

Cruelty on the Farm – Food Safety and Animal Welfare

A talk with Christine Mott

I. Federal Laws and Enforcement Arms

A. Federal laws

1. Federal Meat Inspection Act (FMIA)
 - a. Passed in 1906, fueled by public outcry over food safety after Upton Sinclair's *The Jungle* was published.
 - b. Establishes standards for meat processing plants.
 - c. Purpose is to prevent adulterated and misbranded meat products from being sold as food and ensure that animals are slaughtered and processed under sanitary conditions.
2. Humane Methods of Livestock Slaughter Act (1978)
 - a. Original version passed in 1956. The Humane Slaughter Act enforced by the USDA today was passed in 1978.
 - b. Requires the proper treatment and humane handling of all food animals slaughtered in USDA inspected slaughter plants.
 - c. Applies only to livestock (e.g. cows, goats, sheep and horses) and does not apply to chickens or other poultry.
 - d. A key provision provides that “cattle, calves, horses, mules, sheep, swine, and other livestock... [be] rendered insensible to pain by a single blow or gunshot or an electrical chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.” 7 U.S.C. § 1902.
3. Poultry Products Inspection Act
 - a. Requires the USDA to inspect poultry slaughter and processing. Poultry or domesticated birds are defined as chickens, turkeys, ducks, geese, and guinea fowl.
 - b. Purpose is to ensure poultry products are processed under sanitary conditions and are not misbranded. Act does not regulate animal welfare.

B. USDA Food Safety and Inspection Service (FSIS)

1. The FSIS is charged with ensuring the safety and proper labeling of meat, poultry, and processed eggs products. Enforces the FMIA, the Poultry Products Inspection Act, the Egg Products Inspection Act, and the Humane Methods of Livestock Slaughter Act.
2. Slaughter inspection process¹

¹ For more information on slaughter inspection, visit USDA FSIS Slaughter Inspection 101: <https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety->

- a. FSIS Inspector must be present at ante mortem (before death) inspection. Inspector observes the animals at rest and in motion for signs that could health conditions that would make the animal unfit for human consumption.
- b. At inspection, each animal is classified into 3 categories:
 - i. Passed for slaughter;
 - ii. U.S. Suspect; or
 - iii. U.S. Condemned.
- c. U.S. Suspect
 - i. Exhibit signs of disease or health condition.
 - ii. Are segregated for further observation.
 - iii. Include animals that are non-ambulatory.
 - iv. After further inspection, they are either passed for slaughter or U.S. Condemned.
- d. U.S. Condemned:
 - i. Diseased, dead, or in a dying condition.
 - ii. Animals must be killed and disposed of in accordance with regulations.²
- e. Inspectors also inspect animals post mortem. They look for signs that would render a carcass unfit for human consumption.

II. Non-ambulatory Animals –Regs & Federal Preemption

A. Non-ambulatory animals

1. Non-ambulatory animals are animals that cannot stand on their own because of disease or injury. Also commonly known as downers.
2. A non-ambulatory animal is segregated during slaughter until an FSIS inspector makes a determination that the animal is passed for slaughter or U.S. condemned. 9 C.F.R. § 309 Ante-mortem inspection.

B. Humane Society undercover video and Hallmark/Westland Meat Packing Plants

1. In 2008, the Humane Society released undercover footage showing non-ambulatory cattle being mistreated and being disposed of improperly at the Hallmark/Westland meatpacking plants. At the time, Hallmark/Westland were one of the largest providers of the national school lunch program.
2. The USDA ordered the recall of 143 million pounds of beef, the entire two-year production of Hallmark/Westland Meat Packing Co.
 - a. The USDA noted that most of the recalled beef posed little hazard to consumers and, that by the time of the recall, it had probably already

² C.F.R. § 309.13 – Disposition of condemned livestock:
<https://www.law.cornell.edu/cfr/text/9/309.13>

been consumed. However, because Hallmark had not consistently brought in federal veterinarians for slaughter inspections, the USDA initiated the recall.

