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September 4, 2009

Docket Clerk

United States Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue, SW
Room 2534, South Agriculture Building
Washington, DC 20250-3700

Submitted via Federal eRulemaking Portal

RE: Docket No. FSIS-2009-0016 Information Collection Regarding Industry Responses to Noncompliance Records

The Humane Society of the United States (HSUS), the nation's largest animal protection organization representing 11 million supporters, submits the following comments to the Food Safety and Inspection Service's (FSIS) information collection regarding industry responses to noncompliance records (also termed "establishment responses" and referred to on Form 5400-4 as "plant management response[s]"). 74 Fed. Reg. 31,909 (July 6, 2009).

The Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*, serves several important purposes. It "ensure[s] the greatest possible public benefit from and maximize[s] the utility of information created, collected, maintained, used, shared and disseminated" and "provide[s] for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology." *Id.* § 3501(2), (7). As explained below, establishment responses to noncompliance records are critical to both the federal government and the public for ensuring and assessing compliance with federal food safety and humane treatment laws. However, there are several ways in which their utility and dissemination could be improved, which we will address in turn.

A. Establishment Responses Are Critical for the Performance of FSIS's Functions

FSIS is charged with administering and enforcing the Federal Meat Inspection Act, 21 U.S.C. § 601 *et seq.*, the Poultry Products Inspection

Celebrating Animals, Confronting Cruelty

Act, 21 U.S.C. § 451 *et seq.*, the Egg Products Inspection Act, 21 U.S.C. § 1031 *et seq.*, and the Humane Methods of Slaughter Act, 7 U.S.C. §§ 1901–1906. FSIS personnel must report violations of the statutes and regulations. *See, e.g.*, 9 C.F.R. § 305.6. As the agency noted in its request for information collection, the noncompliance record is the key official record used to document violations of these laws and their implementing regulations. It is both necessary for the performance of FSIS’s functions and entirely consistent with these laws for FSIS to request information from the violating establishments, providing them with an opportunity to respond to the noncompliance record. *See, e.g.*, 21 U.S.C. § 462 (providing that “the person against whom [a criminal] proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding”).

The establishment response to a noncompliance record serves at least three important functions. It 1) identifies the establishment’s position and actions to help the agency take enforcement actions, prevent the problem from recurring, and better address the problem should it recur; 2) ensures that the establishment is aware of and has thought about the noncompliance, and has taken corrective action; and 3) provides assurance to the public that the establishment has considered the problem and will take the necessary steps to correct it.

First, plant responses serve a critical role in FSIS’s enforcement of federal law. They help FSIS determine the appropriate enforcement actions to take, because they demonstrate the seriousness of the problem and the establishment’s willingness to fix it. In a noncompliance letter dated September 18, 2003, FSIS chronicled a history of noncompliances at a slaughter establishment, explaining its past reliance on plant responses in determining the appropriate enforcement action:

Based on your action plan, including commitments, agreements, corrective actions and preventative measures addressed to FSIS, the suspension was placed in abeyance on March 10, 2003.

Attachment A at 2. Establishment responses also become part of the written record about the violation, and as they show the establishment’s knowledge of the situation and proposed action, they may be used as key evidence in future administrative and/or legal proceedings.

If a noncompliance recurs in the future, both the inspector and the establishment will be able to review the establishment’s response to the first noncompliance to better evaluate why the problem has not been corrected. It may be that the establishment’s planned correction was not properly implemented. For example, in a noncompliance record dated September 17, 2003, an FSIS inspector noted that an establishment’s handling of a downed cow not only violated the federal regulations, but also constituted a “violation of its own stated corrective action plan to prevent

inhumane animal handling and abuses.” *See* Attachment B at 2. In doing so, the FSIS inspector referred to previous instances of noncompliance and letters from the plant purporting to have taken corrective actions to prevent a recurrence. *See also* Attachment C at 2 (noting that preventative measures previously identified by the establishment “were not in place and hence ineffective”).

It may also be that the planned correction was implemented but has failed to fix the problem. When the establishment’s response and plans have been documented in the noncompliance record, it is easier for both the inspector and the establishment to determine the best steps to take in the event of a future noncompliance. For example, FSIS has used a long history of noncompliance and failed corrective actions in deciding to take stronger enforcement action against an establishment:

Based on the above findings and your repetitive failures to meet regulatory requirements of humane handling and slaughter of livestock, and the failure to adhere to your previous commitments and agreement, corrective actions and preventative measures, FSIS is suspending the assignment of inspectors for the slaughter operations at your establishment.

Attachment A at 2.

Second, the establishment response serves the important function of making establishments plan for the handling of noncompliance problems, thereby making them more attentive to the details of their own operating procedures. As FSIS is well aware, there are not enough inspectors to constantly monitor all the activities at a regulated establishment. Instead, inspectors may rotate or move around the establishment during their shift. Because inspectors may not be present to observe if and how noncompliances are corrected, it is important for the establishment to monitor itself. Requiring establishments to provide a detailed written response, including further planned action, encourages the establishment to fully confront the problem, plan a solution, and put that plan into action. It will also provide vital information to FSIS inspectors so they know what activities to watch for in the future to assess whether the facility has adequately dealt with the problem.

Third, establishment responses are a vital component of the noncompliance record for members of the public. Noncompliance records are required to be made available to the public pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* Members of the public, including HSUS, frequently seek noncompliance records when they are concerned about the safety of the food supply and/or the humane treatment of animals slaughtered for human consumption. The establishment response provides important information to the public because it describes whether any steps were taken to address the problem, and if so, whether those steps were adequate and may prevent future threats to the food supply and/or animal welfare.

