

## Executive Summary

Expanding the ban that currently prohibits non-ambulatory, or “downer,” cattle from processing to include all species would not improve the safety of our food, as legislation suggests. In fact, condemning all non-ambulatory animals—including hogs that are only temporarily incapacitated—immediately on arrival at a processing facility could actually interfere with science-based systems that protect animal health and cause economic hardship for livestock producers.

## Issue Background

Animal rights groups have advocated a ban on the processing of non-ambulatory, or “downer,” livestock for human consumption for more than 15 years, with legislative efforts dating back to the 102nd Congress. The processing of these animals came to the forefront of the food safety debate following the discovery of a single adult cow with Bovine Spongiform Encephalopathy (BSE) in December 2003. Beginning Jan. 12, 2004, the USDA Food Safety and Inspection Service (FSIS) condemned all non-ambulatory cattle presented for slaughter. Given

scientific evidence that cattle exhibiting paralysis and other non-ambulatory symptoms are at the highest risk of testing positive for BSE, this prohibition was made to minimize the risk of introducing BSE into the food chain

The January 2004 FSIS regulations place a firm definition on “non-ambulatory disabled livestock”: livestock that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions. This includes livestock that are non-ambulatory due to an acute

## Issue Briefing Animal Welfare: Non-ambulatory Livestock

March 2007

injury in route to the slaughter facility, such as a broken leg, as well as livestock that are non-ambulatory due to an underlying pathological condition (Federal Register).

Now attention has shifted to pork. “Fatigue” is a syndrome that occurs in approximately 1 percent of market barrows and gilts. The American Association of Swine Veterinarians ([www.aasp.org](http://www.aasp.org)) defines a non-ambulatory/fatigued pig as “a pig that becomes fatigued without trauma or disease and refuses to walk.” After rest and cooling, this condition is self-reversing.

**Continued on page 3**

## AFBF Policy

AFBF Policy 104, Animal Care (excerpted):

“We support industry-coordinated, non-ambulatory animal handling educational activities and oppose additional unreasonable federal regulations.

“We recommend separate classification of non-ambulatory livestock—those due to an injury or accident and those that are diseased. Non-ambulatory livestock due to injury or accident should be allowed to be slaughtered and processed for personal use.

“We recommend that the livestock industry support additional research and evaluation of livestock husbandry including proper

methods for the movement of non-ambulatory livestock, design of livestock production, handling and transportation systems.

“We recommend that the livestock industry encourage aggressive initiatives within its ranks to communicate the best modern animal husbandry and handling practices including but not limited to: methods to prevent livestock from becoming non-ambulatory; information on practical and acceptable methods for the proper movement of non-ambulatory livestock; and facility designs that promote the safe and appropriate production and movement of livestock.”

## What’s Happening Now?

The Food Safety and Downed Animal Protection Act, H.R. 611/S. 394, was introduced in Congress to make the processing of all species of non-ambulatory livestock illegal.

The legislation, introduced by Rep. Gary Ackerman (D-N.Y.) and Sen. Daniel Akaka (D-Hawaii), already has about 100 House co-sponsors. Sen. Akaka sponsored similar legislation in 2005 that passed the Senate as an amendment to the annual Agriculture Department funding bill. Farm Bureau strongly opposes this legislation.

The legislation is unnecessary and redundant from a food safety standpoint because USDA’s existing Food Safety and Inspection Service requires livestock to pass

both ante mortem and post mortem health inspections by licensed veterinarians in order to be eligible to enter the human food supply.

Furthermore, banning all non-ambulatory animals from slaughter would have unintended consequences that could actually do more harm than good.

If farmers and ranchers are prohibited from bringing these animals to a slaughter facility, they will be forced to destroy and bury them on their property without veterinary inspection. Besides environmental consequences, USDA will lose the opportunity to conduct science-based monitoring of these animals to detect diseases

## Economic Analysis

The incidence of non-ambulatory livestock can be influenced at the farm level. Farmers and ranchers watch for signs of diminished physical condition, marketing them before they become unable to walk.

Industry-developed programs that educate producers and haulers have increased awareness of handling techniques that minimize injury and stress, which could decrease the prevalence of “fatigue.”

When dealing with the fatigued hog phenomenon, the economic impact of condemnation upon arrival at the plant is clear. Estimates of the incidence of fatigued hogs ranges from 0.3 to 0.4 percent (Ritter et al., 2005) to 0.8 to 1 percent (McGlone, Texas Tech University). Applying those proportions to an annual processing total of 100 million hogs, the revenue lost from not allowing these otherwise healthy, wholesome animals to recover from this temporary condition ranges from \$35 million to \$110 million, depending on market prices.

This total does not account for any costs incurred raising the 300,000 to 1,000,000 hogs that are fatigued on arrival at the processing facility each year or disposing of their carcasses if they were automatically condemned. It also bears mentioning that tens of millions of hogs are raised by contract growers on behalf of larger firms. Contract growers’ compensation depends on many factors, including pounds of salable hog delivered to processing. Much of the total economic loss from fatigued hog condemnation will be borne by these contract growers.

