have been demanding to this Senate—and the Senate has passed it several times, it's really a House issue—to stop the processing of downer cows in the food supply. That's happening right now, the OIG demonstrated it in 2006. It's been happening every week, and every month, and every year—downer cows are going into the food supply, and it is a risk—it's a terrible humane handling issue, it's an issue of animal cruelty—but is the risk here—

Senator CRAIG. Okay.

Mr. PACELLE [continuing]. Worse than what's going on—

Senator CRAIG. I'm not sure you and I have a dispute over that. As long as we understand why that is a downer cow, that she was not physically injured, but there's an illness, or a disease or a problem. I used to ship cattle. I was very cautious on how they got onto trucks, how they were handled, because I wanted them handled in a humane fashion. I know that mistreating of animals, packing them into trucks can produce downers, simply by the crush and the impact of numbers of livestock.

But, let's go back—if this is a food chain issue, if this is a worry about the contamination of a food chain, you just told me you

turned it over to a prosecutor to prosecute people, not to stop the action, and correct the quality of the food chain. I mean——

Mr. PACELE. That correction occurred. And it may not have occurred on the timeframe that USDA wanted—I understand their interest in getting the information right when the investigative materials were ready. We turned them over, right away, to the San Bernardino District Attorney, but I just wanted to underscore this—that the threat is every day.

Senator CRAIG. Well——

Mr. PACELE. The threat is now, and until this policy is changed, we are playing Russian roulette with the American food supply.

Senator CRAIG. So—and I'll close, I'm out of time, and I'll go to a second round, if necessary.

There is a reality here. One of the first things I heard in the recall was, from the time it had occurred and been documented, until the time action was taken—which now appears to be, in part, a result of your failure to report it to the right people, immediately—because you were “attempting to make a case”—food was consumed, meat was consumed, that might have been at risk. People could have been injured by that food that was at risk.

Mr. PACELE. And that's the USDA's responsibility, to ferret that out, we——

Senator CRAIG. But, if you knew a law was being violated and contaminated animals were going into the food chain, there is a responsibility on your part, too, is there not?

Mr. PACELE. The responsibility squarely rests with this plant that violated the law.

Senator CRAIG. You and I both agree on that. No question about that.

Mr. PACELE. The responsibility from a regulatory and oversight perspective rested with USDA—we cannot—please don't take—I'm very confident about the work of The Humane Society, and I love my staff—but we cannot protect the safety of the food supply in America. We wanted to make sure there was no whitewash of this case——

Senator CRAIG. Okay.

Mr. PACELE [continuing]. We had a strong case, it needed to develop. We thought that there were clear violations of criminal statutes in California—the States prosecute most animal cruelty, that's why we went there.

Senator CRAIG. Thank you. My time is up. But there is a reality of timing that you have not effectively, and responsibly addressed.

Thank you.

Senator KOHL. Senator Harkin.

Senator HARKIN. Should, Mr. Boyle, should all downer cattle be removed from the food chain? Regardless?

Mr. BOYLE. Well, first off, the vast majority of them are, but not because downers are per se unhealthy animals and unfit for human consumption, as Mr. Pacelle noted—until we had our first case of BSE, we did not have the prohibition of the vast majority of downer animals, that are not allowed to be inspected ante mortem.

And the reason for that, is that an inspector cannot make a determination regarding the central nervous system disorders, or the BSE-related health or illness of an animal while it's in a reclining

position. That determination can only be made when that animal is ambulatory.

Hence, the prohibition on presenting non-ambulatory animals for ante mortem inspection. Because you cannot determine whether there's a BSE risk there.

There is a narrow exception that the Department explained, that after an animal is presented, and passed for ante mortem inspection, if that animal subsequently goes down in the ensuing brief period of time, it does not necessarily mean, once again, you have a BSE-related issue. It does not suggest that it has not been appropriately inspected by the inspector.

What is required, under the regs, and what has not happened here, is that it was not represented as the plant should have. And that is a significant plant failure, with significant plant consequences.

Just because an animal is down—as Senator Craig intimated when he was engaging in the last round of questions—there are a lot of reasons why an animal may go down. It's always painful to see, it's extremely regrettable, the industry works very hard to avoid it, but it is not, per se, a food safety, or a BSE-related issue. That is why the Department exercised the discretion in the rule-making, in the final regulation, in this very narrow parameter, to allow the inspector to re-inspect the downed animal to verify that it is safe for harvest for beef.

Mr. PACELLE. I mean, this is the charade of this rule. That somehow you can parse these cases of illness and acute injury—the veterinarians cannot, even if they're an outstanding, fantastic veterinarian—they don't have the tools, there are too many animals, they don't have the tools, the testing—even for BSE—is a post-mortem test—there's not some fast test that's going on.

We also know that downer cows are three times more likely to have *E. coli*, they're more likely to have salmonella—they're wallowing in manure, it's all over their hides.

This persisted for years. The only reason we have this rule is because we pushed for it, and we had the mad cow case. It takes a crisis, sometimes, for USDA to act—let's get ahead of this. Let's have this Congress codify a no-downer ban, and let's have the USDA go back to the Veneman rule and implement it properly. They undercut it with guidelines that countermanded it.

Mr. BOYLE. Thank you very much, Senator Harkin.

I'd like to shift back, at least away from the rhetoric, and the impassioned emotions here, and focus, for a moment, on the science, and the economics, here.

Mr. Pacelle just said that downed animals in a chute in that narrow window have a greater likelihood of generating *E. coli*-contaminated, and salmonella-contaminated beef. Theoretically, that's possible. But if you look at the microbiological test results of the finished product coming out of that plant, the AMS records will show that all of the lots they tested—and there was extensive testing, on school lunch program product, even above and beyond the normal amount of testing that occurs, which is quite extensive in and of its own right—none of them were positive for *E. coli*. And only two lots—out of 2 years production—were positive for salmonella.

So, the suggestion that we have an increased risk of pathogen contamination in this situation is not supported by the test results.

Also, yesterday The Humane Society filed a lawsuit against USDA, focused upon this issue—to preclude the use of re-inspection of downed animals in that narrow circumstance to see if they are healthy for the purpose of harvesting the beef. And they cited a statistic that—that didn't suggest, they said—there is a 50 times greater likelihood of BSE in that animal that, moments earlier, had been inspected and passed during the ante mortem inspection process. And now that it's gone down, there's a 50 times greater likelihood that it's now suddenly a positive animal for BSE? That data is drawn from the experience in the European Union and the United Kingdom, where they had an epidemic of BSE, where they had hundreds of thousands of cases of BSE.

And the findings suggest there's a 20 to 50 times greater percentage—in that context, in the United Kingdom, in the late 1980s and the early 1990s. But, if you ask the scientists, given our BSE status, given the fact that we've had three—only two of them indigenous to our native herd, despite significant, enhanced testing—a rate of one in a million positive for BSE, based upon the results of that survey program—the scientists will tell you there is zero risk, when that animal passes ante mortem inspection, and then subsequently in the brief period thereafter, before processing, goes down.

And then, finally, the whole economic implication that the company wants to do whatever it can to derive whatever profit by whatever means. I am not familiar with a business school in the United States of America that would suggest to its students that violating Federal regulations is a long-term strategy for economic success. And clearly, the folks at Hallmark/Westland today, have to be of the same point of view.

Mr. PACELLE. May I—I'm sorry, it's your control.

Senator HARKIN. My time is out.

Senator KOHL. Go ahead, go ahead, Mr. Pacelle.

Mr. PACELLE. I just wanted to say that yes, it is the data from Europe, that's the best data pool to draw from, and that's why we invoke it, that's why experts invoke it, that's why USDA invoked it in its Federal Register Notice on the issue, extensively documented in the USDA rule on the downer issue. Because it's relevant, and pertinent.

But if we look at the North American experience, we've had 15 BSE-positive animals turn up. Thirteen in Canada, two in the United States. Thirteen of the 15 were downers. That's a pretty strong correlation to me.