Members of the public may use the establishment response to decide what, if any, further actions to take based on the noncompliance. The news media may cite and rely on noncompliance records. For example, in a story about the Hallmark/Westland investigation and meat recall in 2008, USA Today reported that:

USDA issued such a citation in 2005 – when the plant was under its current ownership – for infractions including excessive use of electric prods on cattle.

Attachment D. Accordingly, it is in the establishments' best interests to supply a response because it can inform concerned members of the public that the establishment is taking the matter seriously and has corrected the problem.

B. There Are Several Ways to Enhance the Quality and Utility of the Information Collected

Because noncompliance records generally, and establishment responses in particular, are pivotal to FSIS' enforcement and the public's understanding of the effectiveness of federal food safety laws, they must be made as accessible as possible. FSIS should enhance their quality and utility by 1) collecting noncompliance records and establishment responses for all humane handling violations; 2) by making them more accessible to the public; 3) by providing more guidance to the industry about the information that should be included in responses; 4) by providing more space on the noncompliance form for establishment responses; and 5) by providing an opportunity for FSIS inspectors to comment on the establishment responses on the noncompliance record form.

First and foremost, it is vital that noncompliance records and written establishment responses be required for all humane handling violations, including egregious ones, and that these records and responses become part of the FSIS computerized database. We urge FSIS to restore this requirement, which was subverted by agency action following the Hallmark/Westland investigation. FSIS Notice 16-08 (Mar. 10, 2008) (requiring a noncompliance record for non-egregious humane handling violations, but not for egregious ones). As explained above, noncompliance records and the accompanying establishment responses are vitally important for ensuring that appropriate corrective and preventative steps are taken and maintained, and informing the public about how a problem has been resolved. This is especially true in the case of egregious humane handling violations, which cause significant animal suffering and are of the utmost importance to members of the public concerned about animal welfare. Requiring the use of noncompliance records and establishment responses for all humane handling violations will make the records more uniform. This, in turn, will improve public access to the information, because members of the public will only need to seek one type of record (i.e.,

noncompliance records) to assess the frequency, seriousness, and corrective measures taken for humane handling violations. Requiring the use of noncompliance records and establishment responses for egregious humane handling violations, as with other violations, will also ensure that their corrective actions will be maintained indefinitely, rather than just for the duration of the suspension period.

Second, noncompliance records and establishment responses should be more readily accessible to the public because they are frequently sought. FSIS should consistently make these records available in electronic format, so that they can be easily searched. It should also make them available through an online database accessible to the public. This will ensure that the public can obtain the records quickly. In light of the considerable backlog of FOIA requests before FSIS, members of the public are not currently able to obtain noncompliance records at the time an incident becomes public, but must instead wait months or even years for a response from the agency. Not only does this harm the public, but it is also against the best interests of the establishments, which would benefit from the public getting information quickly about any steps taken to fix the problem.

Third, the quality of the information collected would be significantly improved if FSIS provided more guidance to the industry about the information to include in its responses. FSIS Form 5400-4 only asks for responses regarding immediate actions and further planned actions. FSIS should ask for more detailed information, and should specify that, at a bare minimum, establishments explain: 1) how the noncompliance occurred; 2) the immediate actions taken to correct the problem, including, for humane handling noncompliances, what steps were taken to alleviate animal suffering; 3) what enforcement actions, if any, the establishment took against the responsible employee(s); 4) the steps the establishment will take in the future to prevent the problem; and 5) if the noncompliance concerned an adulterated or potentially adulterated food product, what steps it will take to prevent the product from entering the food supply.

Fourth, the noncompliance form must provide more space for establishments to write out their responses. The boxes provided on the current form are too small. Plants frequently attached their responses on additional pages because the space provided is inadequate, as each block only provides an approximately one inch by seven inches writing space. *See Attachment E.* Providing more space would further encourage plants to clearly outline and spell out their planned remedial actions.

Fifth, the noncompliance form should provide adequate space for FSIS inspectors to write comments on the establishment responses. There may be instances where the inspector needs to provide more information about the adequacy or success of an establishment's planned response, or add further clarification about the establishment response. Providing such additional space will allow for a more

complete written record of the violation, which would better serve the public interest.

In conclusion, establishment responses to noncompliance records play a vital role in ensuring compliance with federal law and informing the public about the safety and welfare of the food supply. They must continue to be collected, and should become more detailed and accessible to the public to enhance their utility.

Sincerely,

Tracie Letterman
Director of Regulatory Affairs
The Humane Society of the United States

Attachment A



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Alameda District #1
620 Central Avenue, Bldg. 2C
Alameda, CA 94501

September 18, 2003

Mr. Brian Stagno, Manager
Stagno's Meat Company, Est. 2875
P.O. Box 97
Escalon, CA 95320

**CERTIFIED RETURN
RECEIPT REQUESTED**
Facsimile (209) 523-6837

NOTICE OF SUSPENSION

Dear Mr. Stagno:

This letter confirms the verbal notification you received on September 18, 2003, by the Food Safety and Inspection Service (FSIS), Alameda District of the withholding of the marks of inspection and the suspension of the assignment of inspectors for the slaughter process at your establishment, in accordance with 21 U.S.C. 603 and Title 9 Code of Federal Regulations (CFR) Part 500.3(b). This action is initiated after FSIS concluded, again, that your firm failed to maintain or implement required controls to prevent the inhumane handling and slaughter of livestock at your establishment and failed to adhere to or implement previous commitments and agreements including corrective actions and preventive measures, that you had agreed upon with FSIS after a previous suspension of inspection service for similar serious inhumane incidents, in violation of 21 U.S.C. 603(b), Title 9 CFR part 500.5 and 9 CFR part 313.

