July 16, 2018

Roberta Wagner
Assistant Administrator, Office of Policy and Program Development
Food Safety and Inspection Service
Patriots Plaza 3, 1400 Independence Avenue SW
Washington, DC 20250-3700

RE: Docket No. FSIS-2018-0005, Eliminating Unnecessary Requirements for Hog Carcass Cleaning

Dear Ms. Wagner,

On behalf of Compassion Over Killing (COK) and our members, this comment urges the U.S. Department of Agriculture’s (USDA) Food Safety and Inspection Service (FSIS) not to adopt the proposed rule, “Eliminating Unnecessary Requirements for Hog Carcass Cleaning,” 83 Fed. Reg. 22604-22607 (May 16, 2018), which would remove 9 C.F.R § 310.11. FSIS is tasked with enforcing the Federal Meat Inspection Act (FMIA). However, FSIS fails to provide data, in light of evidence to the contrary, that the proposed rule would further—or even preserve—FMIA’s primary purpose of ensuring food safety. Extant cleaning regulations do not obviate the need for 9 C.F.R. § 310.11 because this is the only regulation that addresses pre-incision cleaning, which is integral to preventing contamination of pig carcasses. Therefore, the proposed rule violates FMIA and should not be adopted.

1. The Proposed Rule is Arbitrary and Capricious and Violates the Federal Meat Inspection Act

Currently, 9 C.F.R § 310.11 states, “All hair, scurf, dirt, hoofs and claws shall be removed from hog carcasses, and the carcasses shall be thoroughly washed and cleaned before any incision is made for inspection or evisceration.” The proposed rule suggests eliminating this requirement and replacing it with “alternative, more efficient, procedures for removing hair, scurf, and dirt after the first incision” (emphasis in original). The proposal further states that dehairing should be allowed after evisceration to increase the flexibility of plants.

FMIA tasks FSIS with ensuring food safety. However, the proposed regulation is focused on improving efficiency at the expense of food safety. Scientific evidence indicates that

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3 Id.
removing pre-incision cleaning regulations and decreasing the role of FSIS inspectors would lead to increased contamination. Therefore, if FSIS adopts the proposed rule, it would be arbitrary and capricious and would violate the FMIA.

A. The Proposed Rule is Arbitrary and Capricious Because Efficiency is Not a Goal of FMIA

An agency rule is arbitrary and capricious under the Administrative Procedure Act (APA) “if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency or expertise.”

Although FSIS’s primary responsibility is ensuring food safety, the “Background” section of the Proposed Regulation uses variations of the word “efficient” six times. In contrast, the same section addresses food safety only once, stating plants “can make their operations more efficient and more effective without compromising food safety.” Ensuring efficiency is not a responsibility of FSIS, so the agency has relied on factors which Congress did not intend it to consider. Thus, the proposed regulation is arbitrary and capricious.

B. Studies Show Pre-Incision Cleaning is Necessary to Ensure Food Safety, and FSIS Provides no Evidence to the Contrary

Pre-incision hair removal and cleaning is integral to preventing contamination and ensuring food safety. Studies have found that pre-evisceration cleaning is important for the removal of bacteria; washing lowers the meat surface tension, which prevents bacterial adhesion. This is similar to sanitizing skin and removing hair prior to operating on a patient—the process prevents unnecessary risk of bacterial transfer. A 1995 study found the presence of *E. Coli* and *Salmonella* bacteria on beef carcasses was reduced by more than half when the carcasses were cleaned prior to evisceration, and not just post-evisceration. Moreover, pig carcasses are relatively smooth compared to beef and potentially more susceptible to external contamination. Accordingly, pre-evisceration cleaning is even more necessary and more

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6 Id.
8 Id. at 329 Figure 3.
effective in removing bacteria from pigs.\textsuperscript{10} Eliminating this requirement, therefore, does not have a scientific basis, would endanger food safety, and is arbitrary and capricious.

C. The Proposed Rule Would Make It Difficult for FSIS Inspectors to Perform their Duties

The current regulation, which requires cleaning prior to incision, provides FSIS inspectors a set time—“prior to incision”—to determine if carcasses are adequately cleaned and hair is adequately removed.\textsuperscript{11} Without this regulation, the proposal would eliminate a point of oversight, and plant employees would need to hold themselves accountable for properly cleaning carcasses at different stages of production. Increasing the flexibility of plants by reallocating responsibility from FSIS inspectors to plant employees will likely have negative effects on food safety.

