



United States Department of Agriculture
Office of Inspector General





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AUDIT
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TO: Alfred V. Almanza
Administrator
Food Safety and Inspection Service

ATTN: William C. Smith
Assistant Administrator
Office of Program Evaluation, Enforcement and Review

FROM: Gil H. Harden
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for Audit

SUBJECT: Review of Appeals of Humane Handling Noncompliance Records

Attached is a copy of the final report on the subject audit. On March 22, 2012, we were notified by the Food Safety and Inspection Service that they generally agreed with the finding and an exit conference or a formal response was not necessary for the subject draft audit report. Since there were no formal recommendations in the report, no further response for this audit is necessary.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions.

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Review of Appeals of Humane Handling Noncompliance Records

Executive Summary

The Humane Methods of Slaughter Act requires that livestock be slaughtered only by humane methods.¹ The United States Department of Agriculture (USDA) Food Safety Inspection Service (FSIS) is charged with enforcing the Act's provisions for all food animals slaughtered in USDA-inspected plants. The Act covers cattle, calves, horses, mules, sheep, goats, swine, and other livestock.²

FSIS inspectors in the plants are responsible for verifying that livestock establishments are complying with the Act. When inspectors observe a humane handling violation, they issue a noncompliance record or take other enforcement actions to suspend plant operations. Regardless of which action FSIS takes when a noncompliance is observed, regulations allow establishments to appeal any inspection decision.³

On December 22, 2010, the USDA Under Secretary for Food Safety requested the Office of Inspector General (OIG) to review humane handling noncompliance records and other enforcement actions that were subsequently appealed by plant management to higher FSIS management levels. Our review covered humane handling appeals from January 1, 2007 through December 31, 2010. Our objectives were to (1) determine whether FSIS adequately addressed appeals of humane handling noncompliance records and other enforcement actions; (2) determine if FSIS' procedures for processing appeals of humane handling noncompliance records were followed and if they are adequate; and (3) identify any trends on how humane handling noncompliance records were resolved. In performing the audit, we specifically analyzed the appellate decisions and supporting documents for trends in consistency of granting or denying appeals for similar infractions, timeliness of FSIS' response, and accuracy of information provided to us by FSIS data personnel.

Based on our review of the 138 humane handling noncompliance records and the 13 enforcement actions that establishments appealed, we determined that FSIS' procedures were adequate and FSIS followed its established procedures to appropriately address the appeals we reviewed. Our analysis of the data also did not reveal any negative trends or systemic problems related to inconsistent treatment or unfounded actions to grant or deny appeals in particular establishments across the country. However, we did find that FSIS can improve how it tracks and monitors appeals of humane handling noncompliance records by citing the regulatory justification for any appeals that it grants; ensuring that noncompliance records are written adequately to support the violation; and tracking the time it takes to process appeals.

¹ 7 U.S.C. 1901 dated February 1, 2010.

² Additional regulations for humane slaughter requirements are found in 9 CFR 313 dated January 1, 2010.

³ 9 CFR 306.5 dated January 1, 2010.

OIG acknowledges that FSIS has taken recent steps to improve inspectors' understanding of humane handling requirements and educate them on the procedures to follow when a noncompliance is observed. Specifically, FSIS has issued additional guidance clarifying humane handling requirements,⁴ and has also required additional humane handling basic training for FSIS personnel, which will provide clarification and guidance for its inspection staff. FSIS is also currently implementing a new automated system, the Public Health Information System (PHIS), which should provide FSIS additional tools to monitor appeals of humane handling noncompliance records.

We are therefore making no specific recommendations in this report. We do suggest, however, that FSIS consider how PHIS could be utilized to track and monitor appeals of humane handling noncompliance records to ensure that (1) decisions to grant appeals are supported by regulation, (2) noncompliance records are written adequately to support observed violations, and (3) FSIS responds timely to appeals.

⁴ Directive 6900.2 Rev 2 dated August 15, 2011.

