



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

September 26, 2003

The President
The White House
Washington, DC 20500

Re: OSC File No. DI-01-0901

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting the reports provided to this office pursuant to 5 U.S.C. § 1213(c) and (d) by the Honorable Ann M. Veneman, Secretary, U.S. Department of Agriculture (USDA), and Ms. Robinn A. Reed, Chief, Employee Relations Branch of USDA. The reports set forth the findings and conclusions of the agency upon investigation of disclosures of information allegedly evidencing violations of law, rule, or regulation and a substantial and specific danger to the public health and safety arising out of actions by USDA Food Safety Inspection Service (FSIS) at Iowa Beef Producers, Inc. (IBP), Amarillo, Texas. The whistleblower alleged that FSIS Food Inspectors at IBP failed to conduct proper inspection of cattle in accordance with applicable USDA regulations.

The whistleblower, Dr. Thomas D'Amura, a former Veterinary Medical Officer (VMO), consented to the release of his name. He also provided comments on the agency reports to this office pursuant to 5 U.S.C. § 1213(e)(1), which I am also transmitting.

Dr. D'Amura's allegations were referred to the Secretary of Agriculture for investigation on October 24, 2001. According to the first agency report, the USDA Office of the Inspector General forwarded the matter to the FSIS, Labor and Employee Relations Division (LERD) and directed the LERD to conduct an investigation. The Secretary submitted a report to this office on March 7, 2002. In response to additional information received from Dr. D'Amura, LERD further investigated the allegations and produced a supplemental report dated July 24, 2002. In response to further questions from this office, the LERD submitted a second supplemental report on March 6, 2003.

I have carefully reviewed the original disclosures, the agency's reports and Dr. D'Amura's comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the agency's reports, which substantiate Dr. D'Amura's allegations in part, contain all of the information required by statute and the findings appear to be reasonable.

The Whistleblower's Disclosures

As a VMO, Dr. D'Amura served as a supervisor to a shift of 13 Food Inspectors responsible for inspection of cattle. He also inspected utensils and machinery. In addition, Dr. D'Amura followed the disposition of suspicious meat product and carcasses once a Food Inspector identified the meat product or carcass as suspicious. Lastly, Dr. D'Amura was the only VMO at IBP to conduct ante-mortem inspection of the cattle in the pens.

At IBP, FSIS inspects cattle as they are slaughtered and processed for consumption. Dr. D'Amura alleged a number of instances where Food Inspectors at IBP did not comply with the requirements of 9 C.F.R. Parts 307, 309, 310, 311, 312, 313, and 314, resulting in a substantial and specific danger to public health and safety.

As described in greater detail below, Dr. D'Amura allegations concerned improper ante-mortem and post-mortem inspection procedures at IBP.

1. Improper Ante-Mortem Inspection Procedures

Dr. D'Amura alleged that Food Inspectors did not conduct proper ante-mortem inspection of the cattle before they were slaughtered. A failure to conduct an inspection of the cattle in their pens on the day of their arrival and prior to slaughter violates the express provisions of 9 C.F.R. § 309.1. Moreover, absent an ante-mortem inspection, Food Inspectors were unable to comply with the remaining provisions of 9 C.F.R. Part 309 and the provisions of 9 C.F.R. Part 313. Dr. D'Amura alleged that for a significant amount of the time, no ante-mortem inspection was conducted at all and that the inspections that were conducted failed to comply with federal regulations.

Dr. D'Amura also alleged that Food Inspectors failed to properly tag cattle suspected of being diseased or containing parasites. Tags are used to identify cattle that may be diseased or contain parasites before and during the slaughtering process. Dr. D'Amura alleged that tags were seldom used at IBP. Because the animals were seldom inspected, it was impossible to comply with the requirements of 9 C.F.R. §§ 309.2 and 309.18. Moreover, the few cattle that were tagged were not tracked to determine whether initial suspicions about disease or parasites were either confirmed or denied in the carcass.

2. Improper Post-Mortem Procedures

Dr. D'Amura alleged that post-mortem inspections also were not performed properly at IBP. Initially, Dr. D'Amura noted that Food Inspectors at IBP were frequently absent, which resulted in inadequate staffing, and a failure to comply with 9 C.F.R. Part 310. Production was not slowed down to compensate for absent Food Inspectors. Additionally, Dr. D'Amura specifically observed that Food Inspectors at IBP took frequent breaks and engaged in activity

away from their inspection stations for prolonged periods of time. As a result, Dr. D'Amura alleged that carcasses were not being inspected because actions were not taken to ensure that inspection stations were manned while Food Inspectors took breaks or were absent.

