

Rules and Regulations

Federal Register

Vol. 74, No. 63

Friday, April 3, 2009

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. APHIS–2008–0120]

RIN 0579–AC91

Swine Health Protection; Feeding of Processed Product to Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the swine health protection regulations to clarify the applicability of the regulations regarding the treatment of garbage that consists of industrially processed materials. This interim rule makes clear that such materials are subject to the same treatment requirements as other regulated garbage, except for materials that meet the definition of *processed product* that we are adding to the regulations. This action is necessary to ensure that garbage fed to swine has been treated to inactivate disease organisms that pose a risk to the U.S. swine industry.

DATES: This interim rule is effective April 3, 2009. We will consider all comments that we receive on or before June 2, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0120> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send two copies of your comment to Docket No. APHIS–2008–0120, Regulatory Analysis and Development,

PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0120.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Dave Pyburn, Senior Staff Veterinarian, Swine Health Programs, VS, APHIS, Room 891, 210 Walnut Street, Des Moines, IA 50309; (515) 284–4122.

SUPPLEMENTARY INFORMATION:

Background

The Swine Health Protection Act (7 U.S.C. 3801 *et seq.*, referred to below as the Act) is intended to protect the commerce of the United States and the health and welfare of the people of the United States by ensuring that food waste fed to swine does not contain active disease organisms that pose a risk to U.S. swine. The regulations in 9 CFR part 166 regarding swine health protection (referred to below as the regulations) were promulgated in accordance with the Act. The regulations contain provisions that regulate food waste containing any meat products fed to swine. Compliance with the regulations ensures that all food waste fed to swine is properly treated to kill disease organisms. Raw or undercooked meat may transmit numerous infectious or communicable diseases to swine, including exotic viral diseases such as foot-and-mouth disease, African swine fever, classical swine fever, and swine vesicular disease. In accordance with the regulations, food waste containing meat may be fed to swine only if it has been treated to kill disease organisms.

In part 166 of the regulations, such food waste is referred to as “garbage.” In § 166.1, *garbage* is defined as “[a]ll waste material derived in whole or in

part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking or consumption of food, except that such term shall not include waste from ordinary household operations which is fed directly to swine on the same premises where such household is located.”

Under § 166.2 of the regulations, with some exceptions discussed below, garbage may not be fed to swine unless it is first treated in accordance with the requirements of part 166 at a facility operated by a person holding a valid license for the treatment of garbage. The regulations in § 166.7 require that garbage be heated throughout at boiling (212 °F or 100 °C at sea level) for 30 minutes before being fed to swine. Requirements regarding the licensing of facilities that treat garbage for feeding to swine are contained in § 166.10.

The requirement that the material be heated throughout at boiling takes into account a margin of safety to ensure that disease organisms of concern are inactivated. Although the scientific literature recognizes that heating meat throughout at 167 °F (75 °C) for 30 minutes is sufficient to inactivate the disease organisms,¹ in many cases it is difficult on a practical level to determine precisely when every piece of meat in the garbage being treated has been heated to 167 °F throughout. Larger pieces of meat may take longer than smaller pieces to reach that temperature throughout. By requiring that garbage be heated at boiling throughout for 30 minutes, the regulations have provided a documentable and easily visible way to ensure that meat has been heated to a temperature sufficient to inactivate disease organisms of concern.

¹ McKercher P.D., J.H.Graves, J.J. Callis, and F. Carmichael. (1974). Swine vesicular disease: virus survival in pork products. Proceedings of the Annual Meeting of the U.S. Animal Health Association; (78):213a–213g.

Edwards, S. (2000). Survival and inactivation of classical swine fever virus. Vet Microbiol. Apr 13; 73(2–3):175–81.

Scott Williams Consulting Pty Ltd. (2003). Persistence of Disease Agents in Carcasses and Animal Products. Report for Animal Health Australia, December.

World Organization for Animal Health (OIE). (2008).

