

# Proposed Rules

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 310

[Docket No. FSIS-2007-0039]

RIN 0583-AD33

#### Permission To Use Air Inflation of Meat Carcasses and Parts

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

**ACTION:** Proposed Rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to revise the Federal meat inspection regulations to permit establishments that slaughter livestock or prepare livestock carcasses and parts to inflate carcasses and parts with air if they develop, implement, and maintain written controls to ensure that the procedure does not cause insanitary conditions or adulterate product. FSIS is proposing to require that establishments incorporate these controls into their Hazard Analysis and Critical Control Point (HACCP) plans or Sanitation standard operating procedures (Sanitation SOPs) or other prerequisite programs.

In addition, FSIS is proposing to amend its regulations to remove the approved methods for inflating livestock carcasses and parts by air and to remove the requirement that establishments submit requests to FSIS for approval of air inflation procedures not listed in the regulations.

**DATES:** Comments must be received on or before June 23, 2010.

**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. 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, USDA, FSIS, Room 2-2175 George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5272, Beltsville, MD 20705.

**Instructions:** All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2007-0039. 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 8:30 a.m. and 4:30 p.m., Monday through Friday.

#### FOR FURTHER INFORMATION CONTACT:

Rachel Edelstein, Director, Policy Issuances Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 720-5627.

**SUPPLEMENTARY INFORMATION:** FSIS has been delegated the authority to exercise the functions of the Secretary of Agriculture as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*). Under this statute, FSIS protects the public by verifying that meat products are safe, wholesome, not adulterated, and properly labeled and packaged.

On October 3, 1970, the Federal Meat Inspection regulations were revised to prohibit inflation with air of carcasses or parts of carcasses (35 FR 15568). On September 5, 1989, FSIS modified the prohibition in 9 CFR 310.13(a) by providing for the use of several air inflation procedures that had been field tested, and that the Agency found were acceptable. These methods involve inflating carcasses and parts of carcasses with compressed air during dressing operations to facilitate head skinning and the removal of hides and foot hair (54 FR 36755).

Establishments interested in the use of air inflation procedures for other than the approved methods are required to submit to FSIS a request for experimental testing of any unapproved procedure (9 CFR 310.13(a)(2)). The regulations require that these requests state the purpose of the use of air,

## Federal Register

Vol. 75, No. 99

Monday, May 24, 2010

provide a detailed description of the procedure, and include evidence that the procedure can be performed in a sanitary manner. The regulations also provide that if FSIS finds a new method to be acceptable, it will modify its regulations to include the new method.

In the 1989 final rule, FSIS stated that its original intent in disallowing the use of air inflation was to prevent insanitary conditions from arising and to prevent the adulteration of carcasses or parts of carcasses (54 FR 36755). However, the Agency recognized in that final rule that air inflation procedures could be used in a sanitary manner without adulterating product and consequently approved limited use of air inflation procedures. On July 20, 1990, FSIS amended 9 CFR 310.13(a)(2)(iv) to allow for the use of compressed air injected into the abdominal cavity of swine to facilitate the skinning operation and to minimize the loss of body fat (55 FR 29564).<sup>1</sup>

Under 9 CFR 303.1(h), the Administrator may waive specific regulations for limited periods to permit experimentation so that new procedures, equipment, or processing techniques may be tested to facilitate definite improvements. Under a waiver that FSIS has granted, Packerland Co.<sup>2</sup> is using air inflation methodology to separate the brisket and round portions from beef carcasses for more efficient fabrication. FSIS requested that Packerland collect aerobic bacteria plate counts (APC) and submit the data to FSIS as a means of determining whether the use of air inflation would cause insanitary conditions or adulterate product. APC data are meaningful measures of bacteria levels on carcasses. Packerland Co. has petitioned FSIS to amend its regulations to allow for this air inflation methodology and presented APC data in the petition. The data submitted in the petition show that there is no significant difference between treated (injected with air) and untreated carcasses with regards to APC. Hence, the data show that the use of Packerland's air inflation procedure does not cause insanitary conditions or adulterate product.

<sup>1</sup> On January 12, 2004, FSIS amended 9 CFR 310.13(a)(2)(iv)(D) to prohibit the use of compressed air injection into the skull of cattle in conjunction with a captive bolt stunner (69 FR 1891).

<sup>2</sup> Packerland Co. is also known as JBS Packerland.

Based on the Agency's accumulated experience with air inflation procedures and in response to Packerland's petition, FSIS is proposing to amend 9 CFR 310.13(a) to permit establishments that slaughter livestock or prepare livestock carcasses and parts to inflate carcasses or parts of carcasses with air if they develop, implement, and maintain controls to ensure that those procedures do not cause insanitary conditions or adulterate product. FSIS is proposing to require that establishments incorporate these controls into their HACCP plans or Sanitation SOPs or other prerequisite programs. In addition, FSIS is proposing to amend its regulations to remove the requirement that establishments submit requests to FSIS for approval of air inflation procedures not listed in the regulations.

FSIS is also proposing to remove the approved methods for inflating meat carcasses and parts from the regulations. Establishments that are using an approved air inflation procedure could continue to do so, but they would be required to incorporate their air inflation procedures into their HACCP plans or Sanitation SOPs or other prerequisite programs. This proposal is consistent with the HACCP regulations. As part of their HACCP plans and hazard analysis, establishments are required to prepare a flow chart describing the steps of each process and product flow in the establishment (9 CFR 417.2(a)(2)). If the establishment uses air inflation procedures, under this proposed rule, the flow chart would need to include those procedures. Under the HACCP regulations, establishments are also required to consider whether air inflation may make biological hazards, such as contamination with certain pathogens, reasonably likely to occur (9 CFR 417.2(a)(1)).

Also under the HACCP regulations, if the establishment determines that air inflation procedures do not introduce any hazards, it is to document the reasons for this determination in its decision-making documents that are associated with the hazard analysis (9 CFR 417.5). Under these regulations, if establishments that use air inflation maintain controls outside of their HACCP plans to ensure that air inflation procedures do not cause insanitary conditions or adulterate product, they would be required to incorporate such controls in their Sanitation SOPs or another prerequisite program.

If this proposed rule becomes final, FSIS will verify that establishments that choose to use air inflation procedures have implemented and maintain written controls that are adequate and effective

to ensure that the procedures do not cause insanitary conditions or adulterate product. FSIS will verify the effectiveness of these controls by reviewing establishment records and directly observing the air inflation procedures. FSIS will verify that establishments using air inflation have incorporated their procedures for inflating meat carcasses and parts with air into their HACCP plan or Sanitation SOP or other prerequisite program. In addition, FSIS will assess whether establishments verify on an ongoing basis that their controls are effectively preventing insanitary conditions and adulteration during air inflation.

This proposed rule would provide establishments with more production options and would encourage the development of new technology without diminishing food safety.

#### **Executive Order 12866 and the Regulatory Flexibility Act**

This action has been reviewed for compliance with Executive Order 12866. The Office of Management and Budget has designated this proposed rule "non-significant" and therefore has not reviewed it.

#### **Meat Industry Overview**

Excluding slaughtering only and raw-ground meat processing only, there are about 2,818 federally inspected establishments, which under this proposed rule could adopt air inflation technology to process raw-not-ground meat.<sup>3</sup> Furthermore, of the 2,818 federally inspected establishments, approximately 1,541 are considered very small (with less than 10 employees), 1,153 are considered small (with between 10 and 500 employees), and 124 are considered large (with more than 500 employees).<sup>4</sup>

#### **Estimated Benefits**

Allowing for greater ease in introducing new air inflation technology and procedures would likely spur technological innovation that will provide these new technologies and procedures to additional meat establishments. Greater technological innovation more widely used by industry would likely result in increased net higher-value meat yields, which would lead to consumer savings. Because the rule is voluntary, it is difficult for the Agency to quantify benefits of the rule to the industry of the rule and to consumers. FSIS requests information about the likely net benefits, and the likely adoption rates of

these types of air inflation procedures in meat operations.

#### **Estimated Costs**

Under this proposal, establishments would be required to incorporate their controls for air inflation procedures into their HACCP plan, Sanitation SOP or other prerequisite program. FSIS does not anticipate any new costs associated with this analysis because the HACCP regulations already require that establishments consider the steps of each process, including procedures such as air inflation, as part of their HACCP plan and hazard analysis. Since the use of air inflation procedures is voluntary, establishments would not incur any costs associated with the use of air inflation procedures unless they expected to realize net benefits from the use of the new technology. Therefore, this rule would result in negligible costs but would provide benefits.

#### **Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act (5 U.S.C. 601–612), the FSIS Administrator has examined the economic implications of the proposed rule and has determined that it would not have a significant impact on a substantial number of small entities. Under the proposed rule, no establishments are required to use air inflation procedures to inflate meat carcasses or parts, and establishments are only likely to do so if they would expect to realize profits by employing such methods.

#### **Executive Order 12988**

This proposed rule has been reviewed under 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.

#### **Paperwork Requirements**

FSIS has reviewed this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and has determined that the information collection related to HACCP plans, Sanitation SOPs, and prerequisite programs has been approved by OMB under OMB Control Number 0583–0103.

#### **E-Government Act**

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other

<sup>3</sup> Performance Based Inspection System. 2009.

<sup>4</sup> *Ibid.*

information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

#### 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/2010\\_Proposed\\_Rules\\_Index/index.asp](http://www.fsis.usda.gov/regulations/2010_Proposed_Rules_Index/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\\_and\\_events/email\\_subscription/](http://www.fsis.usda.gov/news_and_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.

#### List of Subjects in 9 CFR Part 310

Meat inspection.

Accordingly, the Food Safety and Inspection Service proposes to amend 9 CFR part 310 as follows:

#### PART 310—POST-MORTEM INSPECTION

1. The authority citation for part 310 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Amend § 310.13(a) to revise paragraph (a) to read as follows:

#### § 310.13 Inflating carcasses or parts thereof; transferring caul or other fat.

(a) Establishments that slaughter livestock and prepare livestock carcasses and parts may inflate carcasses or parts of carcasses with air if they develop, implement, and maintain controls to ensure that the air inflation procedure does not cause insanitary conditions or adulterate product. Establishments must incorporate these controls into their HACCP plans or Sanitation SOPs or other prerequisite programs.

\* \* \* \* \*

Done at Washington, DC, on May 14, 2010.

**Alfred V. Almanza,**  
Administrator.

[FR Doc. 2010-12337 Filed 5-21-10; 8:45 am]

**BILLING CODE 3410-DM-P**

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

###### 14 CFR Part 71

[Docket No. FAA-2010-0498; Airspace Docket No. 10-ASO-26]

#### Amendment of Class E Airspace; Pine Mountain, GA

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E Airspace at Pine Mountain, GA, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures (SIAPs) developed for Harris County Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before July 8, 2010.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001; Telephone: 1-800-647-5527; Fax: 202-493-2251. You must identify the Docket Number FAA-2010-0498; Airspace Docket No. 10-ASO-26, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box

20636, Atlanta, Georgia 30320; telephone (404) 305-5610.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2010-0498; Airspace Docket No. 10-ASO-26) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2010-0498; Airspace Docket No. 10-ASO-26." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/airports\\_airtraffic/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation