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–2008–0022]

RIN 0583–AD35

Requirements for the Disposition of Cattle That Become Non-Ambulatory Disabled Following Ante-Mortem Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: On May 20, 2008, the Secretary of Agriculture announced that the Food Safety and Inspection Service (FSIS) would begin working on a proposed rule to prohibit the slaughter of all non-ambulatory disabled cattle, without exception. As announced by the Secretary, FSIS is proposing to amend the Federal meat inspection regulations to remove the provision that states that FSIS inspection personnel will determine the disposition of cattle that become non-ambulatory disabled after they have passed ante-mortem inspection on a case-by-case basis. This proposed rule will require that all cattle that are non-ambulatory disabled at the time they are presented for ante-mortem inspection at an official establishment, and all those that become non-ambulatory disabled after passing ante-mortem inspection, be condemned and properly disposed of.

DATES: Submit comments on or before September 29, 2008.

ADDRESSES: FSIS invites interested persons to submit comments on 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. 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” and “Proposed Rules” from the agency drop-down menu and then click on “Submit.” In the Docket ID column, select the FDMS Docket Number 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, Room 2534 South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250. All submissions received by mail or electronic mail must include the Agency name and docket number FSIS–2008–0022. Documents referred to in this proposal, and all comments submitted in response to this notice 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. Comments will also be posted on the Agency’s Web site at: http://www.fsis.usda.gov/.

Individuals who do not wish FSIS to post their personal contact information—mailing address, e-mail, telephone number—on the Internet may leave this information off their comments.


SUPPLEMENTARY INFORMATION:

Background

On July 13, 2007, FSIS published the final rule, “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 Stunnnning Devices Used To Immobilize Cattle During Slaughter” (72 FR 38700). Hereafter in this preamble, that rule will be referred to as the Specified Risk Material (SRM) final rule. The SRM final rule affirmed, with certain amendments, interim regulations implemented by FSIS in 2004 to prevent potential human exposure to the bovine spongiform encephalopathy (BSE) agent (see “Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle” (69 FR 1862, January 12, 2004)). One of the interim measures that the SRM final rule affirmed was the prohibition of the slaughter of non-ambulatory disabled cattle offered for slaughter for human food (9 CFR 309.5(e)).

Consistent with the interim final rule, the SRM final rule requires that non-ambulatory disabled cattle be condemned on ante-mortem inspection because these animals present a sufficient risk of introducing the BSE agent into the human food supply to render their carcasses “ unfit for human food” under section 1(m)(3) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(m)(3)) (72 FR 38700). In the preamble to the SRM final rule, FSIS also acknowledged that requiring the condemnation of non-ambulatory disabled cattle that are offered for slaughter may be necessary to ensure that these animals are humanely handled in connection with slaughter as required under the Humane Methods of Slaughtering Act (HMSA) of 1978 (7 U.S.C. 1901 et seq.) (72 FR 38721).

In addition to affirming the requirement that non-ambulatory disabled cattle be condemned on ante-mortem inspection, the SRM final rule amended 9 CFR 309.3(e) to provide that FSIS personnel would determine, on a case-by-case basis, the disposition of cattle that become non-ambulatory disabled after they have passed ante-mortem inspection. The Agency made this revision to codify existing practices formerly described in FSIS Notice 5–04 (“Interim Guidance for Non-Ambulatory Disabled Cattle and Age Determination”) and FSIS Notice 05–06 (“Re-examination of Bovine that become Non-Ambulatory After Passing Ante-mortem Inspection”). These notices instructed FSIS public health veterinarians (PHVs) on the actions they were to take when cattle became non-ambulatory disabled after passing ante-mortem inspection.

Under the current regulations, slaughter establishments are expected to notify inspection personnel when cattle that have passed ante-mortem...
inspection subsequently become non-ambulatory disabled before slaughter. If an FSIS PHV can verify that the animal became non-ambulatory disabled because it suffered an acute injury, such as a broken appendage or a severed tendon or ligament, it is tagged as “U.S. Suspect” (and is not tagged as “U.S. Condemned”) and is eligible to proceed to slaughter (9 CFR 309.2). To ensure that non-ambulatory disabled cattle are humanely handled, the regulations require that establishment personnel move the animals to slaughter on equipment suitable for such purposes, or that establishment personnel stun the animals (9 CFR 313.2(d)). FSIS inspection personnel track “U.S. Suspect” cattle through the slaughter process for post-mortem (after slaughter) evaluation and reinspection (see FSIS Directive 6100.1, Ante-Mortem Livestock Inspection). If the PHV cannot determine whether the animal became non-ambulatory disabled from a specific injury, the animal is tagged as “U.S. Condemned” and is disposed of as provided in 9 CFR 309.13.