Although the general requirement is that garbage be heated at boiling for 30 minutes before being fed to swine, the regulations do contain certain exceptions. There are some materials that meet the definition of *garbage* that APHIS has determined can be safely fed to swine without being heated at boiling for 30 minutes. These materials, which are listed in § 166.2, are the following: Rendered products, bakery waste, candy waste, eggs, domestic dairy products (including milk), fish from the Atlantic Ocean within 200 miles of the continental United States or Canada, and fish from inland waters of the United States or Canada that do not flow into the Pacific Ocean.² In addition to exempting the listed materials from the heating requirements in § 166.7, the regulations provide that it is not necessary that the materials be treated by a person licensed to do so under the requirements of § 166.10.

In this interim rule, we are adding another type of material to the list in § 166.2 of materials that are exempted from the treatment and licensing requirements of §§ 166.7 and 166.10. We refer to the type of material we are adding to the list of exempted materials as “processed products” and define *processed product* in § 166.1. In defining processed product, we are reinforcing that materials that are similar to processed product, but that do not meet the full definition of processed product, are subject to the treatment requirements of part 166. In the following paragraphs, we discuss our definition of *processed product* and our rationale for exempting it from the requirements of §§ 166.7 and 166.10.

The swine health protection regulations that were implemented in 1983 were designed to address the materials and method of treatment that were commonly used at that time to treat garbage for feeding to swine—i.e., the cooking over an open flame of food waste from restaurants, grocery stores, and other food establishments. Subsequent to establishment of the regulations, however, certain swine producers began to use materials from other than the traditional sources of garbage as feed for swine.

It has become increasingly common for producers to feed to swine products that have undergone industrial

processing, such as pet foods or pre-cooked foods that are used for canning for human consumption. In some cases, such products have been heated to at least 167 °F for at least 30 minutes as part of the processing procedure; in other cases, the products have not been so heated. Failure to heat such products to the minimum heat necessary for the minimum period of time necessary to inactivate disease organisms of concern could expose swine to which the products are fed to the risk of infection by the organisms.

However, because commercially produced food products that contain meat and that have undergone industrial processing often differ in appearance, production process, and source from materials traditionally viewed as “garbage,” we have found that some swine producers are not aware they are feeding to swine material that meets the definition of garbage and thus must be heated throughout according to the regulations in part 166. Therefore, we consider it necessary in this interim rule to specifically address the way in which industrially processed foodstuffs intended for feeding to swine are regulated.

If such industrially processed products contain meat, they meet the definition of *garbage* in § 166.1 and, in general, must be heated throughout at boiling or an equivalent temperature for 30 minutes to be eligible for feeding to swine. However, in some cases, the procedures used to process such materials are controlled and monitored in such a way that it is possible for the processors of the material to demonstrate that the materials have been heated throughout to at least 167 °F for at least 30 minutes, making the additional “margin of safety” of heating the material at boiling unnecessary. In such cases, we consider it warranted to exempt those materials from the requirement in § 166.7 that the garbage be heated at boiling for 30 minutes before being fed to swine. Therefore, in this interim rule, we are amending the regulations to include an exemption in § 166.2 for such materials, which we define in this interim rule as *processed product*.

We are adding to § 166.1 the following definition of *processed product*: “Material derived in whole or in part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, that has undergone an industrial manufacturing procedure to prevent spoilage or add shelf stability, and that has, at a minimum, been cooked to a

temperature of 167 °F (75 °C) for at least 30 minutes or has been subjected to an industrial process demonstrated to provide an equivalent level of inactivation of disease organisms, as approved by the Administrator.” Although heating is the standard method of inactivating the disease organisms addressed by the swine health regulations, we recognize that other industrial manufacturing procedures might exist, or might come to exist, that can be demonstrated to be equally effective in reducing disease risk, and we allow for that possibility in our definition of *processed product*.

We note that § 166.10(a) provides that types of garbage listed in § 166.2 as being exempt from the treatment requirements in § 166.7—which, under this interim rule, includes processed products—are also exempted from the requirement that the garbage be treated by a person licensed to treat garbage under § 166.10.