**Continued on page 4**

## Public Relations Resources

### Talking Points:

- A non-ambulatory animal is not automatically a diseased animal. Some animals become non-ambulatory because of injuries that occur during transport, and these conditions do not affect the safety or quality of the meat.
- Some animals are non-ambulatory for reasons having nothing to do with disease or injury. For example, hogs that lie down during transport or at a slaughter facility on a hot day would be considered non-ambulatory if the bill before Congress becomes law, but science and experience show these “fatigued” hogs recover. Their health is not compromised, and they do not pose a risk to food safety. The legislation makes no provision for these temporary conditions, causing significant negative economic consequences for producers and packers, while not providing benefits to consumers.
- Banning all non-ambulatory livestock from health inspections that occur as part of the processing chain would restrict USDA’s ability to conduct science-based monitoring of animal diseases such as tuberculosis, foot-and-mouth disease, pseudorabies and BSE. As a result, animals believed sick will never be inspected or diagnosed by USDA veterinarians because they will never be seen by veterinarians. The legislation would dismantle the existing regulatory apparatus designed to detect and contain an animal disease by forcing farmers to destroy and bury animals on the farm.
- Strong regulatory safeguards exist for humane treatment of animals during processing. USDA’s Food Safety Inspection Service (FSIS) monitors strict animal handling and slaughtering practices for packing plants, including the treatment of non-ambulatory animals. FSIS inspectors—present in packing plants during every minute of operation—are empowered to take action in a plant anytime they identify a violation.
- If the goal of the legislation is to exclude from the food chain animals susceptible to BSE, the bill is unnecessary and redundant. USDA’s comprehensive BSE rulemaking already bans downer cattle and other ruminant animals from entering the human food supply.
- Less than one-tenth of 1 percent of all animals—of any species—moving to slaughter are considered “downers,” USDA says. That figure is even lower now that USDA has removed non-ambulatory cattle and other ruminants from the food chain.
- The Humane Society of the U.S. (HSUS), a national animal rights group, is the main supporter of this legislation. HSUS has no identifiable expertise in the handling of non-ambulatory livestock.

## Issue Background

### Continued from page 1

According to the American Veterinary Medical Association ([www.avma.org](http://www.avma.org)), hogs that go down at a terminal market after transport and are not in extreme distress or do not have an obvi-

ously irreversible condition should be allowed up to two hours to recover from their temporary incapacity.

When fatigued hogs arrive at a USDA-inspected slaughter facility, they are placed in “USDA Suspect” pens and subsequently inspected for disease. Most re-

cover and are processed. But legislation introduced in Congress calls for these hogs to be condemned immediately on arrival at the processing facility. It would not allow time for this acid-base imbalance to reverse itself, thus enabling hogs to move free and unaided once again.

## Legal Analysis

In one example of a legal case pertaining to non-ambulatory livestock, Michael Baur and the activist organization Farm Sanctuary filed suit in U.S. District Court against the USDA in late 2001, seeking to require the government to classify non-ambulatory livestock as adulterated and address issues arising out of the slaughter of these animals.

Baur claimed that, as a meat eater, he was concerned about the possibility of eating meat from a cow with BSE. He contended that he need not suffer a physical injury to have standing, the minimum level of injury required by the law to have one's dispute resolved by the courts.

The judge found that neither

Farm Sanctuary nor Baur had standing, and the case was dismissed.

The U.S. Court of Appeals for the 2nd Circuit reversed the trial court's findings and reinstated the case. The plaintiffs settled with USDA in 2004 following the department's announcement of a rule prohibiting non-ambulatory animals from entering the human food supply.

## What's Happening Now?

### Continued from page 2

such as tuberculosis, foot-and-mouth disease and pseudorabies—epidemics that could harm a far larger number of animals over time.

In addition, lawmakers directed the agriculture secretary to conduct a study to assess issues and challenges relating to non-ambulatory animals in the 2002 farm bill.

USDA is currently investigating slaughter practices to deter-

mine whether there is any need for additional restrictions on non-ambulatory livestock. It would be premature to ban a class of livestock from the food supply before this congressionally mandated report is complete.

The best food safety and public health protection lawmakers can provide is to continue to ensure that all livestock are subject to ante mortem and post mortem inspections to determine fitness for the food supply.

## Brochure

A brochure, titled "Modern American Agriculture," includes information on how livestock production benefits rural communities and describes how farmers and ranchers work to keep their livestock healthy. It's sold in bundles of 100 at [www.fb.org/index.php?fuseaction=materials.brochures](http://www.fb.org/index.php?fuseaction=materials.brochures).

## For More Information

The following AFBF staff members have assembled this issue briefing:

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### Additional Resources

Additional information is posted on Farm Bureau's intranet site, SILO, at <http://silofb.org/issues/livestock>. Among the resources posted on the Livestock Issues Management page on SILO are news clips, links to past Issues Management Briefings about related issues and links to agricultural law programs around the U.S. Links to related conference calls and PowerPoint slide presentations also are posted on this page.