All provisions in the SRM final rule, including the prohibition on the slaughter of non-ambulatory disabled cattle, apply to official establishments and custom slaughter operations. As discussed in the preamble to the SRM final rule, although custom slaughter operations are exempt from inspection under section 23(a) of the Federal Meat Inspection Act, the meat and meat food products prepared in custom operations are still subject to the FMIA’s adulteration and misbranding provisions (21 U.S.C. 623). Thus, custom operators are prohibited from slaughtering and preparing products from non-ambulatory disabled cattle because the carcasses of these animals are considered unfit for human food (72 FR 38704). In the preamble to the SRM final rule, FSIS noted that FSIS inspectors are not available to determine the disposition of cattle that become non-ambulatory disabled in a custom operation. Therefore, as explained in the SRM final rule preamble, if an animal becomes non-ambulatory disabled from an acute injury after its owner has delivered it to a custom operation for slaughter, the custom operator may slaughter the animal for human food if both the operator and the owner of the animal did not observe any other clinical abnormalities that could be consistent with BSE before the animal sustained the acute injury (72 FR 38704).

**Recent Events—Non-Ambulatory Disabled Cattle**

The SRM final rule allowed a case-by-case reinspection of cattle to address the rare situations where an animal that is deemed by FSIS as fit for human food at ante-mortem inspection subsequently suffers an acute injury. However, a recent significant event highlighted a vulnerability in the inspection system that needs to be addressed. This event indicated that the case-by-case disposition provision in 9 CFR 309.3(e) does not always ensure the proper disposition of cattle that become non-ambulatory disabled after ante-mortem inspection. Establishments may present weakened cattle for slaughter in the hope that such cattle will remain ambulatory long enough to enter the slaughter operation.

Although establishments must notify FSIS inspection program personnel when cattle become acutely injured after ante-mortem inspection so that FSIS inspection personnel can determine the disposition of the cattle, FSIS became aware of an incident in which inspection personnel were not notified. On January 30, 2008, FSIS received allegations regarding the inhumane handling of non-ambulatory disabled cattle at the Hallmark/Westland Meat Packing Company. An investigation into the allegations found evidence that the establishment did not consistently notify FSIS inspection personnel when cattle became non-ambulatory disabled after initial ante-mortem inspection. Instead of notifying FSIS inspectors, the establishment attempted to force animals that had gone down after passing ante-mortem inspection to rise by using electric prods and water sprays. Under the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901 et seq.), the use of electric prods and water sprays is prohibited, and FSIS inspectors must handle animals in accordance with the humane methods of slaughter as specified in the HMSA. According to the petition, consumer confidence in the U.S. beef supply has been damaged because the re-inspection of cattle did not occur as required under the current regulations. The petition asserts that the requested amendment is needed to bolster public confidence in the U.S. beef supply. FSIS has also received letters supporting this change to the regulations from an animal welfare organization and members of Congress.

However, FSIS also received five letters, from State meat processors associations and a national meat processors association, opposing the petition. These letters request that the current regulations remain unchanged. The letters state that it is important to have the option for re-inspection of cattle that become non-ambulatory disabled after they have passed ante-mortem inspection to address situations where accidents may occur or animals may become exhausted during the stress of travel.

**Proposed Amendment to 9 CFR 309.3(e)**

FSIS is proposing to remove the provision in 9 CFR 309.3(e) that allows FSIS inspection personnel to determine the disposition of cattle that become non-ambulatory disabled after they have passed ante-mortem inspection on a case-by-case basis. If FSIS finalizes this proposed rule, cattle that become non-ambulatory disabled from an acute injury after ante-mortem inspection will no longer be eligible to proceed to slaughter as “U.S. Suspects.” Instead, FSIS inspectors will tag these cattle as “U.S. condemned” and prohibit these animals from proceeding to slaughter.

If this proposal is adopted as a final rule, all non-ambulatory disabled cattle would be considered unfit for human food and thus adulterated. Moreover, cattle that become non-ambulatory disabled cattle after ante-mortem inspection will always be condemned. The case-by-case disposition determinations of non-ambulatory disabled cattle by inspection program personnel will be discontinued, increasing the time inspection program personnel can focus on other inspection activities. Because all non-ambulatory disabled cattle would be considered adulterated, FSIS would expect custom
operators not to slaughter cattle that become non-ambulatory disabled after they are delivered to the custom
operation.

In addition to proposing that all non-ambulatory disabled cattle be condemned, FSIS is also proposing to
require in 9 CFR 309.3(e) that establishments notify FSIS inspection personnel when cattle become non-
ambulatory disabled after passing ante-mortem inspection. The Agency is doing so to make clear that establishments
have an affirmative obligation to make FSIS personnel aware when an animal goes down. This regulatory requirement
should preclude establishments from attempting to force such animals to rise.

