

# Proposed Rules

Federal Register

Vol. 71, No. 44

Tuesday, March 7, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Part 390

[Docket No. 04-006P]

[FDMS Docket Number FSIS-2005-0028]

RIN 0583-AD10

#### Availability of Lists of Retail Consignees During Meat or Poultry Product Recalls

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend the federal meat and poultry products inspection regulations to provide that the Agency will make available to the public lists of the retail consignees of meat and poultry products that have been voluntarily recalled by a federally inspected meat or poultry products establishment if product has been distributed to the retail level. FSIS is proposing to routinely post these retail consignee lists on its Web site as they are developed by the Agency during its recall verification activities.

FSIS is proposing this action because it believes that the efficiency of recalls will be improved if there is more information available as to where products that have been recalled were sold. By providing consumers more information about the locations where recalled products have been sold, FSIS believes that consumers will be more likely to identify and return such products to those locations or to dispose of them. This action will apply only to meat and poultry products.

**DATES:** Comments must be received on or before May 8, 2006. FSIS intends to hold a public meeting on this issue during the comment period.

**ADDRESSES:** FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- **Federal eRulemaking Portal:** This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and, in the "Search for Open Regulations" box, select "Food Safety and Inspection Service" from the agency drop-down menu, and then click on "Submit." In the Docket ID column, select FDMS Docket Number FSIS-2005-0028 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.

- **Mail, including floppy disks or CD-ROM's, and hand- or courier-delivered items:** Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

- **Electronic mail:** [fsis.regulationscomments@fsis.usda.gov](mailto:fsis.regulationscomments@fsis.usda.gov).

All submissions received by mail and electronic mail must include the Agency name and docket number 04-006P. All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at [http://www.fsis.usda.gov/regulations\\_&\\_policies/2006\\_Proposed\\_Rules\\_Index/index.asp](http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp).

**FOR FURTHER INFORMATION CONTACT:**

Lynn E. Dickey, Director, Regulations and Petitions Policy Staff, Office of Policy, Program, and Employee Development, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250-3700; Telephone (202) 720-2709, Fax (202) 690-0486.

**SUPPLEMENTARY INFORMATION:** FSIS is responsible for ensuring that meat and poultry products are safe, wholesome, and accurately labeled. FSIS enforces the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). These two statutes require Federal inspection and provide for Federal regulation of meat and poultry products prepared for distribution in

commerce for use as human food. When there is reason to believe that meat or poultry products in commerce are adulterated or misbranded, FSIS will request that the firm that introduced the products into commerce recall them. If the establishment does not agree to recall the products, FSIS has the authority to detain and seek seizure of the products.

If the establishment does agree to recall the products, recall information is widely disseminated by FSIS. For every recall, except some Class III recalls, FSIS distributes a press release. FSIS send recall information to wire services and media services in the areas where the product was distributed. For recalls where no press release is issued, FSIS distributes a Recall Notification Report (RNR) and posts this on its Web site.

Through press releases and RNRs, FSIS provides the public with information about meat and poultry recalls. This information includes: A description of the food being recalled, any identifying codes, the reason for the recall, the name of the producing establishment, the level of product distribution (e.g., wholesale; retail) to which the recall is to extend, the availability of product at the retail level, the recall classification, and the appropriate contact persons for FSIS and the recalling company. FSIS also lists those States to which recalled product was shipped if fewer than 13 States were involved in the recall. If the recall extends to more than 13 States, it is considered to be a nationwide recall. In addition, FSIS sends recall information to several media and constituent list-servers.

During the recall process, if products are recalled to the retail level, FSIS requests that the firm conducting the recall provide FSIS with a list of the consignees to whom the recalled meat or poultry products were distributed. FSIS uses this information in verifying the recall to ensure that the consignees have been notified of the recall and are removing the products from the market and returning them to the recalling firm. FSIS also obtains lists from the consignees of all entities to which they distributed the product and contacts those entities to ensure that they were notified. The Agency then obtains those consignees' distribution lists and thereby traces the product forward to the retail level.

FSIS has generally treated distribution lists obtained during recalls as confidential business information, exempt from release under the Freedom of Information Act (FOIA). In 2002, however, FSIS promulgated regulations defining the circumstances and criteria under which it would share product distribution information and customer lists with States and other Federal agencies (67 FR 20009, April 24, 2002). FSIS will disclose this information to States and other Federal government agencies to enable them to verify the removal of the recalled products from commerce, provided that the State or Federal agency has given to FSIS: (1) A written statement establishing its authority to protect confidential distribution lists from public disclosure, and (2) a written commitment not to disclose any information provided to it by FSIS without the written permission of the submitter of the information or written confirmation by FSIS that the information no longer has confidential status (9 CFR 390.9). A disclosure of product distribution information or customer lists to States and other Federal agencies who have this authority and have made such a commitment is not a disclosure to the public and does not waive any FOIA exemption protection (9 CFR 390.9(c)).

Consumer groups and some State officials have advocated the public release of information on where recalled meat and poultry products have been shipped or distributed. These State officials have requested that this information be provided to them without the limitations imposed by FSIS' regulations (9 CFR 390.9(a)(1)), believing that they would be better able to protect the public health. Similarly, some consumer groups have asserted that the public can use this information to identify more easily and effectively the product being recalled. These State officials and consumer groups believe that making the retail distribution information readily available will materially improve the effectiveness of recalls.

While the current process is effective, FSIS believes that product identification can be improved. While FSIS includes in its press release the production code of the product recalled, and will in many cases post a picture of the recalled product's label, it is often the case that more product and often different product is returned than is actually recalled. Therefore, FSIS believes that this proposal, if adopted, would improve the efficiency of the recall process and address consumer groups and State officials' concerns.