According to Dr. D'Amura's first-hand observations, Food Inspectors at IBP also failed to properly inspect livers and intestines, in violation of 9 C.F.R. Part 310, including 9 C.F.R. §§ 310.1 and 311.31, and failed to take test samples in violation of 9 C.F.R. § 310.25. Dr. D'Amura alleged that Food Inspectors did not conduct any examination of the bile duct and the dorsal and ventral surfaces of the liver. Additionally, Dr. D'Amura alleged that the intestines were completely ignored, including the rumino-reticular junction and the lymph nodes. Moreover, samples were not taken from carcasses to test for antibiotic residues, and to test the liver and kidneys.

Dr. D'Amura also observed that the use of official tags was inadequate and that Food Inspectors often failed to apply tags. Carcasses and parts are required to be identified with specifically designed tags, pursuant to 9 C.F.R. §§ 309.16, 310.21, and 9 C.F.R. Part 312. According to Dr. D'Amura, the Food Inspectors at IBP often failed to use tags because they were not made available and were specifically missing from the viscera tables. In addition, Dr. D'Amura alleged that IBP would sometimes issue paper tags to the Food Inspectors, which were ineffective and often fell off the meat after getting wet. Dr. D'Amura also alleged that the procedures for tagging carcasses for instances of tapeworm and other micro-organisms were not followed.

Dr. D'Amura alleged that the tanker trucks used to haul blood products were also never inspected. Pursuant to 9 C.F.R. § 314.2, the tanker trucks must be inspected and a failure to inspect the truck could result in violations of various provisions of 9 C.F.R. Part 314. Dr. D'Amura observed that records at IBP were manipulated so that it appeared that tanker trucks were regularly inspected. In fact, Dr. D'Amura stated that he observed many instances where inspection of the trucks was noted when no inspection was performed.

Lastly, Dr. D'Amura alleged that carcasses that were condemned were never stamped "USDA Condemned" because the stamp was not always made available to Food Inspectors. Dr. D'Amura alleged that because carcasses were not stamped as condemned, they could not be tracked and the Food Inspectors did not know their final disposition at IBP.

The Department of Agriculture Investigations and Reports

Dr. D'Amura's allegations were investigated by the LERD. During the course of its investigation, LERD conducted interviews with and obtained written statements from members of the inspection staff assigned to IBP as well as management officials who were responsible for reviewing inspection procedures and enforcing inspection regulations at IBP. LERD also obtained a written statement from Dr. D'Amura. In addition, LERD obtained a technical

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assessment of in-plant procedures at IBP and took corrective action for deficiencies found in the investigation. As discussed below, the agency's findings substantiated, in part, Dr. D'Amura's allegations.

The agency's initial report explained that IBP operates two slaughter and processing shifts per day, slaughtering at a rate of approximately 390 head of cattle per hour. The USDA inspection staff on site for each shift consists of a Supervisory Veterinary Medical Officer (SVMO), who is the Inspector-in-Charge and is responsible for assuring that inspection procedures comply with regulations. The SVMO is assisted by a subordinate Veterinary Medical Officer (VMO), two Consumer Safety Inspectors (CSIs), and thirteen Food Inspectors.

The agency concluded in its initial report that the investigation revealed no evidence of improper ante-mortem inspection and no "significant" deviation from proper post-mortem inspection. However, as reflected in the supplemental reports, further investigation revealed that during times of staffing shortages, some FSIS employees engaged in "short cuts" for ante-mortem inspection that did not comply with the regulations. In addition, the investigation revealed that the Inspector-in-Charge lacked a working knowledge of the guidelines for selection of animals/carcasses for sampling for antibiotic and chemical residue testing. Further, the agency's investigation revealed evidence suggesting that not all Food Inspectors were palpating the rumino-reticular junction of the viscera during post-mortem inspection, as required.

1. Ante-Mortem Inspection Procedures

According to the agency's reports, the investigation revealed that IBP is approved to operate under an alternative ante-mortem inspection procedure that requires observation of 100% of the cattle presented for inspection at rest and between 5-10% of the cattle in motion from both sides. The investigation revealed that, at times, a "short cut" procedure for ante-mortem inspection was used, which does not comply with the regulations for ante-mortem inspection, including 9 C.F.R. § 309.1. In particular, Dr. Morris Truesdell, SVMO and Inspector-in-Charge at IBP, stated that when there were staffing shortages, he and other Food Inspectors would observe cattle in motion from only one side as they crossed the scales in the holding pens, rather than observe the cattle in the drive alleys from both sides. Dr. Kurt Schulz, the VMO and Technical Advisor who conducted the technical assessment for the investigation, stated that this short-cut procedure does not comply with ante-mortem inspection requirements.

The agency's investigation did not substantiate Dr. D'Amura's other allegations regarding improper or deficient ante-mortem inspection procedures at IBP. During his technical assessment, Dr. Schulz did not identify any other areas of deficiency in ante-mortem inspection. According to the agency's reports, the investigation revealed that "US Suspect"

animals are properly tagged and/or segregated during the ante-mortem inspection process in accordance with the regulations.

Dr. Marcia Endersby, the Circuit Supervisor who is responsible for enforcement of inspection regulations at IBP, stated that she regularly visits IBP, many times unannounced. Dr. Endersby stated that she personally observed ante-mortem inspection procedures at IBP and believes that all employees are properly carrying out inspection functions. She stated that animals identified as "US Suspect" during ante-mortem inspection are tagged and/or segregated so that they can be properly tracked and inspected during the slaughter process. Dr. Endersby's statements were corroborated by other witnesses, including but not limited to Dr. Truesdell, Dr. Muhammad Haq, SVMO for the evening shift, Dr. Bradley Williams, VMO under Dr. Truesdell, and Dr. David Morehead, a CSI responsible for off-line inspection under the agency's Hazard Analysis and Critical Control Point inspection procedures.

2. Post-Mortem Inspection Procedures

The investigation showed that IBP has experienced staffing shortages. However, it did not substantiate Dr. D'Amura's allegations that inspection stations were left unattended or that carcasses and other products were not inspected. Several witnesses, including Dr. Endersby, Dr. Truesdell, and Dr. Haq, acknowledged occasional staffing shortages, but stated that the inspection stations are properly staffed. These and other witnesses stated that Food Inspectors are allowed only scheduled breaks and short bathroom breaks during rotation of their assignments. Some witnesses, including Dr. Truesdell and Dr. Haq, reported that prior to Dr. Truesdell's appointment as Inspector-in-Charge, there were some instances of Food Inspectors abusing their breaks. However, Dr. Truesdell corrected the problem and breaks are now controlled "more carefully."

With regard to inspection procedures, the agency's initial report reflects that Dr. Truesdell acknowledged that he did not believe that all Food Inspectors palpate the rumino-reticular junction of the viscera for lesions or parasites in all cases, because it is difficult at the speed with which IBP slaughters cattle. During the supplemental investigations, however, several witnesses, including but not limited to Dr. Endersby, Dr. Truesdell, Dr. Haq, and Dr. Williams, stated that the Food Inspectors properly inspect livers and other viscera, properly open bile ducts and properly palpate the dorsal and ventral sides of the livers for abscesses or other lesions. During his technical assessment, Dr. Schulz reviewed the written post-mortem inspection procedures issued by Dr. Haq, and determined they complied with post-mortem inspection regulations.

With respect to sampling and testing for antibiotic and chemical residues, the investigation did not substantiate Dr. D'Amura's allegation that samples were not being taken. However, the investigation revealed that Dr. Truesdell's method of selecting animals/carcasses for testing was not in compliance with applicable requirements. Specifically, Dr. Schulz found

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during his technical assessment that Dr. Truesdell did not have a thorough, working knowledge of FSIS Notice 44-01, which sets forth the protocol for on-site sampling and testing for antibiotic or chemical residues by delineating the syndromes that warrant testing. Dr. Schulz explained that while he found no evidence that Dr. Truesdell had failed to take required samples for testing, it appeared that he was unfamiliar with the specific syndromes identified in FSIS Notice 44-01, and thus was “not as familiar as he should be with the Agency guidance.”

The investigation substantiated Dr. D’Amura’s allegation that, at times, tanker trucks were not inspected in violation of 9 C.F.R. § 314.2. However, according to the reports, IBP is no longer required to inspect the tanker trucks. Dr. Endersby explained that inspection of tanker trucks is only required when the blood is saved “as an edible product intended for human consumption.” She further explained that IBP used to, but no longer, saves blood for edible purposes. Dr. Truesdell confirmed that IBP ceased saving blood for edible purposes in January 2001. He acknowledged, however, that prior to 2001, there were rare instances when tanker trucks containing “edible blood” were not inspected. He stated that records of truck inspection records were never falsified.