Senator HARKIN. Well, I don't—I thank you, Mr. Chairman—I don't know how I feel about that issue, I just—I'm going to go back now, again, and find out—what did we do after the Stanko incident in Colorado? I actually chaired those hearings out there, and those guys—both brothers were sent to jail, and that's what they were doing, they were dragging downer cattle into the slaughtering room.

That was, I don't know, I got a little confused at the time—maybe it was the late-seventies. But I was chairing the Livestock, Dairy and Poultry Subcommittee in the House at that time and I

swear that, after that, we took action, Pat, to do something about it—I can't remember what it was.

Mr. BOYLE. Actually, Senator, that incident in the late seventies? Senator HARKIN. Yeah?

Mr. BOYLE. While it involved downer animals, the violation was extremely egregious—they were processing animals without any ante mortem inspection, outside of the inspection regulations. Not an isolated downer in a chute, or—

Senator HARKIN. Well, maybe that was before we had the rule on ante mortem—I don't, I can't—I don't remember when that all came in. But, I thought we took care of that, but—

So, I'm not certain about this. That's something we've got to think about.

Mr. PACELLE. You may have tried diligently, Senator Harkin, but the effect is that we've had downers, day after day, week after week, year after year—

Senator HARKIN. But, certainly, Mr. Pacelle, you would also agree that if a cow is going down a chute and trips, and goes down on his knees—and we see that happen all of the time—surely, you don't say that that—and that cow is able to get back up—that somehow you can't go ahead and slaughter that cow, can you?

Mr. PACELLE. If the cow can get back up?

Senator HARKIN. Yeah, if the cow can get back up.

Mr. PACELLE. Oh yeah, no—the definition of a downer is an animal that can't get up once they're down. They're in a recumbent position, and they stay in a recumbent position.

But I do dispute the notion—and this is really the crux of the debate in Congress on the downer issue—that the veterinarians can distinguish between illness and injury. You may go down because you have a neurological problem—that's why you stumble and fall. And it puts too much of a burden on the veterinarian to make that distinction, and why try to do it, when it represents a fraction of the animals that are going to slaughter.

There are 35 million cattle slaughtered in the United States, a couple of hundred thousands were estimated to be downers, before the rule was passed by Veneman in 2004—why are we trying to get these few animals into the system, compromising their welfare, and threatening the food supply, because all of the data is overwhelming, and USDA put it in its rule?

Senator HARKIN. But, again, I say, Mr. Pacelle, if the cow went down, broke its leg, it can't get back up—

Mr. PACELLE. Yes, but how do we know—

Senator HARKIN. That doesn't mean it has a neurological problem.

Mr. PACELLE. But how do we not know that the broken leg was the consequence of a larger illness. Animals who are ill stumble and fall.

If you or I had a terrible sickness, as compared to being perfectly healthy—we would be more likely to fall, if we were ill.

Senator HARKIN. So, you're saying, just because we don't know. Well, that's probably a legitimate point, maybe. I don't know, I'll have to think about it.

Senator KOHL. Just to point, Senator Harkin, back in 2004, Secretary Veneman put in that “no downer, no exceptions,” you know, they thought it was the right thing to do then.

Mr. Boyle.

Mr. BOYLE. As an interim final rule, that was the scope of the interim final rule. When they looked more—and that was a rule adopted in the wake of our first BSE. And I don’t criticize the Department for promulgating those particular, responsive rules to that first case.

But upon further reflection, looking at the science involved, the expertise of the veterinarians, the role they can play, the Department concluded that in a very narrow circumstance, the fact that an animal that was ambulatory was inspected, was passed, and subsequently—in the short period of time thereafter, before processing, went down—should not automatically preclude it from going into the food supply. Instead, the inspector who passed it originally should be called to conduct a subsequent inspection.

That was the Department’s determination, it seems reasonable. And when it’s enforced—as it is throughout the country—it makes sense, from our perspective, as an industry.

But when it is ignored, it has terrible consequences, and it should be punished. And I think, in this case, it has been.

Mr. PACELLE. Let’s be clear, Mr. Chairman, that if an animal falls and breaks a leg, that animal may not have illness. I mean, the broken leg’s a problem and it’s certainly not very humane to move an animal with a broken leg—how are they going to get the animal in there? But the issue is not that—our argument is not that all animals who break a leg have the problem—it’s that the veterinarian doesn’t have the tools to make an accurate assessment.

And that it’s a small pool of animals—why are we risking so much—we had the mad cow case that cost the industry hundreds of millions of dollars in 2003. Now, this one is costing the industry extraordinary sums of money. Why are we fooling around with this? Why are we messing around with this? It doesn’t make economic sense.

I mean, the science, we think, is all on our side, the humane issues are all on our side, but the economics—these guys should be leading the fight? They should be working hard for this.

Senator KOHL. He’s fighting good, Mr. Boyle?

Mr. BOYLE. And, my friend, we are. And we’re pleased that you’re using our Animal Handling Guidelines, and the audit tools, as well.

Let me elaborate, briefly, on the standard that applies for the veterinarian that looks at that animal that has passed ante mortem inspection, and subsequently goes down.

If the inspector can see an acute injury—if it’s plain, upon visually viewing that animal that it has broken a leg, then that animal is allowed to proceed. If the veterinarian cannot physically see an acute injury that can explain clearly why that previously ambulatory animal is now down, that animal is not allowed to proceed.

And even with the acute injury, once that animal enters the chain, there are special procedures that apply at post-mortem inspection, to reassure and reaffirm that the veterinarian’s initial de-

cision—that it was the acute injury, not some other disease that caused it to go down—is actually a correct one that can be verified at post-mortem inspection.

Senator KOHL. All right, Senator Craig—anything more?

Senator CRAIG. No, I think my next line of questioning was going to be with Mr. Boyle, as it relates to the industry guidelines. I think you've already walked us through those.

We've had a bad actor, here. And there's no question about it. And there is concern about the quality of meat coming out of that particular slaughterhouse, and there's every reason for us to be anxious about it, there's every reason for this committee to hear, and to see if there can't be some way to improve it.

And I go back to what Senator Bennett said earlier, and instill with the industry a culture. And I thank The Humane Society for their due diligence—to a degree. I'm a little concerned when the hand-wringing occurs that this sense of urgency that was displayed because of the risk of human injury, because you were trying to make a legal case, I'm not quite sure that I can be as responsive to the righteousness of the argument.

I am going to be very responsive, to make sure that the industry does it right. And I thank The Humane Society for their due diligence, in regard to the overall kind of oversight that you do.

Thank you.

ADDITIONAL COMMITTEE QUESTIONS

Senator KOHL. Gentlemen, you've been great. You've shed a lot of light on a serious issue, and we will see what we can do to make things better, with your support.

Mr. BOYLE. Thank you, Mr. Chairman.

Thank you, Senator Craig.

Mr. PACELE. Thank you.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR HERB KOHL

Question. The Agricultural Marketing Service (AMS) had been purchasing meat from the Hallmark/Westland plant for the School Lunch Program and others. Under current law, does AMS allow any downer animals, regardless of whether or not they went down after their ante-mortem inspection, to be used for the foods they purchase?

Answer. No. The specification and contractual requirements are very clear in this regard. Meat products derived from non-ambulatory disabled livestock are not permitted in AMS purchases. The Hallmark/Westland recall resulted from deliberate non-compliances with FSIS regulations and AMS contract requirements.

Question. Can you state with any assurance that what was occurring at Hallmark/Westland is not occurring at other plants? If so, how can you confirm that?

Answer. We believe the non-compliances with FSIS regulations and AMS contract requirements at the Hallmark/Westland facility is an isolated event. However, we are not waiting for the completion of the investigation to act.

FSIS has already taken a number of steps to strengthen our inspection system. As announced on February 28, 2008, FSIS has implemented a series of interim actions to verify and thoroughly analyze humane handling activities in all federally inspected establishments.

