

## Georgia Magistrate Judge Limits OSHA Safety Inspections in Poultry Plants

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The Occupational Safety and Health Administration is fighting a Gainesville, Georgia, magistrate judge's recommendation that would restrict its new regional worker-safety program aimed at poultry processing facilities.

In the Regional Emphasis Program (REP), announced October 2015, the federal agency said it will increase enforcement efforts at poultry processing plants in Alabama, Florida, Georgia, and Mississippi (Region IV), directing its inspectors to conduct plant-wide inspections. The legality of the initiative, however, has been called into question, particularly as to whether OSHA may expand a non-programmed inspection — *e.g.*, one based on a complaint, referral, or report — into a full plant-wide investigation.

This issue was brought to a head when OSHA attempted to expand an inspection at Mar-Jac Poultry Inc., a poultry processor, from one focused on a report of a workplace accident into an REP inspection focused on numerous potential hazards.

Mar-Jac objected to this expanded inspection and refused to permit OSHA to inspect areas of the facility that were not relevant to the reported accident. OSHA, in turn, applied for a warrant to expand the scope of the investigation. Magistrate Judge J. Clay Fuller initially approved the warrant, authorizing inspection for all 16 hazards under the REP. Mar-Jac moved to quash the warrant, arguing the directive gives the OSHA area director "unbridled discretion" in violation of Mar-Jac's Fourth Amendment's right to be free from unreasonable search and seizure.

After a fact-finding hearing, the magistrate judge recommended to the U.S. District Court that OSHA had "probable cause" to investigate four of the 16 hazards because of the accident, which revealed evidence of specific violations, but the agency lacked "administrative probable cause" to expand the investigation. The magistrate judge found the REP gave the Area Director "undefined discretion ... to decide which, if any, inspections are expanded to comprehensive inspections...." Therefore, he continued, the REP cannot provide reasonable administrative probable cause for a warrant. Additionally, the magistrate judge found "the mere presence of a reported injury on an OSHA 300 form [does not] support[] a full scale investigation of the hazard related to that injury" and the 300 log could not be used as probable cause to support the warrant.

The U.S. District Court will make the final ruling.

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