



Billing Code 3410-DM-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 310, 327, 381, 424, 557, and 590

[Docket No. FSIS-2018-0027]

RIN 0583-AD72

Publication Method for Lists of Foreign Countries Eligible to Export Meat, Poultry, or Egg Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations to remove lists of foreign countries eligible to export meat, poultry, and egg products to the United States. FSIS will maintain a single list of eligible foreign countries on its website. The criteria FSIS uses to evaluate whether a foreign country is eligible to export meat, poultry, or egg products has not changed. This rule will allow FSIS to more efficiently and clearly communicate equivalence determinations by maintaining a single list of exporting countries on its website, rather than maintaining one list on the website and outdated lists in the codified regulations. In addition, the Agency is amending its regulations to remove references to the lists.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Terri Nintemann, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 720-0089.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2019, FSIS proposed to amend its regulations to remove lists of foreign countries eligible to export meat, poultry, or processed egg products to the United States and, instead, maintain such lists on its website (84 FR 14894). The proposal noted that it did not include any changes to the criteria FSIS uses to evaluate whether a foreign country is eligible. The proposal also described how removing the lists from the regulations would affect FSIS's process for implementing equivalence determinations. Instead of publishing proposed and final rules in the **Federal Register**, FSIS will now implement equivalence determinations through **Federal Register** notices with requests for public comment. FSIS will respond to public comments in any **Federal Register** notice that finalizes an equivalence determination. FSIS will also use this process when it is necessary to terminate the eligibility of a foreign country. This final rule will allow FSIS to convey more clearly information on countries' equivalence status. Once the rule is

in place, the list posted on the web site will not conflict with any outdated information in the **Federal Register**. In addition to removing the lists from the regulations, the Agency proposed to amend six parts of 9 CFR Chapter III (310, 327, 381, 424, 557, 590) to remove references to the lists.

After reviewing comments on the proposed rule, FSIS is finalizing it without changes, except for non-substantive changes, for clarity, to the regulatory language proposed for 9 CFR 327.2(b).

Responses to Comments

FSIS received 15 comments, from 13 individuals, an industry association representing egg processors, and a consumer advocacy organization. The issues raised in the comments and the Agency responses are summarized below.

Comments: FSIS received comments relating to the use of online lists. One individual questioned the use of online lists as potentially confusing or difficult to locate by stakeholders. Another recommended that FSIS ensure that the online lists are updated soon after determinations are finalized. The consumer advocacy organization believed that keeping equivalence determinations on FSIS's website could invite hacking or mistakes and expressed concern that some individuals do not have access to the Internet.

Response: FSIS does not believe these concerns warrant reconsideration of the use of online lists. This rule's amendments to the Code of Federal Regulations (CFR) direct readers to the web address where FSIS maintains the list, www.fsis.usda.gov/importlibrary. FSIS will additionally publish notice of equivalence determinations in the **Federal Register** and include links to these determinations in its *Constituent Update*, which is posted weekly on FSIS's website. FSIS will ensure that its web content managers update the online lists shortly after any final determination is published in the **Federal Register**. FSIS's website is protected to ensure that only authorized users may gain access or make changes. The system keeps track of past versions, which may be restored if needed. Therefore, no hacking event could permanently alter the entries on the lists.

Comments: The industry group supported the proposed rule, but urged FSIS not to weaken its equivalence standards, reduce opportunities for public participation, or make any currently public aspects of the equivalence process non-public. It also urged FSIS to be more transparent in its investigations, audits, and determinations and ensure that the offices of the Under Secretary for Food Safety and the Secretary of Agriculture provide oversight for equivalence determinations. The consumer advocacy organization opposed the proposed rule as undermining the importance of equivalence determinations.

Response: Under this final rule, FSIS is not changing its equivalence standards or opportunities for public comment. FSIS will continue to maintain the same level of transparency in these determinations by publishing its on-site audit reports and allowing for public comment on preliminary equivalence determinations. The offices of the Under Secretary for Food Safety and the Secretary of Agriculture currently review every preliminary and final equivalence determination made by FSIS and will continue to do so under this final rule.

Comments: The industry group also recommended that FSIS create specific regulatory requirements establishing a comment period for **Federal Register** notices of equivalence determinations and a provision mandating that the Agency will respond to comments in the **Federal Register**. The consumer advocacy organization advocated for a 60-day comment period for all equivalence determinations, and a minimum 30-day period for any rulemaking that removes a country's equivalence.

Response: Consistent with other Federal agencies, FSIS regulations do not establish length of comment periods for any proposal rules. The Agency will retain flexibility to set and extend comment periods as needed to adequately receive and consider public feedback. Also, consistent with other Federal agencies, FSIS regulations do not state that FSIS will respond to public comments in a second **Federal Register** notice. That

being said, after a preliminary equivalence determination, FSIS will publish a **Federal Register** notice, including the response to public comments, to finalize (or decline to finalize) any equivalence determination.

Comment: The industry group sought clarification with regard to the FSIS's proposal to amend the current version of the regulations at 9 CFR 590.910 to remove the list of foreign countries eligible to export processed egg products to the United States and instead refer to the list of countries eligible to export on the FSIS website. As FSIS explained in Footnote 2 of the proposed rule, FSIS already had proposed to revise § 590.910 of the regulations in an earlier proposed rule concerning egg products (83 FR 6314, February 13, 2018), but only for more consistency with the existing regulations for meat and poultry.