FSIS has increased the amount of time allocated per shift by inspection program personnel to verify humane handling activities and to verify that animals are handled humanely in ante-mortem areas. FSIS is also conducting surveillance activities to observe the handling of animals outside the approved hours of operation from

vantage points within and adjacent to the official premises. A notice has been issued to all FSIS inspection program personnel to reinforce the work methods for conducting humane handling verification activities at all levels and to ensure the greatest utility of the Humane Activities Tracking System (HATS) Program.

Surveillance and inspection activities are prioritized and focused based on existing data such as the category of livestock handled at the facility, humane handling data, observations made at the facility during regular inspection and a plant's operating schedule.

FSIS will continue to collect information in HATS, which provides an accounting of the time spent by FSIS inspection program personnel performing specific tasks and the results of that inspection related to humane handling and slaughter. Starting on March 3, 2008, FSIS inspection program personnel assigned to federally inspected livestock slaughter establishments increased the amount of time that they spend conducting HATS activities from anywhere between 50 and 100 percent. This increased HATS inspection will continue for 60 days and will be closely measured during that time.

Prioritization will help to ensure the optimal use of resources to ensure humane handling and food safety. FSIS is focusing surveillance and inspection activities at establishments where older or potentially distressed animals are slaughtered, such as facilities that handle dairy or veal cattle. At these facilities, the time spent performing HATS activities will be doubled. At facilities with contracts from the AMS for nutrition assistance programs, regardless of the type or class of the animal slaughtered, HATS verification time is being doubled. At facilities where non-ambulatory livestock are infrequently presented, such as in slaughter facilities that handle young market classes including steers, heifers, market hogs, and lambs, an additional 50 percent of HATS verification time may be required.

At least once every 2 weeks, a District Veterinary Medical Specialist or a district analyst is verifying that inspection personnel at each official livestock slaughter establishment are conducting the appropriate increase in HATS verification time. Any plant found not to be in compliance will be reported to the in-plant supervisor and the frontline supervisor.

Meanwhile, FSIS will begin reviewing the HATS to determine what, if any, adjustments are needed to maximize its utility as a tracking tool to improve compliance.

FSIS has audited the 18 beef slaughter establishments that contract with AMS for Federal nutrition assistance programs. This is the first in a set of audits we will be conducting. AMS has also increased audit frequencies and oversight at slaughter establishments that supply raw materials to our purchase programs as a corrective and preventative measure. Additionally, we are cooperatively working with FSIS on cross-utilizing AMS employees to provide an enhanced surveillance program for the livestock holding and movement areas of slaughter establishments.

The investigation being led by OIG with support from FSIS and AMS is ongoing. Once the investigation has concluded, we will have additional information that, along with the results of the additional verification activities, will determine the actions for FSIS oversight, inspection and enforcement that may be required.

Question. Can you tell us how much time FSIS inspectors spent each day, on average, ensuring that this plant was following USDA's rules on downed animals and humane slaughter?

Answer. At this facility, on average, 90 minutes throughout the day were spent verifying humane handling activities in the ante-mortem area. The number of inspectors assigned to an establishment is dependent upon the size of the facility, the type of products produced as well as their production volume. Hallmark/Westland Meat Packing Company had five FSIS inspection program personnel at the facility each day of operation. There were three on-line inspectors, one public health veterinarian and one off-line inspector. FSIS veterinarians and other inspection personnel are not stationed in the ante-mortem area for the entire day, although they do return randomly to conduct humane handling verification activities. Other inspection activities are conducted off-line when ante mortem inspections have been completed. These inspectors were present at the slaughter facility every day for the entire 8-hour shift.

Question. How many plants have cameras or other ways for FSIS inspectors to observe slaughter operations undetected by plant personnel?

Answer. FSIS does not track the voluntary use of this type of equipment by the plant. FSIS inspection program personnel verify that humane handling requirements are being met through unannounced inspections.

The Federal Meat Inspection Act (FMIA) and implementing regulations provide for 24/7 access to all facilities and access to all plant recordings, including video records/recordings.

Question. Do you have the authority to require plants to either install cameras in slaughter areas or otherwise make certain that inspectors can know at all times what is happening in all parts of the plant without tipping off the plant personnel?

Answer. The Federal Meat Inspection Act (FMIA) and implementing regulations provide for 24/7 access to all facilities and access to all plant recordings, including video records/recordings.

Question. Will you support the ability of inspectors to improve their surveillance methods either through the use of cameras or other means?

Answer. The investigation being led by OIG with support from FSIS and AMS is ongoing. Once the investigation has concluded, we will have additional information that, along with the results of the additional verification activities, will determine the actions for FSIS oversight, inspection and enforcement that may be required.

Question. Can you please provide a brief explanation of the measures you are using to ensure that meat used in the School Lunch Program is safe?

Answer. All meat and meat products purchased for Federal food and nutrition assistance programs must be produced in a facility operating under FSIS inspection. AMS, like other large-volume buyers of high quality products, imposes additional requirements in accordance with the Federal Acquisition Regulation to ensure products are produced in accordance with best industry practices and meet the needs of the end-user. To establish the specification and contractual requirements, AMS used the best science available and benchmarked against other high quality purchasers. The requirements for ground beef include full trace-back capability; pathogen intervention at slaughter; statistical process control evaluation for pathogens, indicator microbes, and fat content; strict temperature and processing controls; and, tamper-proof packing. Each contractor is required to provide a detailed technical document that describes how each specification requirement will be met. Contractors are subject to routine audits and an AMS employee is present when the product is processed.

Question. Since much of the Hallmark/Westland products were provided through USDA programs to the States, how much is this recall going to cost them? Will USDA see that these States are properly reimbursed?

Answer. At this time, we are still compiling the costs related to the recall and precise figures are not available. USDA will reimburse States in accordance with established procedures for costs associated with the replacement and destruction of the recalled products.

Question. What do you think the eventual total dollar value of this recall will be, and how many products will be involved?

Answer. USDA doesn't estimate the dollar value of recalls or recalled products outside of the Federal nutrition assistance programs. At this time, we are still compiling costs related to the recall and precise figures are not available. Any estimate would be premature at this point. Approximately 50.3 million pounds of coarse and fine ground beef were purchased from Hallmark/Westland during the period of the recall. All of the 50.3 million pounds have been accounted for and we are in the process of destroying those products that remain on hold.

Question. Did this plant have a history of humane handling and slaughter violations? If so, please provide relevant details.

Answer. In December 2005, an FSIS District Veterinary Medical Specialist conducted a routine humane handling audit and issued Hallmark/Westland Meat Packing Company a humane handling related non-compliance record (NR) because of overly aggressive driving of animals and multiple structural inadequacies in the pens. The plant promptly implemented appropriate corrective measures. In May 2007, FSIS conducted another audit that noted no excessive use of electric prods, or any other regulatory non-compliance.

FSIS inspection program personnel conduct carcass-by-carcass inspection and verify that establishments follow all food safety and humane handling regulations. FSIS inspection program personnel also verify that the establishment maintains proper sanitation procedures; it follows its Hazard Analysis and Critical Control Point (HACCP) plan and complies with all FSIS regulations pertaining to slaughter and processing operations. This requires continuous inspection of slaughter and processing operations. Furthermore, offline FSIS personnel conduct random humane handling inspections at intermittent times during the day.

If the establishment fails to maintain sanitation, does not follow its HACCP plan or violates other regulations, FSIS inspection program personnel will issue a citation to the establishment in the form of a noncompliance record to document the noncompliance. If necessary, they could also take regulatory control action, such as a Notice of Intended Enforcement or a Suspension of Inspection.

Question. Does USDA have the authority to adopt objective standards and guidelines similar to those adopted by the American Meat Institute?