Immediate Action

Immediate action is necessary to ensure that swine producers are aware that all garbage other than that specifically exempted from the heating and licensing requirements of part 166 must be heated throughout at boiling (212 °F or 100 °C at sea level) for 30 minutes before it is fed to swine. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

The regulations require that garbage to be fed to swine be heated throughout at 212 °F (100 °C) or above for 30 minutes

² The rationale for exempting rendered products from the garbage regulations was addressed in rulemaking that culminated in a final rule published in the **Federal Register** on May 18, 1983 (48 FR 22288–22290, Docket No. 83–024). The other products listed were addressed in rulemaking that culminated in a final rule published in the **Federal Register** on April 12, 1984 (48 FR 14495–14497, Docket No. 83–115).

before being fed, and that the garbage be treated at a facility operated by a person holding a valid license for the treatment of garbage. This interim rule makes clear that food waste consisting of industrially processed products (such as, but not limited to, pet foods or foods cooked for canning for human consumption) that meet the definition of *garbage* is subject to the same requirements as other regulated garbage, except for materials that meet the definition of *processed product*. In this interim rule, we define *processed product* as “material derived in whole or in part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, that has undergone an industrial manufacturing procedure to prevent spoilage or add shelf stability, and that has, at a minimum, been cooked to a temperature of 167 °F (75 °C) for at least

30 minutes or has been subjected to an industrial process demonstrated to provide an equivalent level of inactivation of disease organisms, as approved by the Administrator”.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the Regulatory Flexibility Act allows an agency to certify that a rule will not have a significant economic impact on a substantial number of small entities. Following is the factual basis for such certification of this rule. As background, we first provide national statistics on the U.S. swine and pork industries. We then describe the expected effects of the rule on swine producers who include food waste as part of feed for swine.

The U.S. Swine and Pork Industries

The U.S. swine industry plays an important role in the U.S. economy.

Cash receipts from marketing meat animals were about \$14.8 billion in 2007 (the average between 2003 and 2007 was \$13.8 billion).³ Additionally, swine and related product exports generated over \$2.5 billion in sales that year.⁴ At present, U.S. swine and swine product exports proceed without disease-related restrictions. Maintaining such favorable export conditions depends in part on continued efforts to prevent transmission of foreign diseases to U.S. swine.

As shown in table 1, U.S. pork production increased from 7,835,000 metric tons in 1997 to 9,962,000 metric tons in 2007, an annual growth rate of about 1.8 percent. During the same period, consumption increased from 7,631,000 metric tons to 8,964,000 metric tons, and U.S. exports increased from 473,000 metric tons to 1,424,000 metric tons, by far outpacing imports. Net exports increased from 185,000 metric tons to 985,000 metric tons.⁵

TABLE 1—U.S. PORK PRODUCTION, CONSUMPTION, PRICE, EXPORTS AND IMPORTS, 1997–2007 ¹

| Year | Production in 1,000 metric tons | Consumption in 1,000 metric tons | Price per metric ton | Exports in 1,000 metric tons | Imports in 1,000 metric tons | Net exports in 1,000 metric tons |
|----------------------------------|---------------------------------------|--|-------------------------|------------------------------------|------------------------------------|--|
| 1997 | 7,835 | 7,631 | \$1,562 | 473 | 288 | 185 |
| 1998 | 8,623 | 8,305 | 1,170 | 558 | 320 | 238 |
| 1999 | 8,758 | 8,594 | 1,178 | 582 | 375 | 207 |
| 2000 | 8,596 | 8,455 | 1,413 | 584 | 438 | 146 |
| 2001 | 8,691 | 8,389 | 1,473 | 707 | 431 | 276 |
| 2002 | 8,929 | 8,685 | 1,179 | 731 | 486 | 245 |
| 2003 | 9,056 | 8,816 | 1,298 | 779 | 538 | 241 |
| 2004 | 9,312 | 8,817 | 1,621 | 989 | 499 | 490 |
| 2005 | 9,392 | 8,671 | 1,562 | 1,207 | 464 | 743 |
| 2006 | 9,559 | 8,640 | 1,404 | 1,359 | 449 | 910 |
| 2007 | 9,962 | 8,964 | 1,433 | 1,424 | 439 | 985 |
| 5-Year Average (2003–2007) | 9,456 | 8,782 | 1,464 | 1,152 | 478 | 674 |