The investigation did not substantiate Dr. D’Amura’s allegations that use of official tags was inadequate or that Food Inspectors often failed to apply tags because they were not made available. According to Dr. Endersby, Dr. Truesdell, Dr. Haq, and Mr. Morehead, Food Inspectors at IBP use only official “USDA Retained” tags for identifying abnormalities, such as tape worm or cysticercus bovis cysts. They further explained that Food Inspectors are not able to detect “micro-organisms; rather, they are required to “rail out” all abnormal animals for veterinary disposition. In addition, these witnesses stated that they had no memory of ever using paper tags. Mr. Dennis Stephenson, CSI, recalled one occasion “years ago” when Food Inspectors used paper tags for a few days until a new supply of official tags was received. He stated that they now have a “large supply” of official “USDA Retained” tags that are used to identify abnormal animals.

Finally, the investigation revealed that condemned carcasses are not stamped “USDA Condemned” at IBP, because the method used for destruction of the carcasses at IBP does not require such stamping. According to statements by Dr. Truesdell and Dr. Williams, carcasses that have been condemned under veterinary supervision are marked with deep knife cuts in the exterior surface. The carcasses are then cut down and put into the “tanking chute” on the slaughter floor. According to Dr. Truesdell and Dr. Williams, there is no risk of condemned carcasses entering the food chain, because this process is controlled and tracked by USDA personnel and there is no way that IBP can salvage carcasses that have been processed in this fashion. During his technical assessment, Dr. Schulz reviewed the procedures used for disposal of condemned carcasses and determined they were in accordance with the regulations.

3. Corrective Action Taken by the Agency

The agency's reports describe the corrective actions taken to address the deficiencies identified during the investigation. First, following the initial investigation, Mr. Dan Willis, the Personnel Misconduct Investigator who conducted the investigation, reported to Dallas District officials Dr. Truesdell's statement that he did not believe all Food Inspectors were palpating the rumino-reticular junction of the viscera. In response, Dallas District officials discussed this matter with Dr. Truesdell and emphasized the importance of full compliance with the manual and procedures. In addition, Dr. Endersby was instructed to follow up on this matter with Dr. Truesdell.

Following the supplemental investigation, Mr. Willis met with Mr. Alfred Almanza, then-Acting District Manager, Dallas District Field Operations, to review the findings and develop a corrective action plan. The plan implemented included the following actions:

1. Following his technical assessment on June 26 and 27, 2002, Dr. Schulz reviewed his findings with Dr. Truesdell and Dr. Endersby. Specifically, Dr. Schulz discussed the two areas where he found deficiencies -- ante-mortem inspection and selection of animals/carcasses for residue testing. He reviewed with them the requirements of proper ante-mortem inspection. In addition, he reviewed "in detail" FSIS Notice 44-01, regarding the protocol for residue sampling to ensure that both had a clear understanding of the guidance set forth in the Notice. Dr. Schulz also recommended additional correlation/training for Dr. Truesdell and his inspection staff.
2. Following the supplemental investigation, and as recommended by Dr. Schulz, the Acting District Manager directed Dr. Raymond Dilland, District Veterinary Medical Specialist, to conduct a "correlation" training session at IBP with Dr. Truesdell to review proper ante-mortem inspection procedures. During this correlation session, conducted on July 16, 2002, Dr. Dilland accompanied Dr. Truesdell and inspection staff during the ante-mortem inspection process and examined the supplies and equipment maintained for ante-mortem inspection. He reviewed ante-mortem procedures with the inspection staff, and reviewed with Dr. Truesdell applicable ante-mortem regulations, directives and agency procedures, emphasizing the importance of compliance. Following additional observation of the ante-mortem inspection process, Dr. Dilland concluded that ante-mortem inspection at IBP is conducted in accordance with FSIS regulations.
3. According to the agency, the District Manager and Deputy District Manager concurred that the deficiencies in Dr. Truesdell's performance did not warrant formal disciplinary action. Action against Dr. Truesdell was limited to an oral admonishment by Dr. Endersby, Circuit Supervisor, and the correlation/training noted above. In addition, Dr. Endersby stated that since the investigations, she has closely monitored

Dr. Truesdell's inspection procedures and is confident that he is performing them correctly.

The Whistleblower's Comments

Dr. D'Amura provided comments on the agency's reports. Initially, Dr. D'Amura was concerned that the USDA Office of the Inspector General forwarded a matter concerning food safety to the Labor and Employee Relations Division of FSIS for an investigation.

Dr. D'Amura was also concerned that the investigation focused primarily on the conditions at IBP at the present time while ignoring statements from some witnesses and his disclosures that there were prior problems at IBP. In addition, Dr. D'Amura noted that the night shift was dismissed almost entirely from the initial investigation based on the fact that he worked the day shift. However, for a number of weeks during an illness by Dr. Haq, Dr. D'Amura worked the night shift as VMO and thus had an opportunity to view night-shift ante-mortem and post-mortem procedures.