3. U.S. v. Hallmark Meat Packing Company³

- a. In 2008, the Humane Society sued the meat packing companies in the U.S. District Court in California, and the United States intervened and joined in 2009. The Humane Society filed suit under the whistleblower provisions of the False Claims Act, 31 U.S.C. § 3720(b)(2).
- b. The United States filed additional claims for fraudulent concealment, negligent misrepresentation, and other claims relating to falsely certifying that cattle processed at the plants were humanely handled in accordance with federal rules. The plants were suppliers to a federal school lunch program and participation in the program required the plants to comply with rules regarding humane handling of animals.
- c. In 2013, a settlement was reached and a final judgment entered against the meatpacking plants in the amount of over \$155 million.

C. Federal preemption: National Meat Association v. Harris⁴

1. In 2009, California enacted a ban on the sale and slaughter of downer livestock (cows, pigs, goat, and sheep) and required them to be euthanized immediately. The National Meat Association filed suit claiming that the Federal Meat Inspection Act preempts the California law.
2. The Federal Meat Inspection Act regulates the “premises, facilities, and operations” of slaughterhouses. The National Meat Association argued that FMIA expressly preempts California law. § 678 precludes states from enacting requirements “in addition to, or different than those made under” the FMIA “with respect to premises, facilities and operations” of slaughterhouses. 21 U.S.C. § 678. The FMIA requires non-ambulatory animals to be segregated for further inspection. The animals initially found non-ambulatory may still be slaughtered after they pass federal inspection.
3. The District Court granted the National Meat Association a preliminary injunction. The Ninth Circuit reversed, finding that California law regulates only the kind of animal to be slaughtered and not the slaughtering process.
4. The Supreme Court found that the Federal Meat Inspection Act expressly preempts state regulation of slaughterhouses.

³ U.S. v. Hallmark Meat Packing Company, No. 5:08-cv-00221 - (C.D. Cal. 2013): <https://h2o.law.harvard.edu/collages/19616>

⁴ *National Meat Association v. Harris*, 565 U.S. 452 (2012): https://scholar.google.com/scholar_case?case=11496008754786594777&hl=en&as_sdt=6,33&as_vis=1

III. Anti-Whistleblower Laws & International Regulations

- A. Some states have enacted anti-whistleblower laws or “Ag-Gag Laws.” The laws vary in design but their purpose is to restrict undercover investigations on factory farms.
1. E.g. Iowa HF 589 (Ag Protection Act): criminalizes making a false statement on a “agricultural production” job application.
 - a. The law prevents journalists and animal welfare advocates from taking jobs at factory farms in order to document animal abuses.
 - b. Slaughterhouses can screen out potential whistleblowers by asking on the applications whether they are affiliated with a new organization or animal rights group.
 2. E.g. Missouri SB 631: requires that evidence of animal abuse be turned over to law enforcement within 24 hours.
 - a. The effect is that the law prevents the collection of evidence documenting patterns of abuse.
 3. E.g. North Carolina HB 405: prohibits gaining access to the non-public area of their employer’s property for the purpose of making secret recordings or removing data.
- B. Farmed animal welfare laws in other countries
1. Israel
 - a. Public outcry after the release of an Anonymous for Animal Rights’ undercover video showing animal abuse in Israeli slaughter plants prompted the Ministry of Agriculture and Rural Development to require video cameras with live feed to the Central Ministry control room.
 - b. The video cameras are required to be on 24/7, and the Ministry’s veterinary services team monitors the footage.
 2. EU
 - a. In 1999, the EU passed a law governing the welfare of laying hens, requiring that battery cages be phased out by 2012
 - b. Article 4 provides that laying hens be allowed to move freely within their living situation and also have access to open runs.⁵
 - c. To comply, egg producers moved hens to larger and more comfortable crates.

⁵ Council Directive 1999/74/EC *Official Journal of the European Communities*, 1999. Web. 11 April 2017. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:203:0053:0057:EN:PDF>