¹ Sources: USDA/FAS, PS&D Online, 1997–2007, http://www.fas.usda.gov/dlp/circular//2008/livestock_poultry_04-2008.pdf; prices, reported as \$/100 pounds for yearly pork carcass cut-out values, are converted to dollars per metric ton, and are taken from Red Meat Yearbook (94006), <http://usda.mannlib.cornell.edu/usda/ers/94006/wholesaleprices.xls>. The 2006 and 2007 per metric ton prices are from USDA/ERS, Livestock, Dairy, and Poultry Outlook, Feb. 20, 2007, and Jan. 18, 2008. Net exports are calculated as the difference between exports and imports for each year.

Effects of the Interim Rule

The amount of food waste that meets the definition of *garbage* under § 166.1 represents a very small fraction of total commercial feeding of swine in the United States.⁶ According to a study in 2000, there were 300,000 market swine fed with about 550,000 tons of food

waste in 1997.⁷ The number of market swine fed such food waste has since declined. At present, there are 2,722 licensed garbage feeders producing about 160,000 market swine per year.⁸ Assuming the same ratio as in 1997 between the numbers of market swine fed food waste and the quantity of such food waste utilized, the amount of food

waste fed to swine in 2007 is estimated to have been about 293,330 tons. These quantities of swine and feed are very small, compared to the total number of market swine produced in the United States (0.12 percent) and the total tonnage of commercial feed utilized (0.6 percent).^{9 10}

³ USDA/ERS, Farm Income Costs: Farm Sector Income Forecast, http://www.ers.usda.gov/briefing/farmincome/data/cr_t3.htm.

⁴ http://www.fas.usda.gov/dlp/circular//2008/livestock_poultry_04-2008.pdf.

⁵ USDA/FAS, PS&D Online, 1996–2007, http://www.fas.usda.gov/dlp/circular//2008/livestock_poultry_04-2008.pdf.

⁶ Food waste includes plate waste (62.01%), eggs (0.13%), unpasteurized dairy (1.06%), fish (1.11%), bakery waste (8.94%), slaughter by-products

(0.02%), other products of animal origin (13.45%), and other waste products of non-animal origin (such as candy, brewers waste, etc.). USDA/APHIS/VIS, 2001 National Waste Feeding Report, June 2003.

⁷ Felix J. Spinelli and Barbara Corso, “The Economics of Feeding Processed Food Waste to Swine” in Michael L. Westendorf (ed.) *Food Waste in Animal Feed*, Iowa State University Press, 2000.

⁸ USDA/APHIS/VIS, Swine Health Protection Reports, October 2008, and personal communication with APHIS, Veterinary Services.

⁹ USDA/NASS, Meat Animal Production, Disposition, and Income: 2007 Summary, April 2008 (137,758,900 swine were marketed in 2007).

¹⁰ Total tons of swine feed is estimated as follows: 137,758,900 market swine, multiplied by 716 pounds of feed per swine, divided by 2000 pounds per ton, where 716 pounds of feed per swine is taken from the National Pork Producer Council,

Continued

This interim rule provides that, although industrially processed products that meet the definition of *garbage* must, as a general rule, be heated at boiling for 30 minutes before being fed to swine, those materials that meet the definition of *processed product* (i.e., that have undergone an industrial manufacturing procedure to prevent spoilage or add shelf stability, and that have, at a minimum, been cooked to a temperature of 167 °F (75 °C) for at least 30 minutes or have been subjected to an industrial process demonstrated to provide an equivalent level of inactivation of disease organisms, as approved by the Administrator) are exempt from the requirement for boiling. The main heat treatment methods used by garbage feeders are direct-fire cookers (mostly for smaller loads) and steam injection cookers (larger loads). Spinelli and Corso (2000) assumed an average heating cost of \$5 per ton in 1997 (or about \$6.67 per ton in 2008 dollars) for food waste heated at 212 °F for 30 minutes.¹¹