Specifically, on September 17, 2003, the FSIS Inspector-In-Charge (IIC), assigned to your establishment observed and documented on Noncompliance Report (NR) numbered 18-2003-4538, dated September 17, 2003, at the holding pen, a downer cow being inhumanely handled while being off-loaded from an animal supplier's transport trailer. The animal was placed on a mat in the center of the downer area. The driver of the supplier's trailer got the establishment's forklift and then using the prongs/forks of the forklift, proceeded to push the cow for a distance of at least 15 feet, across the pavement, essentially dragging the cow, so that the cow was finally pushed in a position abutting the fence against the alley. While being pushed/dragged, the IIC observed that the cow was struggling, thrashing around and in distress. Dragging a non-ambulatory conscious animal downer is in violation of Title 9 CFR 313.2(d)(2) which states *"the dragging of disabled animals and other animals unable to move, while conscious, is prohibited"*.

Your establishment's corrective actions stated in your response to a previous suspension, dated March 6, 2003, that "all clients or consignee's unloading disabled animals and/or calves must have permission and coordinate unloading times with plant employees and/or management." As part of your corrective actions, you sent a letter to your suppliers stating *'As of March 10, 2003, an employee of Stagnos Meat Co. must be present to receive all*

disabled animals and drop calves." Your establishment was clearly in violation of its own stated corrective action plan, commitments, and agreements with FSIS to prevent inhumane handling and abuses of animals on the establishment's premises. Stagnos has had other recent inhumane handling violations. This NR documents, again, your firm's repetitive failures to adhere to the statutory and regulatory requirements of the humane handling and slaughtering of livestock, as required by the Federal Meat Inspection Act (FMIA), 21 U.S.C. 603(b) and Title 9 Code part 313.2(d)(2).

Previously, similar incidents of inhumane handling in connection with slaughter were observed and documented on NRs 4-2003-3969, dated March 6, 2003, 1-2003-3969, dated January 3, 2003, 00009-2002, dated July 18, 2002, 00041-01, dated October 17, 2001 and 00034-01, dated September 12, 2001. These NRs were for several egregious, serious noncompliances, including dragging of live animals (downers and calves), and the use of excessive and improper stunning. Specifically, on March 6, 2003, your slaughter operations were suspended based on your failure to maintain and implement required controls to prevent the inhumane handling and slaughter of livestock at your establishment. The NR, then, documented live animals (calves) being slammed on the ground during unloading of a trailer and the use of excessive electrical shots. In response to the suspension, on March 7, 2003, you submitted a written action plan including corrective and preventive measures to ensure the humane handling of all livestock; specifically, you agreed to comply with the humane handling of animals at your facility. Additionally, you provided verbal assurances to FSIS Circuit Supervisor, [REDACTED] to adhere to all regulatory requirements and other proposals. Based on your action plan, including commitments, agreements, corrective actions and preventive measures addressed to FSIS, the suspension was placed in abeyance on March 10, 2003.

During the abeyance period, you implemented corrective and preventive measures in addition to incorporating a humane handling monitoring form. On August 1, 2003, after evaluating records and operational controls and after consulting with the Circuit Supervisor and Inspector-In-Charge assigned to your establishment, the Alameda District lifted the suspension held in abeyance. You were reminded that as a federally inspected establishment you were expected to comply with Title 9 CFR part 313 of the Meat and Poultry Inspection Regulations and all other requirements concerning the handling of livestock.

Based on the above findings and your repetitive failures to meet regulatory requirements of humane handling and slaughter of livestock, and the failure to adhere to your previous commitments and agreement, corrective actions and preventive measures, FSIS is suspending the assignment of inspectors for the slaughter operations at your establishment.

The suspension of the assignment of inspectors will remain in effect until such time as you provide the FSIS, Alameda District Office, adequate written assurances including corrective and preventive measures to assure that livestock at your establishment are handled and slaughtered humanely in accordance with the FMIA and the regulations promulgated thereunder.

In addition, failure to respond to this notice of suspension adequately, and failure to assure that animals at your establishment are handled and slaughtered humanely in accordance with the statutory and regulatory requirements may result in further administrative enforcement actions including the recommendation to withdraw the grant of inspection from your establishment.

In accordance with 9 CFR 500.5(a) (5), you may appeal this action by contacting:

Assistant Deputy Administrator
USDA/FSIS/FO
Room 2134, South Building
1400 Independence Ave., S.W.
Washington, DC 20250
Phone: 202-720-3697 or 202-720-9521
Fax: 202-690-3287

In accordance with 9 CFR 500.5(d), you may request a hearing concerning this action by contacting:

Director
Evaluation and Enforcement Division
District Enforcement Operations
Food Safety and Inspection Service
United States Department of Agriculture
West End Court, Room 300
Washington DC 20250
Phone: 202-418-8872
Fax: 202-418-8896

If you have any questions, please call the Alameda District Office at (510) 337-5000, Ext. [REDACTED]

Sincerely,

[REDACTED]

(b)(6), (b)(7)(c)

For Murli M. Prasad, D.V.M., Ph.D.
District Manager

Attachment B

The request for this information is voluntary. It is needed to monitor defects found in this inspection system. It is used by FSIS to determine whether establishments are in compliance. 9CFR 301 and 9CFR 381. FORM APPROVED OMB NO. 0583-0089. OMB DISCLOSURE STATEMENT: Public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget.