FSIS is proposing this rule under 21 U.S.C. 621, which gives FSIS the authority to adopt regulations for the
efficient administration of the FMIA. The amendment in this proposal 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).

Executive Order 12988

This proposed rule has been reviewed under the Executive Order 12988, Civil Justice Reform. Under this proposed
rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no
retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file
suit in court challenging this rule.

Executive Order 12866 and the Regulatory Flexibility Act

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

This proposed rule will require that all cattle that are non-ambulatory disabled at any time prior to slaughter,
including those that become non-ambulatory disabled after passing ante-mortem inspection, be condemned and properly disposed of. This rule is necessary to 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).

Cost of the Proposed Action

Under this proposed rule, the beef industry will lose the market value of the non-ambulatory disabled cattle that the establishments could have slaughtered and harvested for human food after the cattle passed the re-inspection. Based on the Agency’s 2007

survey data, out of the approximately 33.7 million cattle slaughtered in 2007, FSIS estimates that about 1,300 cattle—
about 600 cull cattle (i.e., mostly cows and bulls) and 700 steers and heifers—were in this category.

The August 2008 data from the Agricultural Marketing Service (AMS) indicate that the market value for a cull cattle carcass and parts is between $500 and $1,000, and the market value for a steer or heifer carcass and parts is between $900 and $1,100. Therefore, the estimated total market value of the carcasses and parts from cattle that would be condemned under this proposed rule would be in the range of $930,000 to $1,370,000 per year

This estimate is conservative in that it does not take into account the salvage value less the cost for handling and disposal of the condemned carcasses.

Although the above discussion focuses on costs to the beef industry, the industry eventually will pass at least some part of the additional cost to consumers through higher prices or reduced production. This is an indirect cost to the consumers and is difficult to estimate ex-ante without data.

This rule is expected to have an insignificant impact on U.S. trading partners, because the number of animals affected is extremely small, particularly given the existing ban on non-ambulatory disabled cattle and the overall quantity of animals involved in the U.S. beef trade.

Benefits of the Proposed Rule

If adopted as a final rule, the proposed amendment would ensure effective implementation of ante-mortem inspection. This action will provide additional efficiencies to food safety inspection by removing the step that requires the inspection workforce to determine whether cattle can be tagged as “U.S. Suspect” if those cattle become non-ambulatory disabled after passing ante-mortem inspection. Countries exporting beef to the U.S. would realize the same efficiencies in their inspection programs dedicated to the inspection of beef destined for the U.S. The Agency believes that the total benefits (quantifiable and unquantifiable) of this proposed rule exceed the cost.

Regulatory Flexibility Analysis

The FSIS Administrator has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). In the Final Regulatory Impact Analysis of SRM final rule 4, the Agency estimated that the rule would possibly affect 3,340 small and very small beef slaughter establishments. This includes 680 federal inspected establishments, 1,346 state inspection establishments, and 1,314 custom exempt facilities. This proposed rule could potentially affect all these establishments because they may have cattle that become non-ambulatory disabled after ante-mortem inspection.

The estimated total annual cost of this proposed rule of $930,000 to $1,370,000 is for the entire beef industry. The Agency estimates that small and very small establishments slaughter about 95% to 98% of the 1,300 downers estimated from the survey. Therefore, the estimated annual cost to the small and very small establishments would be about $883,500 to $1,342,600, which is insignificant compared to the value of their annual production of about $8.4 billion.

Paperwork Reduction Act

This proposed rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or record-
keeping requirements.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of
DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Part 39


Model Propellers

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for all Dowty Rotol propellers. That AD currently requires, for all Dowty Rotol propellers, visual inspections for seizure and for cadmium plating of the blade pitch change operating links and eyebolt fork assemblies. That AD also requires replacement or heat-treatment of the blade pitch change operating links and eyebolt fork assemblies, if necessary. This proposed AD would require the same actions, but only for certain model Dowty Propellers. This proposed AD results from the FAA determining that AD 70–16–02 does not apply to all propellers, since current Dowty Rotol propellers are differently designed. We are proposing this AD supersede to specify the affected propeller models, and to prevent seizure or embrittlement and cracking of the blade pitch change operating links and eyebolt fork assemblies, which could result in reduced controllability of the airplane.

DATES: We must receive any comments on this proposed AD by October 28, 2008.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

• Federal eRulemaking Portal: Go to http://www.regulations.gov and follow the instructions for sending your comments electronically.
• Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; telephone: 44 (0) 1452 716000; fax: 44 (0) 1452 716001, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Cheltenham Road East, Burlington, MA 01803; e-mail: terry.fahr@faa.gov; telephone (781) 238–7155; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under ADDRESSES. You may review the DOT’s complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

You may examine the AD docket on the Internet at http://www.regulations.gov; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments...