

**U.S. DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE**

Amending 9 C.F.R. Part 309.3)
To Prohibit Non-ambulatory Disabled Cattle)
From Being Offered For Slaughter)
_____)
Docket No. _____

Citizen Petition

The undersigned submit this Petition to request the Food Safety and Inspection Service (FSIS or the agency) to amend the ante-mortem inspection regulations to prohibit cattle that become non-ambulatory after passing ante-mortem inspection from being offered for slaughter. This petition is submitted pursuant to the Federal Meat Inspection Act (FMIA or the act), 21 U.S.C. § 601 *et seq*, the regulations appurtenant thereto, 9 C.F.R. § 301.1 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*

The specific regulatory provision at issue, 9 C.F.R. § 309.3(e), allows FSIS inspection personnel to determine on a case-by-case the disposition of cattle that have become non-ambulatory after passing ante-mortem inspection.

The American Meat Institute (AMI) represents the interests of packers and processors of beef, pork, lamb, veal and turkey products and their suppliers throughout North America. Together, AMI's members produce 95 percent of the beef, pork, lamb and veal products and 70 percent of the turkey products in the United States. Headquartered in Washington, DC, the Institute provides legislative, regulatory, public relations, technical, scientific and educational services to the meat and poultry packing and processing industry.

The National Meat Association (NMA) is a non-profit industry organization with its principal office in Oakland, California. NMA has served the interests of the meat packing industry since 1946. The over 500 members of NMA include meat packers which slaughter and process beef from animals raised in both the United States and Canada as well as other meat processors, equipment manufacturers and suppliers throughout the United States.

The National Milk Producers Federation (NMPF), based in Arlington, VA, develops and carries out policies that advance the well being of dairy producers and the cooperatives they own. The members of NMPF's 31 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 40,000 dairy producers on Capitol Hill and with government agencies.

ACTION REQUESTED

Petitioners hereby respectfully request that FSIS amend 9 C.F.R. Part 309 by amending subsection 309.3(e) to read as follows:

Section 309.3 Dead, dying, disabled, or diseased and similar livestock.

(e) Non-ambulatory disabled cattle that are offered for slaughter must be condemned and disposed of in accordance with § 309.13.

I. STATEMENT OF GROUNDS

The United States Department of Agriculture (USDA), through FSIS and its predecessor agencies, is charged with ensuring the wholesomeness of meat products through its administration of the FMIA. Attendant to that responsibility FSIS also has been involved in ensuring that the livestock from which those meat products are derived are handled and slaughtered in a humane manner.

Legal Basis for Amending 9 C.F.R. § 309.3(e).

The Secretary of Agriculture has the statutory authority to administer the FMIA and to promulgate regulations necessary to accomplish that purpose. Specifically, the FMIA provides that the “Secretary shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this subchapter, and all inspections and examinations made under this subchapter shall be such and made in such manner as described in the rules and regulations prescribed by said Secretary not inconsistent with provisions thereof.” See 21 U.S.C. § 621.

Factual Basis for Amending 9 C.F.R. § 309.3(e).

In July 2007 the agency published, as part of a final rule, requirements applicable to federally inspected establishments regarding the disposition of non-ambulatory cattle. See 72 *Fed. Reg.* 38700-38730 (July 13, 2007). In that rulemaking FSIS stated that it had carefully considered the issues attendant to the disposition of non-ambulatory cattle and decided to affirm the prohibition on the slaughter of non-ambulatory disabled cattle offered for slaughter for human food that had been included in a previously published interim final rule. In the preamble to final rule the agency referenced surveillance data from the European Union that indicated that cattle that cannot rise from a recumbent position are among the cattle with a greater prevalence of bovine spongiform encephalopathy (BSE) than healthy slaughter cattle.

FSIS also recognized that typical clinical signs of BSE may not always be observed when cattle are non-ambulatory and that “clinical signs of BSE are often subtle, and many typical signs, such as gait disturbances, can only be observed in an animal that is able to rise from a recumbent position and walk.” *Id.* at 38702-38703. In that same rulemaking FSIS stated that an acute injury, such as a broken leg or torn ligament, rendering the animal non-ambulatory may be the prominent or sole presenting sign in an animal with clinical BSE.

The regulatory provision this Petition seeks to have repealed leaves to the discretion of the FSIS public health veterinarian (PHV) whether an acute injury suffered by a bovine is just that, or whether the injury is a sign of other medical problems the animal may have. Given recent events in which consumer confidence in the safety of the beef supply has been damaged because the reinspection of cattle did not occur as required by the current regulation, a rule eliminating the need for such discretionary reinspection will better serve the industry and consumers and will eliminate possible errors in judgment on the part of a PHV.

In addition to food safety concerns and bolstering public confidence in the beef supply, application of "bright line" no reinspection rule, as requested in this Petition, will assist the United States in international trade relations and negotiations. The Hallmark/Westland incident has been cited by some United States trading partners as a reason for not renewing beef trade. A rule that ensures that non-ambulatory cattle are not allowed into the meat supply in any circumstance, even after passing ante-mortem inspection as an ambulatory animal, can only provide greater confidence to those countries that continue to raise questions about the safety of American beef. Such a change will enhance the industry's ability to provide additional assurances regarding the beef supply, benefiting the meatpacking industry and animal agriculture generally.

II. ENVIRONMENTAL IMPACT

The action requested by the Petition is not expected to have a significant effect on the quality of the human environment. To Petitioners' knowledge, no extraordinary circumstances exist.

III. ECONOMIC IMPACT

Although the July 2007 rule was deemed to economically significant, that rule affected many other meat processing issues and at a larger number of plants than would be affected by the proposed change. In that regard, the 2007 final rule encompassed not only a prohibition of non-ambulatory cattle, but also the exclusion of specified risk materials, as well the impact on HACCP plans and sanitation standard operating procedures. The Final Regulatory Impact Analysis cost of the 2007 rule was \$171.2 million over five years. The repeal of the provision that allows some, not all, non-ambulatory cattle that already have passed ante-mortem inspection will not add measurably to the cost associated with the 2007 rule. Thus, an economic impact statement is not required at this time.

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The undersigned certify that, to the best of their knowledge, this Petition includes all information and views on which the Petition relies, and that it includes representative data and information known to the Petitioners that are unfavorable to the Petition.

Respectfully submitted,

American Meat Institute
National Meat Association
National Milk Producers Federation