Answer. USDA can issue objective humane handling criteria through the public rulemaking process, as the current statute allows. Additionally, AMS can, through contractual requirements, impose objective animal welfare requirements for its purchase programs. At this time, we are working with academia, industry leaders, animal welfare experts and others to determine the scope and extent of any additional requirements that may be implemented for future purchase seasons.

Question. Can you please explain the penalties, both civil and criminal that USDA and the Federal Government has available for companies in situations like this?

Answer. The Federal Meat Inspection Act provides for criminal penalties and civil injunctive relief.

Question. How many cattle each year are approved by USDA at ante-mortem inspection, then (a) subsequently go down and are condemned, and (b) subsequently go down and are approved for slaughter? If you don't have an exact number, please provide an estimate and explain how it was derived.

Answer. There are approximately 600 cull cattle that pass ante-mortem inspection then suffer an acute injury and after additional inspection by the Public Health Veterinarian are allowed to proceed to slaughter of the 6.3 million cull cattle slaughtered per year. Of the 27.4 million steers and heifers slaughtered per year, approximately 350 initially passed ante-mortem, were reinspected and then passed for slaughter. Overall, less than 1,000 of the 34 million cattle slaughtered per year initially passed ante-mortem, were reinspected and then passed for slaughter.

Question. What specific humane handling violations would constitute an immediate shutdown of a plant?

Answer. When inspection program personnel observe animals being injured or treated inhumanely, they are to take immediate enforcement action. As stated in FSIS Directive 6900.2, Revision 1, if animals are being treated inhumanely or injured, inspection program personnel are to take a regulatory control action (i.e., apply a retain/reject tag) as set out in 9 CFR 500.2(a)(4), Inhumane handling or slaughter of livestock.

However, if the observed inhumane treatment is of an egregious nature, the regulations at 9 CFR 500.3(b) apply. 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 orally notify plant management of the suspension and immediately notify the District Office (DO) and the District Veterinary Medical Specialist (DVMS) for prompt documentation of the suspension action. The IIC is also to document the facts that serve as the basis of the suspension action on a memorandum of interview (MOI) and promptly provide that information to the DO and the DVMS for their use in documenting the Notice of Suspension. The DO and the DVMS will make an official assessment of the suspension, take any action with respect to it that they deem appropriate, and notify the Executive Associate for Regulatory Operations designated for the District.

An egregious situation, which would lead to immediate shutdown of the plant, is any act that is cruel to animals or a condition that is ignored and leads to the harm of animals such as: making cuts on or skinning conscious animals, excessive beating or prodding of ambulatory or non-ambulatory disabled animals, dragging conscious animals, driving animals off semi-trailers over a drop off without providing adequate unloading facilities (animals are falling to the ground), running equipment over animals, stunning of animals and then allowing them to regain consciousness, multiple attempts, especially in the absence of immediate corrective measures, to stun an animal verses a single blow or shot, dismembering live animals, such as removing feet from live animals, leaving disabled livestock exposed to adverse climate conditions while awaiting disposition, or otherwise causing intentional unnecessary pain and suffering to animals, including situations on trucks.

QUESTIONS SUBMITTED BY SENATOR TOM HARKIN

DOWNER RULE

Question. According to the Food Safety and Inspection Service's (FSIS) final rule regarding the slaughter of non-ambulatory animals, if an animal is downed after it passes ante-mortem inspection, it is the responsibility of the plant to notify the FSIS inspector that the animal was downed after the inspection. The rule prohibits the slaughter of cattle that are unable to stand or walk upon inspection because the inability to stand or walk can be a clinical sign of BSE. Given that ante-mortem inspectors are not outside watching the animals in the pens at all times, it appears

that there is a loophole in this FSIS regulation which places the burden on the establishment to call the inspector.

What can USDA do to better enforce this regulation?

Answer. The investigation being led by OIG with support from FSIS and AMS is ongoing. Once the investigation has concluded, we will have additional information that, along with the results of the additional verification activities, will determine the actions for FSIS oversight, inspection and enforcement that may be required.

Question. What assurances does USDA have that this rule of contacting the Department if an animal is downed after ante-mortem inspection is being complied with?

Answer. FSIS has already taken a number of steps to strengthen our inspection system and verify that plants are following proper procedures. As announced on February 28, 2008, FSIS has implemented a series of interim actions to verify and thoroughly analyze humane handling activities in all federally inspected establishments.

FSIS has increased the amount of time allocated per shift by inspection program personnel to verify humane handling activities and to verify that animals are handled humanely in ante-mortem areas. FSIS is also conducting surveillance activities to observe the handling of animals outside the approved hours of operation from vantage points within and adjacent to the official premises. A notice has been issued to all FSIS inspection program personnel to reinforce the work methods for conducting humane handling verification activities at all levels and to ensure the greatest utility of the HATS program.

Surveillance and inspection activities are prioritized and focused based on existing data such as the category of livestock handled at the facility, humane handling data, observations made at the facility during regular inspection and a plant's operating schedule.

FSIS will continue to collect information in HATS, which provides an accounting of the time spent by FSIS inspection program personnel performing specific tasks and the results of that inspection related to humane handling and slaughter. Starting on March 3, 2008, FSIS inspection program personnel assigned to federally inspected livestock slaughter establishments increased the amount of time that they spend conducting HATS activities from anywhere between 50 and 100 percent. This increased HATS inspection will continue for 60 days and will be closely measured during that time.

Prioritization will help to ensure the optimal use of resources to ensure humane handling and food safety. FSIS is focusing surveillance and inspection activities at establishments where older or potentially distressed animals are slaughtered, such as facilities that handle dairy or veal cattle. At these facilities, the time spent performing HATS activities will be doubled. At facilities with contracts from the AMS for Federal nutrition assistance programs, regardless of the type or class of the animal slaughtered, HATS verification time is being doubled. At facilities where non-ambulatory livestock are infrequently presented, such as in slaughter facilities that handle young market classes including steers, heifers, market hogs, and lambs, an additional 50 percent of HATS verification time may be required.

At least once every 2 weeks, a District Veterinary Medical Specialist or a district analyst is verifying that inspection personnel at each official livestock slaughter establishment are conducting the appropriate increase in HATS verification time. Any plant found not to be in compliance will be reported to the in-plant supervisor and the frontline supervisor.

Meanwhile, FSIS will begin reviewing the HATS to determine what, if any, adjustments are needed to maximize its utility as a tracking tool to improve compliance.

FSIS has audited the 18 beef slaughter establishments that contract with AMS for Federal nutrition assistance programs. This is the first in a set of audits we will be conducting.

Question. What incentive is there for a plant to report that an animal is downed after it passes ante-mortem inspection?

Answer. FSIS regulations require that establishment personnel notify an FSIS Public Health Veterinarian when livestock became non-ambulatory after passing ante-mortem inspection and before the animal proceeds to slaughter. If an establishment violates this or other regulations, FSIS inspection program personnel will take regulatory control or enforcement action as warranted. In the case of Hallmark/Westland Meat Packing Company, this action led to a recall of 143 million pounds and the ongoing suspension of their operations.

Question. Please describe the additional measures taken by AMS to ensure that meat and poultry products purchased by Federal nutrition programs are safe.

Answer. AMS, like other large-volume buyers of high quality products, imposes additional requirements in accordance with the Federal Acquisition Regulation. To establish the specification and contractual requirements, AMS used the best science available and benchmarked against other high quality purchasers. The requirements for ground beef include full trace-back capability; pathogen intervention at slaughter; statistical process control evaluation for pathogens, indicator microbes, and fat content; strict temperature and processing controls; and, tamper-proof packing. Each contractor is required to provide a detailed technical document that describes how each specification requirement will be met. Contractors are subject to routine audits and an AMS employee is present when the product is processed.

Question. Should these additional measures be required for all meat and poultry inspected by USDA?

Answer. No. The specification and contractual requirements for AMS purchases are designed to ensure products meet specific end-user needs. These requirements would not always be appropriate for across the board deployment for products entering commerce.

Question. Were there AMS inspectors at the Hallmark/Westland facility? If so, could they have played a role in reporting violations of regulations?

Answer. An AMS meat grader was present at the Hallmark/Westland facility when ground beef was being processed for delivery under Federal contracts. Additionally, an AMS auditor periodically audited the grinding and slaughter processes. The AMS meat grader monitoring the processing operation would not routinely have performed surveillance activities in the cattle holding and movement areas. We have increased AMS audit frequencies and oversight at slaughter establishments that supply raw materials to our purchase programs as a corrective and preventative measure. Additionally, we are cooperatively working with FSIS on cross-utilizing AMS employees to provide an enhanced surveillance program for the livestock holding and movement areas of slaughter establishments.

FOOD-BORNE PATHOGENS AND DOWNER CATTLE

Question. A 2003 study led by USDA's Agricultural Research Service (ARS) suggests that downer cattle have a higher prevalence of E. coli O157:H7 than healthy cattle.

Has ARS performed additional research to investigate this correlation?

Answer. ARS was a collaborator in the Downer Cattle/E. coli O157:H7 study published in 2003. The project was funded through a Specific Cooperative Agreement from ARS to University of Wisconsin-Madison through the auspices of the National Alliance for Food Safety and Security. ARS has not conducted or funded any further research in this area.

Question. Will USDA's FSIS use the information from this study and subsequent studies to take additional measures and improve current regulations to keep downer cattle out of the food supply?

Answer. FSIS uses the best available science to continually improve its regulations, policies, and programs.

Question. Does USDA have plans to test any of the recalled meat for pathogens that cause food-borne illness, such as E. coli O157:H7? Why or why not?

Answer. No. The product is already tested for pathogens as required by the AMS contract. The recall was not due to pathogens. It occurred due to noncompliance with a FSIS regulation.

INSPECTORS

Question. Mr. Alfred Almanza, Administrator of USDA's Food Safety and Inspection Service, stated at the hearing that USDA is able to handle staffing shortfalls by having off-line inspectors fill shortfalls in on-line positions. One of the primary functions of off-line inspectors is overseeing the humane handling of live animals and compliance with the downer rules.

By using off-line inspectors to fill staffing shortfalls for on-line inspections, is USDA able to ensure the humane handling of animals and compliance with the prohibition on the slaughter of downed cattle?

Answer. We utilize our HATS, which provides FSIS with an accurate and complete accounting of the time spent by FSIS inspection program personnel performing specific tasks and the results of that inspection related to humane handling and slaughter under the requirements of the Humane Methods of Slaughter Act (HMSA).

Under HATS, FSIS Public Health Veterinarians and other in-plant program personnel report their time and data for specific humane handling activities into HATS. District Veterinary Medical Specialists (DVMS) routinely verify the accuracy of the

data entered. DVMS also conduct in-plant verifications of humane handling and slaughter, and are in regular contact with FSIS in-plant inspection program personnel regarding humane enforcement issues.

QUESTIONS SUBMITTED BY SENATOR BYRON L. DORGAN

Question. Secretary Schafer, I would like to turn your attention to another matter, the President's budget proposal for fiscal year 2009. I was disappointed that the fiscal year 2009 budget proposed to close the Grand Forks Human Nutrition Research Center. What was USDA's justification for proposing to close the Grand Forks center?

Answer. The Grand Forks Human Nutrition Research Center is one of six USDA Human Nutrition Research Centers. The past and current program at Grand Forks has addressed dietary requirements for mineral nutrition, an undertaking that is considered largely complete and no longer associated with a severe national health problem or research priority. In light of this success, the Department is recommending the consolidation of resources and the redirection of nutrition research to address the more critical obesity problem, which has become a serious national concern.

Question. Under the Administration's proposal, the Federal employees and lab equipment at the Grand Forks Human Nutrition Research Center would move to nutrition labs in Davis, California and Beltsville, Maryland. According to an analysis by the University of North Dakota (UND), the cost to close the Grand Forks Human Nutrition Research Center and move its personnel and equipment to Davis and Beltsville would exceed \$30 million. Most of this expense would be for new construction and remodeling at Davis and Beltsville to accommodate the Grand Forks equipment and employees. Did USDA evaluate the cost of moving the Grand Forks employees and equipment to the other two locations? What did it find? Did USDA consider the fact that the two other locations may not have the facility space to house the transferred employees and equipment? If so, how much do you expect it will cost to either renovate or build new space at both Beltsville and Davis?

Answer. The closure of the Grand Forks center and the consolidation of its resources with other ARS Nutrition Research Centers located in California and Maryland will provide a more efficient and effective research program. Funds for new construction and remodeling would not be required. The state-of-the-art Nutrition Research Centers in Davis and Beltsville have the capacity required to accommodate the staff and resources at Grand Forks. The main cost incurred would be to relocate the scientists at Grand Forks to Davis and Beltsville, estimated at \$960,000 but upwards of \$3.5 million if all employees—scientists and support staff—opt to relocate. While there will be up-front costs associated with the move, the avoidance of operating, renovation, and maintenance costs at Grand Forks will result in substantial savings over the long term. USDA estimates a one-time deferred-maintenance cost savings of \$2.9 million as well as \$1.7 million annual savings in operating costs.

Question. In addition, the University of North Dakota estimates that it will cost taxpayers about \$4 million more a year for salaries because the transferred Federal employees would receive an automatic location pay increase because the Davis and Beltsville labs are located in urban areas. Did USDA take into consideration location pay rates and the fact that it will cost USDA more to employ the same scientist in Davis or Beltsville than it did when that scientist was located in Grand Forks? What did USDA learn? Where are the cost savings in closing the Grand Forks center?

Answer. USDA does recognize the fact that locality pay rates in Davis and Beltsville are higher than in Grand Forks, North Dakota, and estimates an annual total increase in salary costs of approximately \$50,000. Nevertheless, USDA believes that the long-term cost savings associated with the Grand Forks center closing will far outweigh the higher salary costs and will provide the resources necessary to focus on higher-priority research areas as well as allow the agency to function more efficiently and effectively.

Question. Were you aware that obesity prevention is already a major component of the Grand Forks research portfolio? If so, why would USDA propose to transfer that research to higher-cost urban areas?

Answer. The past and current program at Grand Forks has addressed dietary requirements for mineral nutrition, an objective that is considered largely complete and no longer reflective of a critical national health problem or research priority. Although a modest level of new research at the Grand Forks center has begun to

address dietary issues in Native American communities in recent years, ARS has proposed the redirection and consolidation of this work at Davis and Beltsville in order to more effectively use available resources to meet the needs of all at-risk populations.

Question. Mr. Secretary, I applaud the efforts by ARS to focus more attention on obesity prevention research. Obesity has become a national epidemic. The problem is particularly prevalent among rural and Native American populations. The Grand Forks Human Nutrition Research Center is the only Agricultural Research Service nutrition lab located in rural America and near Native American reservations. Can you explain why USDA would remove a major nutrition and obesity research resource located in rural America when obesity rates among rural and Native American populations are among the highest in this country?

Answer. It is important for the ARS obesity research program to study a broad sample of the U.S. population at all risk levels in order to understand the causes of and solutions to obesity. Consolidated ARS obesity research programs and resources at Beltsville, Maryland, and Davis, California, in concert with other ARS Nutrition Research Centers, will address in a coordinated way the required broad sample of the U.S. population, including representative research segments in North Dakota and elsewhere that have significant rural and Native American populations. The moving of the program will not change the extent to which ARS research addresses obesity in rural and Native American populations.

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

Question. Given the many millions of dollars the appropriations committee has given to USDA since 2003, specifically for humane slaughter oversight, can you tell me how this money has been spent?

Answer. Please be assured that USDA shares Congress' concerns about humane handling and slaughtering and appreciates the Committee's support for providing resources for humane slaughter oversight. FSIS inspection program personnel are trained in humane handling, and are obligated to take immediate enforcement action when a humane slaughter violation is observed. Our Humane Activities Tracking System (HATS) provides FSIS with an accurate and complete accounting of the time spent by FSIS inspection program personnel performing specific tasks and the results of that inspection related to humane handling and slaughter under the requirements of the Humane Methods of Slaughter Act (HMSA).

Under HATS, FSIS Public Health Veterinarians and other in-plant program personnel report their time and data for specific humane handling activities into HATS. District Veterinary Medical Specialists (DVMS) routinely verify the accuracy of the data entered. DVMS also conduct in-plant verifications of humane handling and slaughter, and are in regular contact with FSIS in-plant inspection program personnel regarding humane enforcement issues.

There are nine specific HATS humane handling categories: adequate measures for inclement weather, truck unloading, water availability (and feed, if applicable), handling during ante-mortem inspection, handling of suspect and disabled livestock, electric prod/alternative object use, observations for slips and falls, stunning effectiveness, and checking for conscious animals on the rail prior to processing.

In 2007, FSIS issued a total of 66 suspensions to federally inspected establishments, 18 percent (12 suspensions) of which were for egregious humane handling violations witnessed by inspection program personnel. Of the 6,200 federally inspected establishments, approximately 800 slaughter livestock and are therefore subject to the Humane Methods of Slaughter Act. In 2007, FSIS conducted approximately 167,540 humane handling verification activities which resulted in 691 non-compliance records (0.41 percent noncompliance rate) at these facilities. Noncompliance records for humane handling can be issued when the violation is less than egregious, such as not having water available in pens.

The DVMS serves as the primary contact in each district for humane handling and good commercial practice issues and is the liaison between the district office and headquarters on all humane handling and good commercial practice matters.

DVMS personnel provide training for new veterinary employees on agency humane handling and slaughter regulatory responsibilities, including ante-mortem inspection (before slaughter). Additionally, these specialists are responsible for on-site coordination of nationally prescribed humane slaughter procedures, verification of humane handling activities, good commercial practices and correlation (or assessing their knowledge) of information in directives, notices, and other information from headquarters through the district office to Public Health Veterinarians in the field.

In fiscal year 2007 approximately 600 DVMS correlation visits occurred at slaughter plants. Correlation visits are used to make an assessment of a plant's humane handling activities and to determine FSIS personnel's knowledge and appropriate application of humane handling verification procedures.

Question. Is it true, as the inspectors union has charged, that in-plant staffing shortages are causing inspection officials to be pulled from ante-mortem and other inspection activities, including humane slaughter? Are the humane slaughter inspectors being used for other than this task in violation of our directive?

Answer. In-plant staffing shortages are not causing inspection officials to be pulled from ante-mortem and other inspection activities.

When FSIS received its final appropriation from Congress last year, an aggressive effort was already underway to hire a significant number of new inspectors. As of October 19, 2007, FSIS had hired more than 600 new in-plant personnel and, as a result, achieved a net gain of approximately 160 in-plant personnel. On October 27, 2007, FSIS achieved a net gain of 194 in-plant personnel, surpassing the goal of 184. By December 22, 2007, we had achieved a net gain of more than 220 in-plant personnel, or food inspectors and consumer safety inspectors.

HATS provides FSIS with an accurate and complete accounting of the time spent by FSIS inspection program personnel performing specific tasks and the results of that inspection related to humane handling and slaughter under the requirements of the Humane Methods of Slaughter Act.

Question. Food safety and animal welfare advocates suggest that humane slaughter violations may be more systemic, occurring in many other plants, in part because plant workers know exactly when an inspector will visit live holding pens, and can "clean up" before they arrive. What is USDA doing to address this—either the charge or the fact that it's happening?

Answer. The investigation being led by OIG with support from FSIS and AMS is ongoing. Once the investigation has concluded, we will have additional information that, along with the results of the additional verification activities, will determine the actions for FSIS oversight, inspection and enforcement that may be required. In the meantime, FSIS is conducting surveillance activities to observe the handling of animals outside the approved hours of operation from vantage points within and adjacent to the official premises. This is augmented by our audits and increased humane handling inspection activities.

In 2007, FSIS reported that 66 "actions to suspend" were issued to federally inspected facilities—in effect closing them until a corrective action plan was approved. Twelve of these suspended facilities were suspended for egregious humane handling violations.

Question. Were any of these facilities repeat offenders? If so, where would you draw the line and refuse to allow these facilities Federal inspection?

Answer. Of the twelve facilities that were suspended in 2007, four had been suspended more than once: Nicholas Meats, Inc., suspended in 2004 and 2007; Preferred Beef Group, suspended in 2006 and 2007; Cabrito Market, suspended twice in 2007; and H and P Meats, suspended in 2007 and 2008.

Noncompliance by establishments is judged on a case-by-case basis. If a plant is repeatedly involved in enforcement action, FSIS would work with USDA's Office of the General Counsel to draft a complaint to withdraw inspection.

Question. As you know, the Federal Nutrition Programs serve many of our Nation's most vulnerable populations—low income school children and the elderly. Did any of the suspended facilities supply meat to the Federal Nutrition Programs? If so, how many?

Answer. Of the 12 facilities suspended for humane handling violations in 2007, none were contractors or subcontractors for AMS purchases.

Question. Does USDA have sufficient authority to close a facility and assess civil penalties when sick or downed animals are found to have been processed?

Answer. Yes. USDA has sufficient authority to enforce our regulations regarding non-ambulatory disabled livestock.

QUESTIONS SUBMITTED BY SENATOR BEN NELSON

Question. In your testimony, you state that Hallmark/Westland "did not consistently involve the FSIS public health veterinarian in situations in which the cattle became non-ambulatory after passing ante-mortem inspection, as required by FSIS regulation." Can you quantify this or give us a better indication of how often this happened, how many non-ambulatory cattle were slaughtered or some other idea of the scope and magnitude and its direct relation to the recall?

Answer. This evidence is part of the ongoing investigation.

Question. Additionally, you mention in your testimony that “evidence demonstrates that the FSIS public health veterinarian was not consistently involved.” Can you give us a better idea of what exactly this evidence is and how extensively it occurred and was documented?

Answer. This evidence is part of the ongoing investigation.

Question. Is there any evidence that any of the cattle depicted in The Humane Society’s publicly-released video were slaughtered and/or entered the human food supply? Has USDA discovered any evidence at this point that any “downer” cattle were slaughtered and entered the food supply via Hallmark/Westland’s operation?

Answer. This evidence is part of the ongoing investigation.

Question. You note that FSIS regulations require re-inspection by a public health veterinarian if a cow becomes non-ambulatory after passing ante-mortem inspection, but you also testify that Hallmark/Westland did not consistently “involve” a public health veterinarian: does USDA have any indication as to why Hallmark/Westland failed to follow these procedures and how often they did?

Answer. This evidence is part of the ongoing investigation.

Question. Is it solely the responsibility of the plant being inspected to notify and request a public health veterinarian in this situation?

Answer. Yes, it is the plant’s responsibility to notify the FSIS Public Health Veterinarian when cattle become non-ambulatory after ante-mortem inspection.

Question. When did this regulation go into affect and what was the reason for it?

Answer. On July 12, 2007, FSIS announced a permanent prohibition on the non-ambulatory disabled or “downer” cattle from the food supply, except otherwise normal, healthy animals that become non-ambulatory after passing ante-mortem inspection. The rule, published in the July 13, 2007, Federal Register, made permanent what had been an interim final rule from January 2004. The final rule became effective on October 1, 2007.

In case an otherwise normal, healthy animal that has passed ante-mortem inspection and that is on its way to the knock box suffers an acute injury (e.g., when an animal falls or when an animal has a leg that gets trapped and broken), the Public Health Veterinarian must verify that the animal suffered such an acute injury in order for the animal to proceed to slaughter and post-mortem inspection. However, to help better track the occurrence of such situations and the disposition of such animals, public health veterinarians are directed to tag these cattle as “U.S. Suspect.”

Question. Finally, has there been any review by the agency of the effectiveness of this system—in other words, do you have a sense of whether or not it is a good practice to rely on the plant to notify?

Answer. The investigation led by OIG with support from FSIS and AMS is ongoing. However, we are not waiting for the completion of the investigation to act.

FSIS has already taken a number of steps to strengthen our inspection system. As announced on February 28, 2008, FSIS has implemented a series of interim actions to verify and thoroughly analyze humane handling activities in all federally inspected establishments.

Question. In your testimony, you refer to this recall as a “recall” a “voluntary recall” and a suspension. What specifically is USDA’s action on this matter and is it based primarily on food safety concerns or humane treatment of the cattle to be slaughtered?

Answer. Certain cattle, while ambulatory when they pass ante-mortem inspection, may later become non-ambulatory from an acute injury or another circumstance. If such a situation occurs, FSIS regulations require the Public Health Veterinarian to inspect the animal again and determine that the animal did indeed suffer from an acute injury before the animal is permitted to go to slaughter. This failure by Hallmark/Westland, based on the evidence from the ongoing investigation, led to the company’s February 17, 2008, voluntary recall of 143 million pounds of fresh and frozen beef products produced at the establishment since February 1, 2006.

While it is extremely unlikely that these meat products pose a risk to human health, the recall action was deemed necessary because the establishment did not comply with FSIS regulations. The recall was designated Class II because the probability is remote that the recalled beef products would cause adverse health effects if consumed. This recall designation is in contrast to a Class I recall, which is a higher-risk health hazard situation where there is a reasonable probability that the use of the product will cause serious, adverse health consequences or death.

Question. You’ve mentioned that this matter has “delayed” negotiations with Japan and Korea; can you be more specific about how much damage this has done to the progress we have made and what you think it will take to repair the damage and get the negotiations back on track?

Answer. USDA does not believe that negotiations to reopen our beef markets in Japan and Korea have been negatively impacted. While our negotiations with Korea were intensive, and sometimes difficult, we did ultimately come to an agreement that allows for U.S. beef imports into South Korea consistent with World Organization for Health (OIE) standards. We continue to be engaged with Japanese officials and we have indicated to them that we expect them to move quickly to resume beef trade consistent with the World Organization for Health (OIE) standards just as Korea, the Philippines, Indonesia, and Barbados have, all within the last several months.

Question. What assurances are you able to give at this point to the Japanese and Koreans about the effectiveness of our food safety system and inspections?

Answer. We have been providing extensive information about our food safety system to both Japan and Korea. As I have indicated, although the Hallmark/Westland incident was regrettable, it was categorized as a Class II recall, which means that there is a remote possibility of adverse health consequences. In addition to the information that has been provided on our BSE measures, we believe that Japan and Korea understand that there is no serious food safety issue associated with this recall.

Question. Before issuing this recall, did you consult with your trade staff and with USTR about the implications for the Japan and Korea negotiations? Did you or anyone at USDA or at USTR reach out to Japan or Korea in advance of the recall?

Answer. Once it became clear that a recall was appropriate, USDA focused on providing detailed information about our actions to the public and all interested parties.

None of the recalled product was shipped to either Korea or Japan. USDA offices in Japan were fully informed of all actions and provided information upon request to Korean and Japanese officials.

Question. What is the breakdown of personnel at FSIS both on a national level and on a plant-by-plant basis, such as how many public health veterinarians, line inspectors, other inspection or "frontline" personnel and how many non-inspection or oversight personnel?

Answer. FSIS program personnel form the backbone of FSIS' public health infrastructure in establishments, laboratories, and import houses throughout the country. In fiscal year 2007, the agency employed over 9,000 personnel, including 7,800 full-time in-plant and other front-line personnel protecting the public health in approximately 6,200 federally-inspected establishments nationwide.

FSIS assigns inspectors based on a plants current production rates and in accordance with the national method of assigning work, which was implemented in 2004. If production and processes change, the number of inspectors may also change. FSIS has collected in-plant personnel data by district, since plant-by-plant personnel numbers change daily, and some establishments do not operate on a daily basis. On-line positions at FSIS-inspected slaughter establishments are covered daily when the establishments operate and, as necessary, relief inspectors, inspectors hired on an intermittent basis, and in-plant off-line inspectors cover the on-line duties. We use other-than-permanent employees to fill positions when other employees are on sick leave, annual leave, or are in training, to make sure assignments are covered each day.

Breakdowns of FSIS in-plant personnel by district as of March 1, 2008, and a history of in-plant personnel by position from 2001 to 2008, are attached for the record.

Question. Aside from the investigations of this particular instance, what specific reviews or investigations are being undertaken within the agency to determine whether there are more systemic problems, where the problems are and what plans are being made to correct them? What timeframe are you looking at for being able to report back to Congress on your findings?

Answer. The investigation being led by OIG with support from FSIS and AMS is ongoing. Once the investigation has concluded, we will have additional information that, along with the results of the additional verification activities, will determine the actions for FSIS oversight, inspection and enforcement that may be required.

Question. What is the current vacancy rate at FSIS and what are you doing to get those positions filled, and what is the vacancy breakdown among the various positions (public health vets; line inspectors, etc.) in the food safety and export inspection system? Please provide a detailed breakdown of the vacancies.

Answer. When FSIS received its final appropriation from Congress last year, including a budget increase of \$27.4 million that we requested to reduce vacancy rates and meet increased demand for front-line personnel, an aggressive effort was already underway to hire a significant number of new inspectors. On October 27, 2007, FSIS surpassed the goal of an additional 184 in-plant personnel, including food inspectors and consumer safety inspectors. As of February 16, 2008, our va-

cancy rate in slaughter establishments was 4.25 percent, and our vacancy rate in processing plants amounted to 10.23 percent and our overall in-plant vacancy rate was 6.9 percent.

Attached is a detailed breakdown of vacancy rates among on-line inspectors (public health veterinarians and field inspectors) and off-line inspectors (consumer safety inspectors) by district, as of February 16, 2008.

Question. In a world of budgetary problems where we all may have to tighten our belts some, have you begun looking at ways to better allocate limited USDA resources to make sure that the frontline positions are funded and filled?

Answer. Our employees are our greatest asset. We are only as strong as that committed workforce. Just as they are committed to keeping the Nation's food supply safe, we are committed to them. When FSIS received its final appropriation from Congress last year, an aggressive effort was already underway to hire a significant number of new inspectors. As of October 19, 2007, FSIS had hired more than 600 new in-plant personnel and, as a result, achieved a net gain of approximately 160 in-plant personnel. On October 27, 2007, FSIS achieved a net gain of 194 in-plant personnel, surpassing the goal of 184. By December 22, 2007, we had achieved a net gain of more than 220 in-plant personnel, or food inspectors, and consumer safety inspectors.

FSIS has employed the aggressive use of existing and new staffing authorities to fill mission-critical positions, especially for in-plant and other frontline positions, where 85 percent of FSIS employees are located. A comprehensive human capital strategy was developed to improve hiring and retention efforts, to better match resources to needs, and to develop new skills sets needed by the workforce. As a testament to those efforts, the agency received a Presidential Quality Award for Management Excellence for its dedication, hard work, and outstanding leadership in advancing the President's Management Agenda through the strategic management of human capital. FSIS received one of six awards given to Federal agencies for excellence in quality and productivity.

Question. It appears that in fiscal year 2008, Congress fully funded the Administration's request for FSIS and that in the 2 previous fiscal years Congress actually provided more funding than requested. Are these funding levels sufficient to meet the needs on the ground?

Answer. Yes, the funds are sufficient to meet FSIS' staffing needs.

