

Proposed Rules

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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 309

[Docket No. FSIS-2010-0041]

Non-Ambulatory Disabled Veal Calves and Other Non-Ambulatory Disabled Livestock at Slaughter; Petitions for Rulemaking

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Petitions for rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is requesting comments on two petitions for rulemaking submitted to the Agency that raise issues associated with the disposition of non-ambulatory disabled veal calves and other non-ambulatory disabled livestock at slaughter. The first petition, submitted by the Humane Society of the United States (HSUS), requests that FSIS repeal a provision in its ante-mortem inspection regulations that permits veal calves that are unable to rise from a recumbent position and walk because they are tired or cold to be set apart and held for treatment. Such calves are permitted to proceed to slaughter if they are able to rise and walk after being warmed or rested. The HSUS has petitioned FSIS to amend the regulations to require that non-ambulatory disabled veal calves be condemned and promptly and humanely euthanized. The second petition, submitted by Farm Sanctuary, requests that the Agency amend the Federal meat inspection regulations to prohibit the slaughter of non-ambulatory disabled pigs, sheep, goats, and other amenable livestock. In addition to requesting comments on the petitions, the Agency is clarifying its requirements for condemned non-ambulatory disabled cattle at official slaughter establishments.

DATES: Comments must be received by April 8, 2011.

ADDRESSES: FSIS invites interested persons to submit relevant comments on the implementation of this proposed rule. Comments may be submitted by either 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. Go to <http://www.regulations.gov>. Follow the online instructions at that site for submitting comments.

- *Mail, including floppy disks or CD-ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2-2127, George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705-5272.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2010-0041. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Assistant Administrator, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-3700, (202) 720-2709.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Requirements for Non-Ambulatory Disabled Cattle

Non-ambulatory disabled livestock are 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 condition (9 CFR 309.2(b)). FSIS's ante-mortem inspection regulations require that establishment personnel notify FSIS inspection program personnel when cattle become non-ambulatory disabled after passing ante-mortem inspection (9 CFR 309.3(e)). The regulations require that all non-

ambulatory disabled cattle that are offered for slaughter, including those that become non-ambulatory disabled after passing ante-mortem inspection, be condemned and disposed of as provided in 9 CFR 309.13. The FSIS slaughter classes of cattle covered in this Notice include steers and heifers, bulls and cows (dairy and beef), and calves and heavy calves (that weigh more than 400 pounds). 9 CFR 309.13 prescribes requirements for the disposition of condemned livestock at official establishments.

Except as otherwise provided for in the regulations, condemned livestock, including non-ambulatory disabled cattle, must be humanely euthanized by the establishment and the carcasses disposed of as provided in 9 CFR part 314, the regulations that prescribe requirements for the handling and disposition of condemned or other inedible products at official establishments (9 CFR 309.13(a)). Some livestock condemned at ante-mortem inspection due to certain reversible conditions, including veal calves that are non-ambulatory disabled because they are tired or cold, are permitted to be set apart and held for treatment under FSIS supervision (9 CFR 309.13(b)). The FSIS slaughter classes of veal calves are bob veal, formula-fed veal, and non-formula-fed veal. Livestock that are set apart for treatment are permitted to proceed to slaughter if, after receiving treatment, the animal is found to be free from disease. Thus, non-ambulatory disabled veal calves that are able to rise from a recumbent position and walk after they have been set aside and warmed or rested, and that are found to be otherwise free from disease, may be slaughtered for human food.

When FSIS first issued regulations to prohibit the slaughter of non-ambulatory disabled cattle, it allowed inspection program personnel to determine, on a case-by-case basis, the disposition of cattle that became non-ambulatory disabled after passing ante-mortem inspection. Under this practice, if an FSIS Public Health Veterinarian (PHV) could verify that an animal became non-ambulatory after ante-mortem inspection solely because it suffered an acute injury, such as a broken appendage or a severed tendon or ligament, it could be tagged as "U.S. Suspect" and was eligible to proceed to

slaughter. Otherwise, the animal was condemned.