There is evidence that regulations that reallocate responsibility from trained FSIS inspectors to plant employees endanger food safety. HACCP Based Inspection Models Project (HIMP) plants reallocate certain inspection responsibilities from trained FSIS inspectors to plant employees.\textsuperscript{12} FSIS inspectors undergo rigorous required training programs, but plant employees have no such minimum federal requirements.\textsuperscript{13} As a consequence, when compared with other similarly-sized plants operating under traditional inspection, HIMP plants received 84\% of the non-compliance reports filed for problems with food safety plans between 2012 and 2016.\textsuperscript{14} Based on HIMP precedent, reallocation of responsibility from trained FSIS professionals to untrained employees under the proposed regulation could negatively affect the ability of inspectors to identify signs of disease. Thus, FSIS’s proposed regulation is also arbitrary and capricious because it runs counter to evidence available to the agency.

2. The Proposed Rule is Not Redundant with Other Cleaning Regulations

The proposed rule incorrectly states that 9 C.F.R 310.11 is redundant with post-incision cleaning requirements such as 9 C.F.R. § 310.18, Sanitation SOP requirements, and HAACCP regulations. However, these are post-incision cleaning requirements. As mentioned above, the proposed regulation mistakenly assumes that pre-incision cleaning and post-incision cleaning are

\textsuperscript{10} Id.
\textsuperscript{11} 9 C.F.R. § 310.11.
\textsuperscript{12} 83 Fed. Reg. 4780.
interchangeable, when science tells us otherwise. The primary goal of 9 C.F.R. § 310.11 is thorough pre-incision washing, which prevents, rather than remediates, major internal contamination.

In addition to being post-cleaning regulations, many of the allegedly redundant regulations are narrower in scope than 9 C.F.R. § 310.11. First, 9 C.F.R. § 310.18 is intended to supplement 9 C.F.R. § 310.11. The supplemental section states that “if contamination occurs, it shall be promptly removed in a manner satisfactory to the inspector.” (emphasis added). Therefore, 9 C.F.R. § 310.18 mitigates accidental contamination that occurs post-incision, is purposefully limited in scope, and is insufficient to replace 9 C.F.R. § 310.11.

Second, alternative procedures, such as off-line removal of “carcass defects and blemishes too small to be detected during slaughter,” allowed under the 9 C.F.R. § 303.1(h) exemption are not redundant with 9 C.F.R. § 310.11. Examples of these blemishes are individual hairs and eyelashes. However, the purpose of the regulation FSIS proposes to eliminate is not to remove small blemishes—it is to “thoroughly wash[] and clean[],” which prevents internal contamination that is likely to occur during incision and evisceration.

Finally, in its section “Modernization of Swine Slaughter Inspection,” the proposed rule states that sanitation procedures, such as “sampling and analysis for microbial organisms . . . as well as written procedures to prevent visible fecal material, ingesta, and milk contamination,” make 9 C.F.R. § 310.11 redundant. Again, FSIS provides no data to suggest these sampling and analysis procedures will make food as safe as pre-incision cleaning. Instead, these procedures rely on the passing of “Modernization of Swine Slaughter Inspection.” First, this is a proposed rule. The agency cannot rely on nonexistent regulations. Furthermore, as discussed above, plants operating under HIMP—the program that the Modernization of Swine Slaughter Inspection seeks to expand nationwide—present significant food safety concerns. Relying—if only in part—on a non-finalized, dangerous rule is arbitrary and capricious. If adopted, FSIS’s proposal would also violate the FMIA.

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16 9 C.F.R. § 310.11.
17 9 C.F.R. § 310.18.
19 Id.
3. FSIS Should Not Adopt the Proposed Rule, As It Would Violate the APA and the FMIA

For the reasons detailed in this comment, COK strongly opposes the elimination of 9 CFR 310.11. In adopting the proposed rule, FSIS would be neglecting its responsibility to enforce FMIA, endangering the health of millions of Americans. The current regulation is necessary for food safety and is not redundant. In formulating the rule, FSIS focused on efficiency at the expense of food safety, but the agency’s responsibility is to ensure food safety. The proposed rule ignores scientific evidence, and relies on the passing of another unsubstantiated proposal. Thus, for FSIS to adopt the proposed rule would be arbitrary and capricious and violate FMIA. We request that FSIS not finalize the proposed rule, “Eliminating Unnecessary Requirements for Hog Carcass Cleaning.”

Sincerely,

Irina Anta
Counsel