Background and Objectives

Background

FSIS-inspected livestock slaughter establishments are required to meet the requirements of the Humane Methods of Slaughter Act. In-plant inspectors from FSIS are responsible for verifying that livestock establishments are complying with the Act.

When inspectors observe a humane handling violation, their first responsibility is to stop the inhumane treatment and take additional steps when necessary to prevent further inhumane handling. Inspectors can issue a noncompliance record or take other enforcement actions, such as suspending inspection activities. A noncompliance record is an official record of noncompliance with one or more food safety regulatory requirements. Both actions require the plant to take corrective actions to address and prevent further inhumane treatment. When a noncompliance record is issued for humane handling, the inspector may place a USDA Reject Tag on a piece of equipment or a holding area, which prevents the plant from using the tagged equipment or area of the facility until the noncompliance is addressed, thus preventing further inhumane treatment. Noncompliance records are recorded in the agency's Performance Based Inspection System (PBIS)⁵, where they can be used to monitor the establishment's performance history over time. Multiple noncompliance records may trigger more intense compliance reviews, such as a Food Safety Assessment⁶ performed by FSIS district office specialists. Federal regulations provide plants with the opportunity to appeal any noncompliance record or enforcement action decision.⁷

FSIS' appeal process for noncompliance follows FSIS' Office of Field Operations⁸ chain of command, ensuring that program employees closest to and most familiar with the facts surrounding the event evaluate the appeal first to minimize response time. The appeals process also allows a plant to appeal to the next higher level if unsatisfied with the outcome of an appellate decision. When a noncompliance is appealed, the FSIS official at the next higher level reviews the inspector's description of the inhumane action and the establishment's response to the allegations. The reviewer determines, based on the documentation, whether the appeal should be granted or denied. An appeal of a noncompliance record that is granted will be flagged in PBIS and will no longer be considered a humane handling violation.

On December 22, 2010, the USDA Under Secretary for Food Safety requested OIG to review appeals of humane handling noncompliance records and other enforcement actions that were subsequently appealed by plant management to higher FSIS management levels.

⁵ PBIS is a software application designed by FSIS to manage its hazard analysis and critical control point assignment schedules, inspection procedures, and data reporting.

⁶ During a Food Safety Assessment, FSIS personnel assess the design and validity of food safety systems.

⁷ 9 CFR 306.5 dated January 1, 2010.

⁸ The Office of Field Operations manages inspection and enforcement activities nationwide, ensuring that domestically produced meat, poultry, and egg products are safe, secure, wholesome, and properly labeled.

FSIS is currently implementing the Public Health Information System (PHIS), which is a new web-based application that will replace PBIS and other applications. FSIS states that PHIS will help FSIS better collect, consolidate, and analyze data, and thereby improve its overall ability to protect public health.

Objectives

The objectives of this audit were to: (1) determine whether FSIS adequately addressed humane handling noncompliance records and other enforcement actions that were challenged by establishments, (2) determine if FSIS' procedures for processing appeals of humane handling noncompliance records were followed and if they are adequate, and (3) identify any trends on how appeals of humane handling noncompliance records were resolved.

Section 1: Additional Grant Justifications, Violation Descriptions, and Tracking and Monitoring

Finding 1: FSIS Followed Procedures to Address Appeals, But Can Improve How It Justifies Appeal Decisions, Describes Non-Compliance Violations, and Tracks and Monitors Appeals' Status

Overall, we determined that FSIS' procedures were adequate and that FSIS appropriately addressed the appeals we reviewed. Our analysis also did not reveal any negative trends or systemic problems related to inconsistent treatment or unfounded actions to grant or deny appeals in particular establishments across the country. As a result, we are not making any recommendations; however, we suggest the following three improvements for how FSIS tracks and monitors appeals.

FSIS Granted Appeals without Regulatory Justification

Of 138 appeals of humane handling noncompliance records, 5 of the 48 granted appeals were allowed merely because subsequent corrective actions were taken.⁹ However, OIG noted that FSIS regulations do not state that appeals of noncompliance records may be granted based on subsequent corrective action. Moreover, these cases contradict decisions made in other appeals for similar violations.

For example, one of the five appeals describes how an FSIS inspector observed animal handlers chasing animals into the kill alley by shouting and whistling. According to Federal regulations, livestock must be driven to slaughter at a normal walking pace and with a minimum of excitement and discomfort to the animals.¹⁰ After the inspector issued a noncompliance record, the establishment appealed, and the appeal was granted by the inspector in charge. The inspector in charge did not question the validity of the events described in the noncompliance record but did acknowledge that, after discussions with the plant's management and the subsequent actions taken by the establishment, the animal handlers' performance was much improved. In other words, the appeal appears to have been granted based solely on corrective actions; namely, the subsequent improvement of animal movement by establishment personnel.

While OIG agrees that the establishment's improvement is significant, noncompliance records are written for present behavior witnessed by the inspector, while corrective actions taken are to prevent future occurrences of the observed noncompliance. The significance of each record of noncompliance becomes important to identify any possible trends of past and future violations. We asked FSIS national officials if there were any

⁹ From January 1, 2007 through December 31, 2010, we identified 2,240 humane handling noncompliance records of which 138 were appealed by establishments.

¹⁰ 9 CFR 313.2 dated January 1, 2010.

regulation or guidance that allowed an appeal to be granted because of corrective action. FSIS officials stated that each appeal is considered based on all pertinent facts. FSIS has since issued additional guidance clarifying humane handling requirements,¹¹ and has also required additional humane handling basic training for FSIS personnel, which will provide clarification and guidance for inspection personnel in determining the regulatory merits of granting an appeal.

OIG is not making recommendations on this topic, but suggests that FSIS track and monitor the reasons for granting appeals and consider how PHIS can be used to ensure each decision to grant relief is adequately supported by regulation.

FSIS Inspectors Did Not Write Adequate Descriptions of Violations to Support Noncompliance Records

Of the 138 appeals of humane handling noncompliance records, 8 were granted because the FSIS inspector's description of the noncompliance was unclear or inadequate and the FSIS personnel at the next level of appeal could not determine if the situation was actually a humane handling violation. For example, one supervisor reviewing an appeal wrote that he granted the appeal "due to an inadequate description of the noncompliance within Block 10 of the NR [noncompliance record]. The noncompliance was not apparent with the description provided." Block 10 is the space within the noncompliance record form used to describe the noncompliance observed by FSIS personnel.

FSIS has recently issued additional guidance clarifying humane handling requirements,¹² and has also required additional humane handling basic training for FSIS personnel, which will provide clarification and guidance for inspection personnel. OIG is therefore issuing no recommendations, but suggests that FSIS consider how PHIS could be used to ensure that noncompliance records are written adequately to support observed violations.

FSIS Did Not Respond to Appeals Timely

Although FSIS guidance states that the public health veterinarian, inspector in charge, front line supervisor, and district manager should attempt to respond to appeals within 2 weeks, we found the average time for the FSIS officials listed above to respond to an appeal was 28 days (4 weeks). We identified 9 instances where FSIS took 100 or more days to respond to an appealed humane handling violation, with the longest time being 302 days. We determined that, for 61 of the 138 (44 percent) appeals, FSIS took more than 2 weeks to respond, and 46 of the 138 (33 percent) took more than 3 weeks.

FSIS' district offices explained these delays by stating that responding to appeals is a lower priority than performing food safety inspections. OIG does not disagree, but suggests that FSIS consider how PHIS could be used to track and monitor the timeliness of FSIS' responses to appeals of humane handling noncompliance records.

¹¹ Directive 6900.2 Rev 2 issued August 15, 2011.

¹² Directive 6900.2 Rev 2 issued August 15, 2011.

In conclusion, OIG believes FSIS can improve how it tracks and monitors appeals of humane handling noncompliance records by using PHIS to ensure that (1) decisions to grant appeals are supported by regulation, (2) noncompliance records are written adequately to support observed violations, and (3) FSIS responds timely to appeals. Specifically, FSIS should consider addressing these issues when developing reports in PHIS.

Scope and Methodology

Our audit covered the appeals of humane handling noncompliance records and other enforcement actions from January 1, 2007, through December 31, 2010. We commenced fieldwork in March 2011 at FSIS headquarters and completed our fieldwork in December 2011. To accomplish the objectives of the audit, we reviewed applicable laws, regulations, FSIS handbooks, FSIS notices regarding humane handling requirements, and the appeals process. In addition, we obtained and analyzed data from FSIS in order to identify noncompliance records or other enforcement actions issued for humane handling violations.

FSIS' Data Analysis and Integration Group provided OIG a database from PBIS data that contained all noncompliance records issued by FSIS personnel at slaughter establishments. We identified 2,240 humane handling noncompliance records and determined that 138 were appealed by establishments. We reviewed the database for all 138 appealed humane handling noncompliance records, of which 48 were granted. During our review of the 138 appealed noncompliance records, we requested additional supporting documentation for 45 appealed noncompliance records for clarification. In addition, we reviewed humane handling noncompliance record data to determine if there were any identifiable trends with regards to appeals of humane handling noncompliance records that were granted, denied, or modified.

To identify other enforcement actions for humane handling violations, we reviewed the Quarterly Enforcement Reports from January 1, 2007, through December 31, 2010. These reports provide an overview of humane handling and slaughter procedures in Federally inspected facilities, including noncompliance records, time spent on humane handling inspections, and suspensions for the 12 months ending in the quarter published. We identified about 270 other enforcement actions for humane handling violations and determined there were 13 appeals. We reviewed all 13 appeals of other enforcement actions for humane handling, of which 2 were granted.

Fieldwork was performed at the FSIS headquarters office in Washington, D.C., and FSIS district offices in Minneapolis, Minnesota, and Philadelphia, Pennsylvania. The selection of district offices was based on the number of appealed humane handling noncompliance records and the number of appeals that were granted. We did not perform any reviews at slaughter establishments for this audit.

During our fieldwork, we interviewed FSIS personnel at FSIS headquarters and at two district offices to determine the process FSIS utilizes to address humane handling noncompliance records that were appealed by establishments.

We relied on FSIS' PBIS data stored in its data warehouse to identify our universe of humane handling noncompliance appeals. In two FSIS district offices, we selected a judgmental sample for comparing PBIS data to supporting documents and found no discrepancies.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions

based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Abbreviations

FSIS.....	Food Safety Inspection Service
OIG	Office of Inspector General
PBIS	Performance Based Inspection System
PHIS.....	Public Health Information System
USDA.....	United States Department of Agriculture

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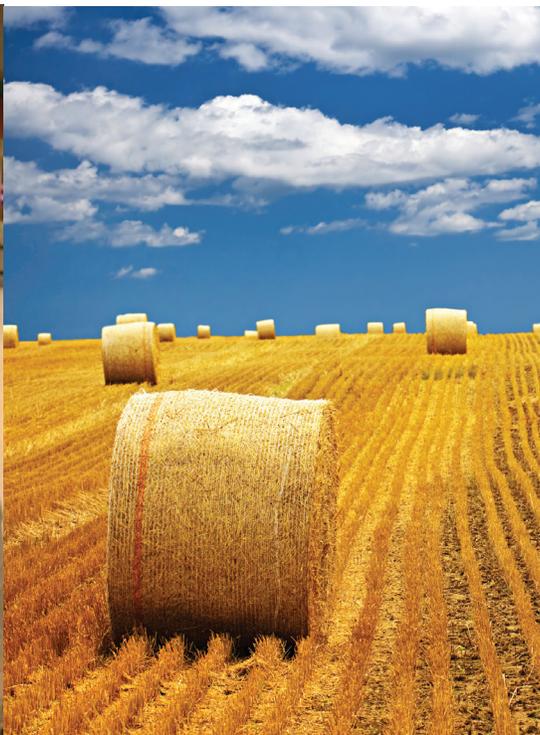
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