In 2007, FSIS codified this practice as part of a final rule to affirm, with changes, interim measures that it had implemented in 2004 to prevent potential human exposure to the Bovine Spongiform Encephalopathy (BSE) agent (“Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle; Prohibition of the Use of Certain Stunning Devices Used To Immobilize Cattle During Slaughter” (72 FR 38700)). The Agency had prohibited the slaughter of non-ambulatory disabled cattle for human food because cattle that cannot rise from a recumbent position are among the cattle that have a greater prevalence of BSE than healthy slaughter cattle and the typical clinical signs of BSE may not always be observed when cattle are non-ambulatory.

In 2008, an investigation into alleged inhumane handling of non-ambulatory disabled cattle at an official slaughter establishment indicated that the case-by-case disposition determination for cattle that became non-ambulatory disabled after passing ante-mortem inspection may not always ensure the proper disposition of these animals and may have created an incentive for establishments to inhumanely force non-ambulatory disabled cattle to rise. Therefore, in March 2009, FSIS issued a final rule that amended 9 CFR 309.3(e) to remove the provision that allowed FSIS PHVs to determine the disposition of cattle that became non-ambulatory disabled after they had passed ante-mortem inspection. In that rulemaking, FSIS made clear that “* * * humane handling requires that such cattle be promptly euthanized” (“Requirements for the Disposition of Cattle that Become Non-Ambulatory Disabled Following Ante-Mortem Inspection” (74 FR 11464)). In that rulemaking the Agency also noted that the amendment prohibiting the slaughter of non-ambulatory disabled cattle did not affect the provision that permits veal calves that are tired or cold to be set aside and treated (74 FR 11465).

Regulatory Requirements for Non-Ambulatory Disabled Livestock Other Than Cattle

FSIS’s ante-mortem inspection regulations do not require that non-ambulatory disabled livestock other than cattle be condemned. Instead, animals that are suspected of being affected with a disease or condition that may require condemnation of the animal, in whole or in part, identified

as “U.S. Suspect” (9 CFR 309.2(b)). Such animals are examined at ante-mortem inspection by an FSIS veterinarian, and a record of the veterinarian’s clinical findings accompanies the carcass to post-mortem inspection if the animal is not condemned on ante-mortem inspection. Post-mortem inspections of the carcasses of “U.S. Suspects” livestock are performed by FSIS veterinarians rather than by food inspectors, and the results of this inspection are recorded. “U.S. Suspect” animals, unless otherwise released pursuant to 9 CFR 309.2(p), must be set apart and slaughtered separately (9 CFR 309.2(n)). If, on post-mortem inspection, the meat and meat food products from such animals are found to be not adulterated, such products may be used for human food (9 CFR 311.1).

During the 2007 rulemaking to require the condemnation of non-ambulatory disabled cattle and the 2009 rulemaking to remove the case-by-case disposition determination of cattle that became non-ambulatory after passing ante-mortem inspection, the Agency received numerous comments from animal welfare organizations and the citizens concerned about the private welfare of animals.¹ The majority of these commenters encouraged FSIS to extend the ban on slaughter of non-ambulatory disabled cattle to other livestock species to ensure that these animals are handled in a humane manner (72 FR 38722 and 74 FR 11464).

In response to the comments, FSIS noted that the purpose of the 2007 rulemaking was to affirm measures that the Agency had implemented to prevent potential human exposure to the BSE agent. In response to comments submitted on the 2009 rulemaking, the Agency noted that the 2009 rulemaking only addressed ante-mortem inspection and humane handling issues related to non-ambulatory disabled cattle. Thus, issues associated with humane handling of non-ambulatory disabled livestock other than cattle were outside the scope of these rulemakings. However, in both rulemakings, FSIS stated that it planned to evaluate measures that may be necessary to ensure the humane handling of other non-ambulatory disabled livestock species (72 FR 38722 and 74 FR 11464).

HSUS Petition

In November 2009, the HSUS submitted a petition requesting that FSIS amend the ante-mortem inspection regulations to remove the provision that

allows veal calves that are non-ambulatory disabled because they are tired or cold to be set aside to be warmed or rested (hereinafter referred to as “the veal calf set-aside provision”) (9 CFR 309.13(b)). The petition requests that FSIS amend the regulations to remove the veal calf set-aside provision and require that all non-ambulatory disabled veal calves be immediately and humanely euthanized. The petition is available for viewing by the public in the FSIS docket room and on the FSIS Web site at http://www.fsis.usda.gov/regulations_policies/Petitions/index.asp.

To support the requested action, the petition references video footage from an HSUS undercover investigation at an official veal slaughter establishment in August 2009. The video footage documents incidents in which a veal slaughter establishment owner and his employees repeatedly use electric prods and physical force to attempt to get non-ambulatory disabled bob veal calves to rise.

The petition asserts that the veal calf set-aside provision is inconsistent with the language and intent of the Humane Methods of Slaughter Act because it fails to ensure that the “* * * handling of livestock in connection with slaughter * * * be carried out only by humane methods” (7 U.S.C. 1902). The petition states that allowing non-ambulatory disabled veal calves to be set-aside for treatment is inherently inhumane because it encourages conduct such as dragging, kicking, excessive shocking, and other means of forced movement that are clearly prohibited by the HSMA and FSIS’s implementing regulations in 9 CFR part 313.

According to the petition, failing to require immediate euthanasia creates a financial incentive for establishments to engage in abusive conduct because a non-ambulatory disabled calf is worthless unless it is slaughtered. The petition states that the veal calf set-aside provision is also a means by which non-ambulatory veal calves may be left to linger indefinitely and then eventually forced to rise so that they can proceed to slaughter.

In addition to being inconsistent with the HSMA, the petition argues that allowing non-ambulatory disabled veal calves to be set aside and treated is inconsistent with FSIS’s own rules, policies, and conclusions with respect to other classes of non-ambulatory disabled cattle. The petition notes that FSIS amended 9 CFR 309.3(e) to remove the case-by-case disposition determination of cattle that became non-ambulatory disabled after ante-mortem

¹ The Agency received 23,000 comments to the 2007 rulemaking and 58,000 comments to the 2009 rulemaking.

inspection “* * * to ensure that animals that may be unfit for human food do not proceed to slaughter and to improve the effectiveness and efficiency of the inspection system” (74 FR 11463). The petition states that the same reasoning applies to non-ambulatory disabled veal calves. The petition asserts that removing the veal calf set-aside provision from 9 CFR 309.13(b) would eliminate uncertainty in determining whether veal calves are non-ambulatory disabled because they are tired or cold or because they are injured or sick, thereby ensuring the appropriate disposition of these animals. The petition also maintains that removing the veal calf set-aside provision would improve inspection efficiency by eliminating the time that FSIS inspection program personnel spend assessing and supervising the treatment of non-ambulatory disabled veal calves.

The petition further argues that, just as removing the case-by-case disposition of non-ambulatory disabled cattle (other than veal) was needed to ensure that slaughter establishments handled these animals humanely, requiring the immediate euthanasia of non-ambulatory disabled veal calves will remove the incentive for slaughter establishments to inhumanely force these animals to rise so that they can proceed to slaughter. The petitioner also maintains that the practices used in the raising of veal calves, which, according to the petitioner, include inadequate transfer of antibodies from the mother's colostrum, iron deficient diets, intensive confinement, and lack of activity, result in calves that are acutely susceptible to conditions and injuries that increase the likelihood of them going down, either before or upon arrival at the slaughter facility. The petitioner asserts that removing the veal calf set-aside provision will eliminate incentive for veal calf producers to send extremely weak calves to slaughter, thereby improving the raising conditions for these animals.