FSIS has concluded that it has authority to make available lists the Agency has compiled during recalls of the retail consignees of meat and poultry products that have been recalled, and that it would be appropriate to do so to enhance the efficiency of recalls.

FSIS has concluded that making information identifying the retail consignees of recalled products available to the public will improve the efficiency of recalls by helping consumers to identify and focus on the products that are recalled. In addition, making this retail consignee information available will, we believe, help make clear that other, similar products are not being recalled, and that there is no reason to be concerned about such similar products. The Agency's experience with recalls over time has shown that in many recalls, much more product is returned than has actually been recalled. Often products are returned that were not produced by the recalling company or that were produced at different times or locations than the recalled product.

FSIS is proposing to make available to the public on its Web site the lists of the retail consignees of recalled meat or poultry products that the Agency compiles in connection with its recall verification activities. The retail consignee information will generally be lists compiled by FSIS, and not the customer lists of any specific company. The lists will contain only the names and locations of the identified retail consignees of the recalled meat and poultry products. These retail consignee lists will not include the names of intermediate distributors of such products. Examples of intermediate distributors include food service or institutional distributors. FSIS does not believe that making lists of intermediate distributors routinely and generally available during recalls is warranted. The information is of little value to consumers but is often of commercial value to the companies that rely on such intermediate distributors and firms to get their products to the retail level. Accordingly, the Agency will not make such information routinely available in connection with recalls. However, this information will continue to be made available to State agencies that have made a written commitment to FSIS in accordance with 9 CFR 390.9.

In proposing this action, FSIS is seeking the views of all interested parties, including establishments, on this proposal. It is also important to note that FSIS will hold a public meeting on this proposal. The date and location of

the meeting will be announced in the **Federal Register**.

#### **Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal: (1) Preempts all state and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Executive Order 12866**

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866 and was determined to be significant.

FSIS considered several options, including amending its regulations to include local health departments as entities that could receive recall distribution lists or making the lists available only in response to Freedom of Information requests and to State agencies with agreements under 9 CFR 390.9. FSIS, however, chose to propose that the Agency will make available to the public the names of retail consignees of the recalled products that the Agency has compiled as a result of its recall verification activities. This approach will alert individual consumers, State and local authorities, and other Federal agencies of the names of retail stores in which the recalled products may be found in as expeditious a manner as possible. It will also not involve the disclosure of confidential business information because the lists that FSIS will make public will generally be lists that the Agency has compiled, not the customer lists of any specific company, and only information regarding retail outlets will be made public.

This action would not impose a monetary cost on establishments conducting a recall, and the information proposed to be released would not result in any competitive harm to the affected establishments. If consumers use such information and are better able to identify and return recalled meat and poultry products to the stores where they purchased them, the recall process will be more timely and effective. Although the benefits of the proposed action are not quantified, it is reasonable to conclude that they are equal to or exceed the costs of the rule, because costs are expected to be minimal.

#### **Initial Regulatory Flexibility Analysis**

The Agency has concluded that the rule will not have a significant economic impact on a substantial

number of small entities. Consequently, an initial regulatory flexibility analysis is not required.

#### Government Paperwork Elimination Act (GPEA)

FSIS is committed to achieving the goals of the GPEA, which requires that Government agencies, in general, provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. Under this proposed rule, basic information provided to FSIS by official meat and poultry products establishments voluntarily recalling adulterated meat and poultry products may be submitted to the Agency electronically via e-mail or facsimile. Allowing recalling establishments to do this would reduce data collection time, and information processing and handling by the establishments and FSIS.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this proposed rule, FSIS will announce it on-line through the FSIS Web page located at [http://www.fsis.usda.gov/regulations\\_&\\_policies/2006\\_Proposed\\_Rules\\_Index/index.asp](http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp).

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at <http://www.regulations.gov>.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals,

and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at [http://www.fsis.usda.gov/news\\_and\\_events/email\\_subscription/](http://www.fsis.usda.gov/news_and_events/email_subscription/) and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

#### List of Subjects in 9 CFR Part 390

Confidential business information, Freedom of information, Government employees.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR Chapter III, Subchapter D, as follows:

#### PART 390—FREEDOM OF INFORMATION AND PUBLIC INFORMATION

1. The authority citation for part 390 would be revised to read as follows:

**Authority:** 5 U.S.C. 301, 552; 21 U.S.C. 451–471, 601–695; 7 CFR 1.3, 2.7.

2. A new § 390.10 would added to read as follows:

#### § 390.10 Availability of Lists of Retail Consignees during Meat or Poultry Product Recalls.

(a) The Administrator of the Food Safety and Inspection Service (FSIS), or designee, will publicly disclose the lists of the retail consignees of recalled meat or poultry products that the Agency has compiled to verify the removal of recalled product. These lists will be available on the FSIS Web site.

(b) The lists that will be disclosed will contain only the names of the identified retail consignees of recalled meat and poultry products and their locations.

Done in Washington, DC, March 1, 2006.

**Barbara J. Masters,**

*Administrator.*

[FR Doc. 06–2125 Filed 3–6–06; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2005–21779; Directorate Identifier 2002–NM–349–AD]

RIN 2120–AA64

#### Airworthiness Directives; McDonnell Douglas Model DC–9–10 Series Airplanes; DC–9–20 Series Airplanes; DC–9–30 Series Airplanes; DC–9–40 Series Airplanes; and DC–9–50 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to certain McDonnell Douglas transport category airplanes. The original NPRM would have superseded an existing AD that currently requires, among other things, revision of an existing program of structural inspections. The original NPRM proposed to require implementation of a program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. The original NPRM resulted from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. This new action revises the original NPRM by removing certain service information as acceptable methods of compliance. We are proposing this supplemental NPRM to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

**DATES:** We must receive comments on this supplemental NPRM by April 3, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.