U.S. DEPARTMENT OF AGRICULTURE FOOD SAFETY AND INSPECTION SERVICE		TYPE OF NONCOMPLIANCE	
NONCOMPLIANCE RECORD		<input type="checkbox"/> Food Safety <input checked="" type="checkbox"/> Other Consumer Protect	
1. DATE	2. RECORD NO.	3. ESTABLISHMENT NO.	
9/17/2003	18-2003-4538	02875 M / 1	
4. TO (Name and Title) Brian Stagno/Richard Stagno, President/GM		5. PERSONNEL NOTIFIED Brian Stagno (b)(6)	
6. RELEVANT REGULATION(S) 9 CFR 313.2(d)2			
7. RELEVANT SECTION/PAGE OF ESTABLISHMENT PROCEDURE/PLAN		HACCP	SSOP
8. ISP CODE 04C02		OTHER	
9. NONCOMPLIANCE CLASSIFICATION INDICATORS			
PLANT PROCESS	A. <input type="checkbox"/> SSOP	<input type="checkbox"/> Monitoring	<input type="checkbox"/> Corrective Action
	B. <input type="checkbox"/> HACCP	<input type="checkbox"/> Monitoring	<input type="checkbox"/> Corrective Action
C. <input checked="" type="checkbox"/> PRODUCT	<input type="checkbox"/> Economic	<input type="checkbox"/> Misbranding	<input checked="" type="checkbox"/> Protocol
D. <input type="checkbox"/> FACILITY	<input type="checkbox"/> Lighting	<input type="checkbox"/> Structural	<input type="checkbox"/> Outside Premises
E. <input type="checkbox"/> E. COLI	<input type="checkbox"/> Other		
10. DESCRIPTION OF NONCOMPLIANCE			
<p>(b)(6) At 1708 hours at the "Downer Area" I witnessed a downer cow being inappropriately handled while being off-loaded from a transport trailer. The trailer belonged to (b)(6) being driven by a white pickup truck with license plate number (b)(6). The backing of the downer cow being unloaded was 93DJ1755.</p> <p>Specifically I observed the following: In the absence of any Stagno's Meat Co. employee, the (b)(6) employee unloaded the non-ambulatory cow off the trailer. The cow was initially lying on a mat in the trailer. By using a chain attached to the mat, the animal was removed from the transport vehicle on the mat. The animal was thus located (b)(6).</p>			
11. SIGNATURE OF INSPECTION PROGRAM EMPLOYEE			
(b)(6), (b)(7)(c)			
12. PLANT MANAGEMENT RESPONSE (immediate action(s))			
13. PLANT MANAGEMENT RESPONSE (further planned action(s))			
This document serves as written notification that your failure to comply with regulatory requirement(s) could result in additional regulatory or administrative action.			
14. SIGNATURE OF PLANT MANAGEMENT		15. DATE	
16. VERIFICATION SIGNATURE OF INSPECTION PROGRAM EMPLOYEE		17. DATE	

U.S. DEPARTMENT OF AGRICULTURE FOOD SAFETY AND INSPECTION SERVICE		TYPE OF NONCOMPLIANCE <input type="checkbox"/> Food Safety <input checked="" type="checkbox"/> Other Consumer Protection	
NONCOMPLIANCE RECORD CONTINUATION SHEET			
1. DATE 9/17/2003	2. RECORD NO. 18-2003-4538	3. ESTABLISHMENT NO. 02875 M / 1	
4. TO (Name and Title) Brian Stagno/Richard Stagno, President/GM		5. PERSONNEL NOTIFIED Brian Stagno (b)(6)	
6. RELEVANT REGULATION(S) 9 CFR 313.2(d)2			
7. RELEVANT SECTION/PAGE OF ESTABLISHMENT PROCEDURE/PLAN		HACCP	SSOP OTHER
8. ISP CODE 04C02		9. NONCOMPLIANCE INDICATOR Product Protocol	

10. DESCRIPTION OF NONCOMPLIANCE:

on the mat in the center of the downer area. At this point the trailer driver got on the establishment's forklift and then using the prongs/forks of the forklift proceeded to push the cow at least 15 feet, across the pavement, essentially dragging her, so that she finally was situated in a position abutting the fence against the alley. While being pushed/dragged I observed that the cow was struggling, thrashing around and in distress. There was only a single other downer cow in the downer/suspect area at the time.

Dragging a non-ambulatory downer animal is in violation of 9 CFR 313.2(d)2 which states "the dragging of disabled animals and other animals unable to move, while conscious, is prohibited". Further the establishments corrective actions proposed in a letter to the USDA on March 6, 2003 stated in response to an earlier suspension action that "...all clients or consignee's unloading disabled animals and or calves must have permission, and coordinate unloading times with plant employees and or management". Additionally a letter sent to the customers of Stagno's Meat Co. stated "As of March 10, 2003, an employee of Stagno's Meat Co. must be present to receive all disabled animals and drop calves". The establishment was clearly in violation of its own stated corrective action plan to prevent inhumane animal handling and abuses.