Agency Review and Request for Comment on the HSUS Petition

FSIS has carefully reviewed and considered the issues raised in the HSUS petition. The Agency is responsible for enforcing the HMSA and believes strongly in the importance of ensuring that animals are humanely handled in connection with slaughter. The Agency is concerned that the veal calves set-aside provision may create an incentive for establishments to inhumanely force non-ambulatory disabled veal calves to rise and for veal

calf producers to send weakened calves to slaughter.

The Agency also believes that prohibiting the slaughter of all non-ambulatory disabled veal calves may remove potential uncertainty in determining the disposition of calves that have been set aside and would be consistent with the requirements for the other classes of non-ambulatory disabled cattle.

Therefore, the Agency has tentatively decided to grant the HSUS petition. Amending the Federal meat ante-mortem inspection regulations to prohibit the slaughter of non-ambulatory disabled veal calves would better ensure effective implementation of ante-mortem inspection pursuant to 21 U.S.C. 603(a) and of humane handling requirements established pursuant to 21 U.S.C. 603(b) of the Federal Meat Inspection Act (FMIA). FSIS has the authority under 21 U.S.C. 621 to adopt regulations for the efficient administration of the FMIA.

According to the 2009 data from FSIS's Animal Disposition Reporting System (ADRS), about 157 U.S. federally-inspected establishments slaughtered about 521,000 calves for veal and veal products. All of the 157 establishments were small entities, based on the criteria of the Small Business Administration (SBA).²

Although FSIS is inclined to grant HSUS's petition, before initiating rulemaking, the Agency has determined that it would be useful to solicit public input on the issues raised in the petition. Therefore, the Agency is issuing this notice to request comments on the HSUS petition and the potential impact of granting the petition.

Farm Sanctuary Petition

In March 2010, Farm Sanctuary submitted a petition requesting that FSIS amend the ante-mortem inspection regulations to require that non-ambulatory disabled pigs, sheep, goats, and other amenable livestock species be condemned. The petition states that such action is needed to ensure that all livestock are humanely handled in connection with slaughter as required under the HMSA. The petition is available for viewing by the public in the FSIS docket room and on the FSIS Website at http://www.fsis.usda.gov/PDF/Petition_Humane_Handling.pdf.

To support the requested action, the petition references a number of FSIS Non-Compliance Records (NRs) that Farm Sanctuary obtained through

Freedom of Information Act (FOIA) requests. The NRs cited in the petition primarily documented incidents involving the inhumane handling of pigs. The NRs documented establishment personnel kicking, prodding, dragging, and otherwise trying to force non-ambulatory disabled pigs to move to slaughter. The NRs also documented incidents in which establishment personnel allowed ambulatory pigs to trample over “downed” pigs in the alleyway. The petition also references an NR in which non-ambulatory disabled sheep were denied access to food and water.

The petition asserts that because FSIS continues to allow non-ambulatory disabled livestock other than cattle to be slaughtered for human food, establishments have a financial incentive to force these animals through the slaughtering process, which encourages inhumane treatment. The petition also asserts that prohibiting the slaughter of all non-ambulatory disabled livestock will encourage livestock producers and transporters to improve their handling practices. The petition further notes that such action is needed to prevent diseased animals from entering the human food supply.

Agency Review and Request for Comment on the Farm Sanctuary Petition

The Agency has reviewed the Farm Sanctuary petition requesting that it amend the ante-mortem inspection regulations to prohibit the slaughter of all non-ambulatory disabled livestock and to require such animals be humanely euthanized. However, the Agency has not yet determined how it intends to respond to the requested action. Therefore, to help inform its response, FSIS is soliciting comments on the issues raised in the petition.

As noted earlier in this document, as part of its 2007 rulemaking to affirm measures that the Agency had implemented to prevent potential human exposure to the BSE agent, and as part of its 2009 rulemaking to require the condemnation of all non-ambulatory disabled cattle, FSIS received numerous comments requesting that it prohibit the slaughter of all non-ambulatory disabled livestock, including livestock other than cattle. However, the Agency did not fully evaluate the issues raised in those comments because issues related to the humane handling of livestock other than cattle were outside the scope of the 2007 and 2009 proceedings.

