

# Congress of the United States

Washington, DC 20515

May 23, 2008

The Honorable Ed Schafer  
Secretary  
U.S. Department of Agriculture  
1400 Independence Ave., SW  
Washington, D.C. 20250

Dear Secretary Schafer:

We commend your decision to move forward with closing the loophole in USDA's current rule governing non-ambulatory cattle (commonly known as "downers"), so that Americans and our trading partners will no longer need to worry about cattle too sick and injured to walk being allowed by USDA into the food supply. We are writing to urge you to close this loophole immediately, using emergency powers, rather than waiting months for your decision to take effect as indicated in the press.

USDA has previously exercised this sort of expedited action, proposing and implementing a rule immediately. For example, in January 2004, just after the initial U.S. case of bovine spongiform encephalopathy (BSE) came to light, the agency proposed an interim final rule, effective immediately, to bar the slaughter of any non-ambulatory cattle.

Unfortunately, unbeknownst to the public, the January 2004 comprehensive downer cattle rule was weakened with conflicting directives given to inspectors behind-the-scenes, instructing them to re-inspect cattle who become non-ambulatory after their initial inspection and approve those whom the inspector believes to be down due to an acute injury. This loophole was subsequently acknowledged publicly and formally adopted in the final BSE rule issued by USDA in July 2007.

The loophole poses potentially serious food safety risks to consumers and promotes inhumane handling of animals who cannot stand and walk on their own. It is unacceptable on both counts.

Downed cattle are significantly more likely to be infected with BSE, as USDA has noted. They may also be at higher risk for harboring foodborne bacteria, such as E. coli and Salmonella, which kill hundreds of Americans every year, as these non-ambulatory animals often wallow in bacteria-laden waste and may have higher levels of intestinal pathogens due to stress.

It is unworkable and reckless to rely on inspectors being summoned back by slaughter facility workers to re-evaluate downers on a case-by-case basis. Even if

workers comply (as they clearly did not at the Hallmark slaughter facility featured in the recent undercover investigation that shocked the nation), determining why an animal is non-ambulatory is challenging if not impossible for inspectors because injury and illness are often interrelated - 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."

From an animal welfare perspective, even if "only" a broken leg is involved, dragging an animal with a fracture is just as cruel, if not more so. As long as the loophole remains in place, producers will continue to have an economic incentive to transport downers to slaughter facilities, and facility workers will have an incentive to do everything possible to get downers on their feet, in the hope that they will pass inspection. This loophole contributed to the unspeakable abuses that were documented at the Hallmark slaughter facility, which you rightfully recognized demanded a strong agency response when you called for the largest beef recall in American history. You can eliminate these incentives immediately, and among other benefits, avoid future recalls associated with this unacceptable loophole.

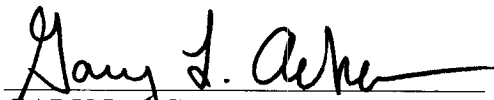
In your announcement on Wednesday, you recalled your pledge to the American people and Congress - when the horrific Hallmark footage became public in late January - to "treat this issue with the utmost urgency, and do everything in my power to appropriately address this problem and work to strengthen consumer confidence in our food supply."

The American Meat Institute, National Meat Association, and National Milk Producers petitioned the agency in April to close the downer loophole. Food safety and animal welfare advocates, along with many editorials from across the country, have called on USDA to do the same.

We think it is now certainly time to close the downer loophole without further delay.


Thank you for your attention to this urgent food safety and animal welfare matter.

Sincerely,

  
GARY L. ACKERMAN  
Member of Congress

  
CHRISTOPHER H. SMITH  
Member of Congress

  
ROSA L. DeLAURO  
Member of Congress

  
ED WHITFIELD  
Member of Congress