Stagno's Meat Co. has had other recent Humane Handling violations. Stemming from NR's 4-2003-3969, and 1-2003-3969 on March 6, 2003 inspection operations were suspended. On March 7, 2003 you provided a proposed written action plan including corrective and preventative actions to ensure that humane handling of all livestock would be guaranteed at your premises. Based on this plan and further verbal commitments made by you on March 7, 2003, it was decided to hold the Suspension in Abeyance. On July 31, 2003 after evaluating records and operational controls, FSIS lifted the Suspension Held in Abeyance.

This incident of inhumane handling and improper unloading of animals in the absence of a plant employee was discussed with plant HACCP coordinator Wesley Jones and by telephone to plant manager Brian Stagno (who is at home recovering from an injury) between 0700 and 0800 hours on Sept. 18, 2003.

11. SIGNATURE OF INSPECTION PROGRAM EMPLOYEE

15. DATE

9/18/03

FSIS FORM 5400-4 (7/99)

Replaces FSIS Form 5400-4 (9/97), which may be used until exhausted (7/98)

DISTRIBUTION: Original &

1 copy - Establishment
1 copy - Inspector

Attachment C

The request for this information is Voluntary. It is needed to monitor defects found in this inspection system. It is used by FSIS to determine whether establishments are in compliance. 9CFR 301 and 9CFR 381. FORM APPROVED OMB NO. 0583-0069. OMB DISCLOSURE STATEMENT: Public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 494-W, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget.

U.S. DEPARTMENT OF AGRICULTURE FOOD SAFETY AND INSPECTION SERVICE		TYPE OF NONCOMPLIANCE	
NONCOMPLIANCE RECORD		<input type="checkbox"/> Food Safety	<input checked="" type="checkbox"/> Other Consumer Protection
1. DATE 3/6/03	2. RECORD NO. 4-2003-3969	3. ESTABLISHMENT NO. 02875 M / 1	
4. TO (Name and Title) Brian Stagno/Richard Stagno, President/GM (b)(6)		5. PERSONNEL NOTIFIED (b)(6)	
6. RELEVANT REGULATION(S) FSIS Dir, 6900.1, part 313, 500.1, 500.2, 500.3			
7. RELEVANT SECTION/SPACE OF ESTABLISHMENT PROCEDURE/PLAN		HACCP	SSOP
8. SSP CODE 04C02		OTHER	
9. NONCOMPLIANCE CLASSIFICATION INDICATORS			
PLANT PROCESS	A. <input type="checkbox"/> SSOP B. <input type="checkbox"/> HACCP	<input type="checkbox"/> Monitoring <input type="checkbox"/> Monitoring	<input type="checkbox"/> Corrective Action <input type="checkbox"/> Corrective Action
C. <input checked="" type="checkbox"/> PRODUCT	<input type="checkbox"/> Economic	<input type="checkbox"/> Misbranding	<input checked="" type="checkbox"/> Recordkeeping <input type="checkbox"/> Recordkeeping
D. <input type="checkbox"/> FACILITY	<input type="checkbox"/> Lighting	<input type="checkbox"/> Structural	<input type="checkbox"/> Implementation <input type="checkbox"/> Plant Verification
E. <input type="checkbox"/> E. COLI	<input type="checkbox"/> Other	<input type="checkbox"/> Outside Premises	<input type="checkbox"/> Product Based
10. DESCRIPTION OF NONCOMPLIANCE At approximately 1120 hrs when I was going out of USDA office to Est. 548, I happened to see the unloading of calf operation in calf pen at Est. 2875. I saw the truck trailer driver was pulling the live calves from the trailer, slamming the calves on the ground, then supporting the calves to get up by excessive use of hot shot (some of the calves were falling down again in circles) then walking them towards the brim of the calf pen and kicking them to fly over and land in the pen. I immediately went to ask for the plant management personnel (b)(6) to witness what I saw. We both stood above the knock box and saw the driver dragging the calves towards the pen. I notified (b)(6) that this is not (b)(6). (b)(6), (b)(7)(c)			
11. You are hereby advised of your right to appeal this action as delineated by 106.5 and/or 381.33 of 9 CFR			
12. PLANT MANAGEMENT RESPONSE (Immediate action(s))			
13. PLANT MANAGEMENT RESPONSE (Further planned action(s))			
This document serves as written notification that your failure to comply with regulatory requirement(s) could result in additional regulatory or administrative action.			
14. SIGNATURE OF PLANT MANAGEMENT		15. DATE	
16. VERIFICATION SIGNATURE OF INSPECTION PROGRAM EMPLOYEE		17. DATE	

U.S. DEPARTMENT OF AGRICULTURE FOOD SAFETY AND INSPECTION SERVICE		TYPE OF NONCOMPLIANCE <input type="checkbox"/> Food Safety <input checked="" type="checkbox"/> Other Consumer Protection	
NONCOMPLIANCE RECORD CONTINUATION SHEET			
1. DATE 3/6/03	2. RECORD NO. 4-2003-3969	3. ESTABLISHMENT NO. 02875 M / 1	
4. TO (Name and Title) Brian Stagno/Richard Stagno, President/GM (b)(6)		5. PERSONNEL NOTIFIED [REDACTED]	
6. RELEVANT REGULATION(S) FSIS Dir, 6900.1, part 313, 500.1, 500.2, 500.3			
7. RELEVANT SECTION/PAGE OF ESTABLISHMENT PROCEDURE/PLAN		USACCP	SSOP
8. ISP CODE 04C02		9. NONCOMPLIANCE INDICATOR Product Protocol	