In response to the Farm Sanctuary petition, FSIS is now considering measures that may be necessary to ensure that non-ambulatory disabled

²The Small Business Administration defines small businesses as those with less than 500 Full Time Equivalent (FTE) employees.

livestock other than cattle are humanely handled in connection with slaughter. Therefore, the Agency is soliciting comments on Farm Sanctuary's petition and the petition's request that all non-ambulatory disabled livestock at official establishments be condemned and promptly euthanized. After carefully considering the comments, FSIS intends to issue another **Federal Register** notice or proposed rulemaking related to addressing issues associated with the humane handling of livestock other than cattle at official establishments.

Clarification of the Requirements for Disposition of Cattle That Become Non-Ambulatory Disabled

As mentioned above, the 2009 final rule amended FSIS' ante-mortem inspection regulations to prohibit the slaughter of all non-ambulatory disabled cattle, including those that become non-ambulatory disabled after passing ante-mortem inspection. The amendment, 9 CFR 309.3(e), states that, "Establishment personnel must notify FSIS inspection personnel when cattle become non-ambulatory disabled after passing ante-mortem inspection. Non-ambulatory disabled cattle that are offered for slaughter must be condemned and disposed of in accordance with § 309.13."

As stated in the preamble to that final rule, FSIS amended its regulations to require that *all* (emphasis added) cattle that are non-ambulatory disabled at an official establishment, including those that become non-ambulatory disabled after passing ante-mortem inspection, be condemned and disposed of properly. The Agency also stated that it was not necessary to amend the regulations to require that non-ambulatory disabled cattle be humanely euthanized "* * * because humane handling requires that such cattle be promptly euthanized" (74 FR 11464). FSIS stated that the amendments would ensure more effective and efficient inspection procedures and improved compliance with the humane handling requirements (74 FR 11463).

When reviewing the petitions submitted by HSUS and Farm Sanctuary, FSIS found that certain statements in the Agency's directive on ante-mortem inspection (Directive 6100.1, Revision 1, Ante-Mortem Livestock Inspection (issued 4/16/09)) and in other Agency guidance may be inconsistent with the 2009 final rule. Therefore, the Agency recently issued an FSIS notice to make clear to its inspection program personnel that all ante-mortem condemned non-ambulatory disabled cattle, and cattle that become non-ambulatory disabled

after passing ante-mortem inspection, must be promptly and humanely euthanized to ensure that they are humanely handled.

As noted above, non-ambulatory disabled cattle are cattle that cannot rise from a recumbent position or walk, regardless of the reason for their non-ambulatory status. This includes cattle that are unable to rise due to a reversible condition, such as parturient paresis, ketosis, pneumonia, arthritis, injury and the other conditions identified in 9 CFR 309.13(b). Thus, non-ambulatory disabled cattle, other than those in the veal calf slaughter classes, cannot be set apart for any reason and held for treatment under supervision of FSIS inspection program personnel.

The Agency will revise Directive 6100.1, Revision 1, and other guidance to ensure that they more clearly reflect the regulatory requirement that all non-ambulatory disabled cattle are condemned and must be promptly and humanely euthanized.

USDA Nondiscrimination Statement

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call 202-720-5964 (voice and TTY).

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 notice, FSIS will announce it on-line through the FSIS Web page located at http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.

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, 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 e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/News_&_Events/Email_Subscription/. 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 accounts.

Done at Washington, DC, on February 1, 2011.

Alfred Almanza,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2010-0673; Directorate Identifier 2009-NM-208-AD]

RIN 2120-AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

In June 2000, prompted by a crack found at the top of the Nose Landing Gear (NLG) oleo, BAE Systems (Operations) Ltd (BAE