We do not know what proportion of *garbage* as defined in part 166 is derived in whole or in part from animal material that has undergone heating to 167 °F for 30 minutes or has been subjected to an industrial process that provides an equivalent level of disease mitigation. As an illustrative example of the potential effect of this rule on producers who feed to swine those materials that meet the definition of *processed product*, if such materials were to comprise 5 percent of garbage fed to swine, then the cost to producers who feed such materials could be nearly \$100,000 less overall than it would be if all such processed product were treated by being heated at boiling for 30 minutes.¹²

Affected Small Entities

The Small Business Administration (SBA) has established size standards for determining whether firms are considered small under the Regulatory Flexibility Act. The majority of U.S. swine producers (NAICS 112210) are small entities, based on the SBA small-

entity standard of not more than \$750,000 in annual receipts.¹³ In 2007, there were a total 2,722 feeders that potentially could be affected by this rule, depending upon whether they include processed products in their feed. The average income of these entities is estimated to be about \$4,290, well below the small-entity size standard.¹⁴

Summary

Producers known to feed garbage to swine numbered 2,722 in 2007 (about 3 percent of all swine producers), and produced only about 0.12 percent of the swine marketed that year. Of these producers, the cost of feeding garbage to swine will be less for those who use processed products as feed. The rule will also provide swine producers who do not currently feed garbage to swine the option of feeding to swine processed product that is not required to be heated at boiling for 30 minutes at a licensed facility.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

¹³ SBA, Small Business Size Standards matched to North American Industry Classification System 2002, Effective July, 2006 (<http://www.sba.gov/size/sizetable2002.html>).

¹⁴ This average income is calculated by multiplying the number of market swine fed food waste by their average market value, and dividing that product by the number of garbage feeders in 2007: 160,000*73/2,722 = \$4,290.96.

List of Subjects in 9 CFR Part 166

Animal diseases, Hogs, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 166 as follows:

PART 166—SWINE HEALTH PROTECTION

■ 1. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3801–3813; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 166.1, a definition of *processed product* is added, in alphabetical order, to read as follows:

§ 166.1 Definitions in alphabetical order.

* * * * *

Processed product. Material derived in whole or in part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, that has undergone an industrial manufacturing procedure to prevent spoilage or add shelf stability, and that has, at a minimum, been cooked to a temperature of 167 °F (75 °C) for at least 30 minutes or has been subjected to an industrial process demonstrated to provide an equivalent level of inactivation of disease organisms, as approved by the Administrator.

* * * * *

§ 166.2 [Amended]

■ 3. In § 166.2, paragraph (a) is amended by adding the words “Processed products;” immediately after the words “any of the following;”.

Done in Washington, DC, this 31st day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–7507 Filed 4–2–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0162]

Drawbridge Operation Regulation; Houma Navigation Canal, Mile 36.0, at Houma, Terrebonne Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

Swine Industry Crisis, April 2008 (<http://www.wppa.org/Portals/wppa/WebEconomicImpactFinal.pdf>), and 137,758,900 market swine is from footnote 9. We note that the 716 pounds of feed consumption per animal is less than half of the food waste consumption per garbage-fed animal reported by Spinelli and Corso (2000).

¹¹ Felix J. Spinelli and Barbara Corso, “The Economics of Feeding Processed Food Waste to Swine” in Michael L. Westendorf (ed.) *Food Waste in Animal Feed*, Iowa State University Press, 2000.

¹² An estimated 293,330 tons of food waste used in 2007, multiplied by a heating cost of \$6.67 per ton, multiplied by 5 percent equals \$97,826.