10. DESCRIPTION OF NONCOMPLIANCE:

acceptable and that I have to hold the unloading operation until further instructions from district office. He instructed the driver to hold on and go to his office. (US Reject tag B 31 & 5624 was applied to Calf Pen)

This is second violation of this nature and previously NR # 1 2003 was also written in which plant management responded in future preventive measures that a sign will be posted in the area to alert animal haulers about seriousness of the inhumane handling and haulers will be accompanied by plant employee. Both of these measures were not in place and hence ineffective. Before this [REDACTED] and [REDACTED] also noticed violations of inhumane nature (unacceptable stunning procedure) in 2002 (NR # 0009-02)

(b)(6), (b)(7)(c)

11. SIGNATURE OF INSPECTION PROGRAM EMPLOYEE [REDACTED] (b)(6), (b)(7)(c)		15. DATE
FSIS FORM 5400-4 (7/98) Replaces FSIS Form 5400-4 (9/97), which may be used until exhausted (7/98)		DISTRIBUTION: Original & 1 copy - Establishment 1 copy - Inspector

Attachment D



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Meat plant concerns raised for years

By Julie Schmit, USA TODAY

The California meat plant where allegations of cruelty to cattle and improper slaughter led to the nation's largest meat recall this month drew complaints about abusive treatment of animals going back at least 12 years, according to documents provided by two animal-rights groups.

One complaint, made Oct. 8, 1996, to a local humane society office near the Hallmark Meat slaughterhouse in Chino, Calif., alleged that cows that couldn't walk were being prodded "repeatedly in the face," and other cows were allowed to trample over them. The complaint was never substantiated, the Inland Valley Humane Society says, but it helped set off a series of changes at the plant, the records show.

The plant, now named Westland/Hallmark, halted operations on Feb. 1 after the Humane Society of the United States made public an undercover video shot last fall showing plant workers using forklifts to roll cows that couldn't walk and poking them with electric prods, allegedly to move them to the slaughter box.

Two workers face animal abuse charges in the case. On Feb. 17, the company recalled 143 million pounds of beef produced in the past two years after the U.S. Department of Agriculture found evidence that plant workers slaughtered cows that became unable to walk without a veterinarian inspecting them first.

"Downer" cattle have been generally prohibited from the U.S. food supply since 2004 because they carry a higher risk of mad cow disease, a fatal brain illness, and E. coli and salmonella contamination.

The plant "has a long, documented history of abusing downed cattle," said Michael Greger, director of public health for the Humane Society of the United States, in testimony before Congress this week.

But USDA spokeswoman Amanda Eamich says the plant has had a "substantial period of compliance" and "rather unsubstantial non-compliance" through the years. The USDA has inspectors inside the plant.

Donald Hallmark, 73, who owned the plant until 2002, said in a telephone interview that no animals were treated inhumanely when he was an owner. He also said changes were made when requested by regulators or humane society officials. "We did just what they wanted us to," he said. "We were never there to mistreat cows."

Record of problems

Documents from the Inland Valley Humane Society & S.P.C.A., based in Pomona, Calif., near the plant, allege repeated issues with treatment of downers.

"We have had numerous incidents with your facility in the past involving downer animals and loose animals creating public safety issues," Marsha Wyatt, a society supervisor, wrote in a 1996 letter to Hallmark. "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. It was dated two days after the society received the prodding complaint, according to the notes of the society worker who took the call.

The humane society officer who went to investigate was ordered off the property, the letter says.

Still, Hallmark later promised changes. In early 1997, Donald Hallmark told the plant's USDA inspector that all downer cattle would be treated "humanly," according to the Feb. 26 letter he sent the inspector. "We at Hallmark Meat Packing believe we can make a difference in humane handling and the wholesomeness of our product," the letter said.

Later that year, Wyatt sent another letter to Hallmark and his son, thanking them for a meeting to address "downer problems" and included a list of conditions "to improve the welfare" of the animals.

Wyatt's letter added, "We all know that continued mishandling of downers is unethical and will only lead to further complaints from the public and possible interference from the media."

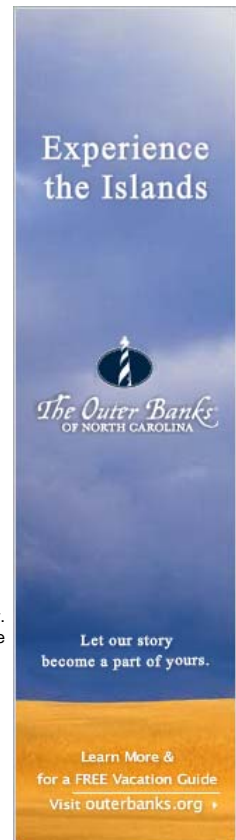
The Inland Valley Humane Society — which isn't affiliated with the Humane Society that obtained the video and provided some documents for this story — also provided USA TODAY with a log of what its officers observed at the plant.

After Hallmark's 1997 pledge, a humane society worker in May 1998 observed a cow with a hoof hanging by a tether of skin wandering around a parking lot for 15 minutes before the USDA inspector signed off to have it euthanized. That same month, a society officer reviewed the plant's downer logs and found that, on average, downers waited two to three hours to be checked by a USDA inspector.

"Sounds to me the plant has had a lot of problems, and the USDA was lax in its enforcement," says Lester Friedlander, a USDA inspector for 10 years who left the department in the mid-1990s. He says the timely euthanization of downers was largely left to the discretion of USDA veterinarians at plants, but the plant, and the incidents reported by the local humane society, should have been written up as violations of the Humane Slaughter Act of 1978.

A USDA warning

The USDA issued such a citation in 2005 — when the plant was under its current ownership — for excessive use of electric prods on cattle. "Too much electric prodding causing



animals to get more excited while being driven towards (the kill) box," according to the USDA's citation.

The plant "promptly implemented" corrective measures, the USDA's Eamich said. A follow-up audit in May of 2007 noted "no excessive use of electric prods" and compliance with regulations, she added.

The USDA's investigation continues. But the video has sparked questions about the rigor of the USDA's inspection system. The Humane Society of the United States says the inspector checking for downers at the plant came at the same time each day, so workers knew when he wasn't around. The USDA says the inspector made random checks.

Cows that drop after passing a USDA pre-slaughter inspection may be slaughtered if checked by the USDA again and found to have suffered a non-food-safety injury, such as a broken leg. The plant didn't always alert the veterinarian for the second check, the USDA says.

Thursday, Sen. Herb Kohl, D-Wis., chairman of an agriculture subcommittee, will hold a hearing into the recall and inspection program.

Westland/Hallmark plant manager Stan Mendell said in a telephone interview that the plant has laid off 200 workers, and he was unsure if it will reopen. He also said the plant "is a top-notch facility," and that management did not instruct the workers in the video to do what they did to get downed cows to slaughter.

What the workers in the video allegedly did to the cows was "terrible," Donald Hallmark said.

His successors poured a lot of money into the plant, he said, but "They will be broke when this is over."

Find this article at:

http://www.usatoday.com/money/industries/food/2008-02-27-westland-meat-recall_N.htm?csp=34

☐ Check the box to include the list of links referenced in the article.

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Attachment E

The request for this information is voluntary. It is needed to monitor defects found in this inspection system. It is used by FSIS to determine whether establishments are in compliance. 9 CFR 301 and 9 CFR 381. FORM APPROVED OMB No. 0583-0088. OMB DISCLOSURE STATEMENT: Public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget.

US Department of Agriculture FOOD SAFETY AND INSPECTION SERVICE NONCOMPLIANCE RECORD		TYPE OF NONCOMPLIANCE	
		<input type="checkbox"/> Food Safety	<input checked="" type="checkbox"/> Other Consumer Protection
1. DATE	2. RECORD NO.	3. ESTABLISHMENT NO.	
12/08/2005	0017-2005-4174	00336 M / I	
4. TO (Name and Title)		5. PERSONNEL NOTIFIED	
Stanley Mendell, Plant Manager- Processing/Grinding		Stanley Mendell, (b)(6)	
6. RELEVANT REGULATION(S)			
313.1(a); 313.2(b); 313.15(b)(iii)			
7. SECTION/PAGE OF EST. PROCEDURE PLAN			
HACCP SSOP OTHER N/A			
8. ISP CODE		9. NONCOMPLIANCE CLASSIFICATION INDICATORS	
04C02		PRODUCT - Protocol (b)(6), (b)(7)(c)	

10. DESCRIPTION OF NONCOMPLIANCE

During a Humane Handling visit of the facilities at Hallmark Meat Packing, EST. 336 by [REDACTED] Alameda District Office, the following noncompliance were observed: 1) wooden planks along the main drive from pen #10 through pen #15 with nail heads (too many to count) sticking out, and it has rough surface. It was also noted that clamp of hairs were seen attached to the surface of the wooden planks. 2) By pen # 12 two pieces of broken wooden boards were also noticed. 3) In pen #13 metal strip (divider) broken off, it was protruding with pretty sharp edges that could cause injury to the animals. It is about 1-1/2 to 2 inches in depth. 4) drains (5 inches in diameter) along the main drive by pens #2A through #4A without drain covers. 5) Opposite pen #10 there was a big hole on cement and between pens #A1 and #A2 the cement was cracked and broken about a foot to a foot and a half where an animal's foot could get caught. 6) On pen # 15 water trough is empty and there were animals in the pen. 7) Too much electric prodding causing animals to get more excited while being driven towards the stunning box. Out of [REDACTED] animals observed, 33 were prodded and out of the 33, 22 animals required multiple prodding to get then into the knocking box. All of the above could cause unnecessary pain and suffering to the animals. This document is written as a notification that your failure to comply with the regulatory requirement(s) of the Humane Slaughter Act of 1978 could result in additional regulatory or administrative actions including suspension. (b)(7)(c)

EMPLOYEE

(b)(6), (b)(7)(c)

You are hereby advised of your right to appeal this decision as delineated by 306.5 and/or 381.35 of 9 CFR.

12. PLANT MANAGEMENT RESPONSE (Immediate action(s)):

SEE ATTACHMENT.

13. PLANT MANAGEMENT RESPONSE (further planned action(s)):

SEE ATTACHMENT.

This document serves as written notification that your failure to comply with regulatory requirement(s) could result in additional regulatory or administrative action.

14. SIGNATURE OF PLANT MANAGEMENT

[Signature]

15. DATE

12-29-2005

16. SIGNATURE OF INSPECTION PROGRAM

[Signature]

17. DATE

12-29-2005

Replaces FSIS Form 5400-4 (9/97), which may be used until exhausted (7/98)

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Page 1 of 1

WESTLAND/HALLMARK MEAT COMPANY

ESTABLISHMENT #336

Westland /Hallmark Meat Company

ESTABLISHMENT REJOINDER TO NR-17-2005-4174

12.1.1.1 MANAGEMENT RESPONSE (immediate action(s)):

1. The wooden planks along the main drive from pens #10 through #15 with nail heads sticking out were removed and the rough surface was eliminated with new wooden planks.
2. There was two (2) pieces of broken wooden boards by pen #12 which were replaced with new wooden boards.
3. The metal strip divider in pen #13 which was protruding with sharp edges was removed.
4. Drain covers by pens #2A through #4A had covers placed on them.
5. A hole that was observed opposite pen #10 was filled with cement and the cement between #1A and #A2 was repaired with cement eliminating the cited cracks.
6. The water trough at pen #15 was filled immediately with water.
7. Re-training of corral personnel was immediately implemented to significantly truncate the amount of electrical prodding.

(THE PICTURES ATTACHED TO THIS NR REJOINDER EVINCES THAT ALL CORRECTIONS HAVE BEEN COMPLETED IN A TIMELY MANNER)

12.1.1.2 MANAGEMENT RESPONSE (further planned action(s)):

Further planned preventive measures regarding items 1 through 7 have been put into action in order to eschew similar incidents from occurring again as was documented in NR 17-2005-4174.

Increased corral maintenance surveillance by both the maintenance department and corral personnel was immediately put into place which will clearly identify and correct in a timely manner any area of the corrals infrastructure that may cause injury to the livestock. In addition increased training of corral personnel has been put into place and will continue to be provided in order to truncate the use of electric prodding on livestock. All feed and water troughs will be visually checked on a daily basis to ensure that there is sufficient supply for the livestock.

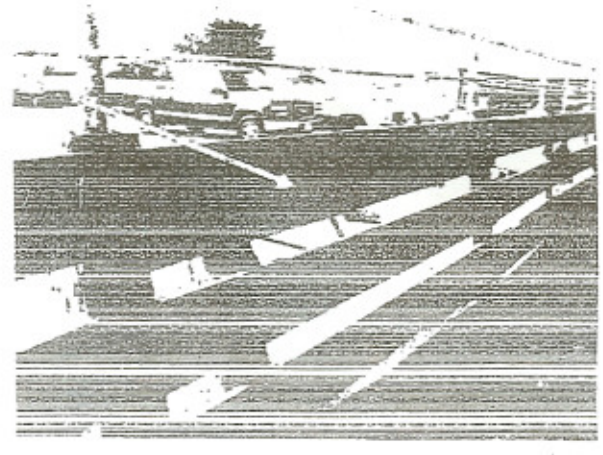
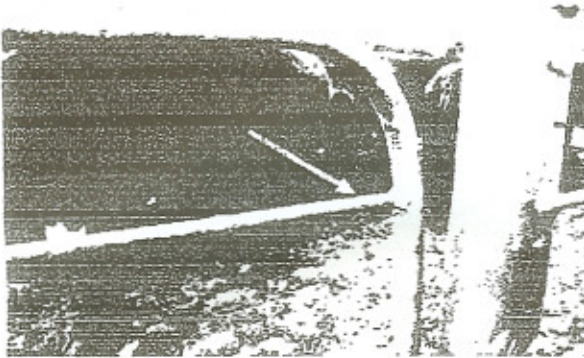
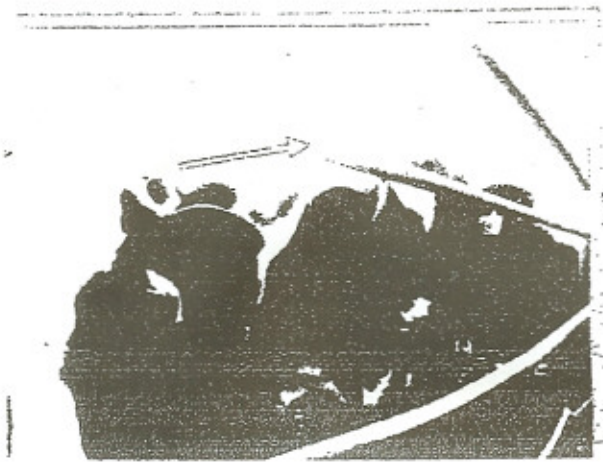
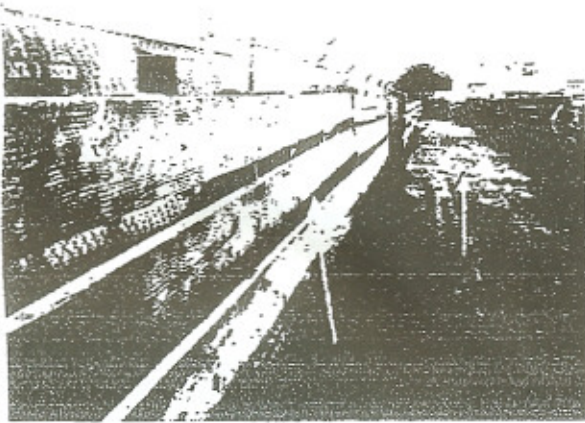
Westland/Hallmark Meat Company (WHMC) is steadfastly committed to abiding in full to all regulatory requirements regarding the Humane Slaughter Act of 1978. WHMC will continue to train company personnel on the importance of the humane handling of livestock and will continue to monitor the corrals in order to ensure that there are no hazards to the livestock.

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WESTLAND /HALLMARK MEAT COMPANY

ESTABLISHMENT #336



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