Dr. D'Amura disagreed with the reports' conclusions that ante-mortem inspection was being performed properly, especially considering the investigation's findings regarding the use of "short cuts." Dr. D'Amura stated that the physical layout of the IBP plant and the speed with which cattle are slaughtered prevent the required observation at rest of 100% of all cattle presented for slaughter and the observation in motion from both sides of between 5% and 10% of all cattle presented for slaughter. Dr. D'Amura stated that it is impossible for the SVMOs, VMOs, and CSIs to observe this much cattle at rest or in motion. Dr. D'Amura stated that this would require the Food Inspectors to conduct a full inspection of over 2,600 head of cattle on one shift, and 5,200 head of cattle in a full day, while filling in on the inspection line for missing Food Inspectors who were absent or taking breaks.

In addition, Dr. D'Amura stated the commonly used route from the inspection office to the scale house is ringed by a six-foot high cinder block wall, which is a distance of hundreds of yards. Because of the cinder block wall, it is only possible to view the cattle, in groups of 50, as they cross the scales and enter the pens. According to Dr. D'Amura, it would take at least an hour to view roughly 300 cattle using this method, which only provides for a view of the cattle from one side. To obtain a 100% observation rate of all cattle at rest, Dr. D'Amura states that an individual would have to walk through the holding pens, while dodging moving cattle and other obstacles. Consequently, Dr. D'Amura believes it is physically impossible to perform observations at the rates stated in the agency's reports and that the "short cuts" mentioned by Dr. Truesdell and Mr. Stephenson were, in fact, the way ante-mortem inspections were performed.

Dr. D'Amura also questioned the reports' conclusion that post-mortem procedures were performed properly. He noted that the staff shortages alluded to in the agency's reports resulted in a cascading effect of improper inspections. According to Dr. D'Amura, if senior staff is

engaged in relief of line Food Inspectors, it is impossible to maintain proper inspections in either ante-mortem or post-mortem procedures. Indeed, due to the speed with which cattle are slaughtered at IBP, the cumulative effect of staff shortages and abuse of break privileges multiplies rapidly. Thus, Dr. D'Amura alleged that relieving line Food Inspectors during staff shortages and break abuses resulted in veterinarians being unable to perform ante-mortem inspection of cattle, follow up on tagged cattle, or take samples for testing. Dr. D'Amura indicated that the speed at which cattle is slaughtered at IBP affects other procedures as well. He explained that the initial investigation appeared to ignore many of the detailed improprieties that he cited in memoranda written to Dr. Truesdell and Mr. Almanza.

Dr. D'Amura conceded that if IBP no longer markets blood for edible purposes, the allegations regarding failure to inspect the tanker trucks are now moot. However, he did note that Dr. Truesdell admitted that tanker trucks were not inspected during the time when IBP was marketing the blood products. Dr. D'Amura further explained that, again, if personnel are busy relieving Food Inspectors on the inspection lines, it leaves little time to conduct tanker truck inspections.

In addition, Dr. D'Amura was concerned that the Investigator relied on statements by inexperienced employees who are new to FSIS and still in their probationary periods, such as Dr. Williams and Dr. Newkirk. He also believes that it was not appropriate for the investigation to be carried out by personnel within the Dallas District Office, which is responsible for oversight of operations at IBP.

In its supplemental reports, the agency addressed some of the issues raised by Dr. D'Amura in his comments, including discussion of the night shift inspection procedures, further explanation of the physical lay-out of the facilities and the routes taken by inspection staff during inspection, and the manner in which ante-mortem inspection is carried out.

Conclusion

Based on the representations made in the reports and as stated above, I have determined, pursuant to section 1213(e)(2), that the agency reports contain all of the information required by statute and the findings appear to be reasonable.

As required by section 1213(e)(3), I have sent a copy of the reports and Dr. D'Amura's comments to the Chairmen of the Senate Committee on Agriculture, Nutrition and Forestry,

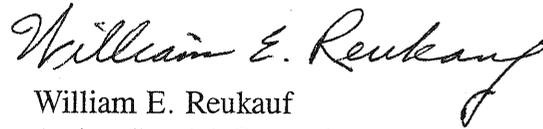
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and the House Committee on Agriculture. We have also filed copies of the reports and Dr. D'Amura's comments in our public file and closed the matter.

Respectfully,

A handwritten signature in cursive script that reads "William E. Reukauf". The signature is written in black ink and is positioned above the printed name and title.

William E. Reukauf
Acting Special Counsel

Enclosures