Question. Looking over the past 4-5 fiscal years, has the agency reviewed its allocation of funding detailing how much money is spent for on-the-ground inspectors versus how much is spent on national-level or non-inspection positions? Can you please provide a breakdown of this spending information?

Answer. For fiscal year 2008, 80 percent of FSIS' total salaries and benefits went to the agency's Office of Field Operations for inspection program personnel and other front-line personnel. Attached is a detailed breakdown of the spending on salaries and benefits for in-plant and non-in-plant personnel for fiscal year 2003 through fiscal year 2007.

QUESTIONS SUBMITTED BY SENATOR ROBERT F. BENNETT

Question. Secretary Schafer, this is obviously an emotional issue for many people. The treatment of the livestock at this facility is shocking and people are very concerned that the Hallmark/Westland company was a major supplier of beef to the National School Lunch Program. In addition, many people wonder how it is possible that downer cattle made it past Food Safety and Inspection Service inspectors and into the food supply.

It has been suggested that we enhance USDA inspection and increase oversight of humane handling at slaughter facilities, perhaps by enacting new legislation or more effectively targeting resources. If changes are made to the current USDA inspection processes or humane handling rules, what would you consider changing and why?

Answer. The investigation being led by OIG with support from FSIS and AMS is ongoing. Once the investigation has concluded, we will have additional information that, along with the results of the additional verification activities, will determine the actions for FSIS oversight, inspection and enforcement that may be required.

The recall was initiated because it became apparent to the Food Safety and Inspection Service (FSIS) that Hallmark/Westland was occasionally slaughtering cattle that went down after FSIS inspectors had conducted ante-mortem inspection and cleared them for slaughter. The company slaughtered these downer cattle without notifying an FSIS veterinarian which is a clear violation of FSIS rules.

Question. Please explain the ante-mortem inspection requirements.

Answer. The inspection process begins with an establishment's notification to FSIS that they want animals inspected prior to slaughter. Inspection at a slaughter establishment begins in the ante mortem area or pen where FSIS inspection program personnel inspect live animals before moving to slaughter. It is the establishment's responsibility to follow the Humane Methods of Slaughter Act. Egregious violations to humane handling requirements can lead to suspension of inspection within an establishment. This will stop the plant from operating.

During this inspection, FSIS inspection program personnel observe all animals at rest and in motion. Inspection program personnel are trained to look for abnormalities and signs that could indicate disease or health conditions that would prohibit the animal from entering the food supply. If an animal goes down or shows signs of illness after receiving and passing ante mortem inspection before slaughter, the establishment must immediately notify the FSIS veterinarian to re-inspect the animal and make a case-by-case disposition of the animal's condition. Alternatively, the establishment may humanely euthanize the animal. Re-inspected animals allowed to continue to slaughter are labeled as "U.S. Suspect" and are segregated until the animal has received additional inspection by an FSIS veterinarian.

FSIS public health veterinarians and other inspection personnel are not stationed in the ante-mortem area for the entire day. They do return randomly to verify humane handling, as well as the stunning and bleeding process. Other inspection activities are also conducted off-line inside the slaughter facility when ante mortem inspections have been completed. These off-line FSIS inspection program personnel move through the different areas of the establishment while performing their duties. This gives them the ability to vary their assigned off line inspections.

Question. How long after ante-mortem inspection must an animal be slaughtered? If there is no time requirement, is there an average or typical time delay between ante-mortem inspection and slaughter?

Answer. FSIS Notice 16-08 requires that an animal be slaughtered on the same day that it receives ante-mortem inspection. The Notice states, "Generally, inspection personnel should not pass for slaughter more animals than can be slaughtered in approximately 4 hours."

Question. Please explain how an FSIS inspector could miss the activities that took place at the Hallmark/Westland facility.

Answer. FSIS public health veterinarians and other inspection personnel are not stationed in the ante-mortem area for the entire day. They return randomly to verify humane handling, as well as the stunning and bleeding process. Other inspection activities are also conducted off-line inside the slaughter facility when ante mortem inspections have been completed. These off-line FSIS inspection program personnel move through the different areas of the establishment while performing their duties. This gives them the ability to vary their assigned off line inspections.

Evidence from the ongoing investigation demonstrates that, over the past 2 years, this plant did not always notify the Food Safety and Inspection Service (FSIS) public health veterinarian when cattle became non-ambulatory after passing ante-mortem (prior to slaughter) inspection, as is required by FSIS regulations. This evidence is part of the ongoing investigation.

The Hallmark/Westland facility was the second largest supplier of beef to the National School Lunch Program in 2007. Under AMS contracts, meat destined for Federal nutrition assistance programs undergoes additional inspection, above and beyond food not destined for the School Lunch Program.

Question. Please explain the additional steps taken by USDA to ensure the quality and safety of the meat product purchased for the School Lunch Program.

Answer. All meat and meat products purchased for Federal food and nutrition assistance programs must be produced in a facility operating under FSIS inspection. AMS, like other large-volume buyers of high quality products, imposes additional requirements in accordance with the Federal Acquisition Regulation to ensure products are produced in accordance with best industry practices and meet the needs of the end-user. To establish the specification and contractual requirements, AMS used the best science available and benchmarked against other high quality purchasers. The requirements for ground beef include full trace-back capability; pathogen intervention at slaughter; statistical process control evaluation for pathogens, indicator microbes, and fat content; strict temperature and processing controls; and, tamper-proof packing. Each contractor is required to provide a detailed technical document that describes how each specification requirement will be met. Contractors are subject to routine audits and an AMS employee is present when the product is processed.

Question. Why does the Department require additional measures for Federal food assistance programs above those for the regular food supply?

Answer. AMS, like other large-volume buyers of high quality products, imposes additional requirements in accordance with the Federal Acquisition Regulation.

Question. Of the 143 million pounds of beef that has been recalled, 50.3 million pounds went into Federal food assistance programs. USDA and State agencies are currently in the process of locating and destroying this meat. Please explain where you are in this process.

Answer. We have accounted for all of the 50.3 million pounds of ground beef items subject to the recall. Approximately 33 million pounds were served prior to the recall and 18.4 million pounds are on hold awaiting destruction or have been destroyed.

Question. How much of the meat recalled from Federal food assistance has been consumed, how much is being held, and how much is still being located? Why is some of the meat still being traced?

Answer. We have accounted for all of the 50.3 million pounds of ground beef items subject to the recall. Approximately 33 million pounds were served prior to the recall and 18.4 million pounds are on hold awaiting destruction or have been destroyed. Therefore, none of the meat is still being traced.

Question. For the recalled product that went into the School Lunch Program, are State agencies or schools responsible for any costs associated with destroying the meat, and will they be responsible for any additional costs associated with replacing product as a result of the recall?

Answer. USDA is in the process of replacing recalled ground beef items that the Department provided that are or will be destroyed due to the recall. Additionally, States may opt for entitlement credits if they do not want the replacement ground beef this school year. With regard to the cost of destruction, States will be reimbursed by USDA for costs associated with the removal and destruction of recalled products in accordance with established procedures.

Question. How much do you expect this recall to cost USDA? Can USDA recover any costs from Hallmark/Westland?

Answer. At this time, we are still compiling the costs related to the recall and precise figures are not available. We will file, in the near future, a warranty claim with Hallmark/Westland under the terms of the contract for recovery of damages to USDA.

Question. As a result of this recall is there a shortage of meat for Federal food assistance programs? If so, what is the Department doing to counter this shortage?

Answer. No. AMS and FNS have worked closely with States to ensure that all local food service authorities have sufficient ground beef products to conduct their food and nutrition assistance programs. Since January 30, 2008, AMS has purchased over 26 million pounds of ground beef items at a cost of approximately \$39.9 million for replacement and scheduled purchases.

CONCLUSION OF HEARING

Senator KOHL. Thank you all for coming.

Senator CRAIG. Thank you, all.

[Whereupon, at 4:06 p.m., Thursday, February 29, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]