Response: FSIS proposed to amend the version of § 590.910 in effect at the time. Because the February 2018 proposed rule regarding egg products has not been made final, those regulations are still in effect. FSIS is thus amending those regulations, as proposed. If the February 2018 rulemaking is made final, its version of § 590.910 will incorporate the changes made by this final rule regarding the listing of foreign countries with equivalent egg products inspection systems.

Comment: The consumer advocacy organization sought clarification on the time period before a country would be listed as inactive on FSIS's website.

Response: FSIS states on its website and in instructions to Agency personnel that, after three or more years without shipping, a country will be considered "inactive" and must apply for a reinstatement of equivalence. See FSIS Directive 9770.1, *Determining Initial and Reinstating the Equivalence of Foreign Food Safety Inspection Systems*. Therefore, consistent with current practice, if a country does not ship for three years, FSIS will move the country to the "inactive" chart on the FSIS web site.

Comment: An individual commenter asked how the rule would promote efficiency and if there were other costs to FSIS.

Response: As FSIS explained in the economic analysis, the change in publication method will not create additional costs to FSIS, which will continue to implement equivalence determinations through the **Federal Register**. Similarly, there will not be additional costs for industry or foreign countries seeking to export to the United States. This final rule will allow FSIS to more efficiently propose and finalize equivalence determinations without changing the substantive criteria or level of evaluation of foreign food safety systems. This will save staff time and allow FSIS's list of exporting countries to

more quickly reflect changes in foreign countries' equivalence status. FSIS will also gain efficiency by maintaining a single list of exporting countries on its website, rather than maintaining one list on the website and a separate list in the codified regulations.

Comments: The industry group urged FSIS to apply stricter scrutiny to foreign food safety systems. It also expressed concern about whether the processed egg products system in the Netherlands is genuinely equivalent to the U.S. system. An individual commenter suggested that imported meat and poultry products be monitored and tested for safety by the FDA.

Response: These comments are outside the scope of this rulemaking, which focuses solely on the publication method of lists of foreign countries eligible to export meat, poultry, and egg products to the United States.

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of

promoting flexibility. This final rule has been designated as a "non-significant" regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Expected Costs of the Final Rule

This final rule doesn't change the requirements for importing meat, poultry, and egg products to the United States. FSIS will continue to determine whether a foreign country's food safety inspection system for meat, poultry, or egg products is equivalent to FSIS's inspection system. FSIS will announce the results of equivalence determinations through a notice with a request for comments in the **Federal Register**, rather than a proposed rule. In addition, FSIS will continue to assess the costs and benefits of new countries becoming eligible to ship product to the United States. This change in procedure will not alter U.S. production, imports, or consumption; therefore, FSIS does not expect a change in U.S. consumer price due to this final rule. The change in procedure is also not expected to add any additional cost to the countries applying for eligibility to import meat, poultry, and egg products to the United States, nor does it add costs to FSIS, or the U.S. meat, poultry, or egg products industries.

Expected Cost Savings and Benefits of the Final Rule

While there are no additional costs associated with this final rule, the benefit from the final rule is an increase in the efficient use of FSIS resources. FSIS will continue to use the **Federal Register** to receive and respond to public comments on equivalence determinations, but the notice process will allow FSIS to more efficiently propose and finalize equivalence determinations. FSIS expects that the notice process will take less time than the current rulemaking process. FSIS will also gain efficiency by maintaining a single list of exporting countries on its website, rather than maintaining one list on the website and separate lists in the codified regulations.

Regulatory Flexibility Act Assessment

The FSIS Administrator certifies that, for the purposes of the Regulatory Flexibility Act (5. U.S.C. 601-602), this final rule will not have a significant economic impact on a substantial number of small entities in the United States. Under this final rule, the requirements for importing meat, poultry, and egg products to the United States will not change. Thus, no market effect is expected from this final rule. Small entities, therefore, will not bear additional costs, as market factors remain unchanged.

Executive Order 13771

Consistent with E.O. 13771 (82 *FR* 9339, February 3, 2017), FSIS has estimated that this final rule will yield cost savings. Therefore, this final rule is an E.O. 13771 deregulatory action.

Paperwork Reduction Act

FSIS has reviewed the paperwork and recordkeeping requirements in this final rule in accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). Foreign countries seeking to export meat, poultry, or egg products to the United States are required to provide information to FSIS certifying that their inspection systems provide standards equivalent to those of the United States, and that the legal authority for the system and their implementing regulations are equivalent to those of the United States. FSIS provides countries with questionnaires asking for detailed information about the country's inspection practices and procedures to assist that country in organizing its materials. This information collection was approved under OMB control number 0583-0094. This final rule only affects FSIS's methods of proposing and finalizing equivalence determination after the Agency has made a preliminary determination. It contains no new or expanded paperwork requirements.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this 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 administrative proceedings will be required before parties may file suit in court challenging this rule.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a "major rule," as defined by 5 U.S.C. 804(2).

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

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." E.O. 13175

requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, the Food Safety and Inspection Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in

the United States under any program or activity conducted by the USDA.

How to File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at

http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail:

U.S. Department of Agriculture
Director, Office of Adjudication
1400 Independence Avenue, SW
Washington, DC 20250-9410

Fax: (202) 690-7442

E-mail: program.intake@usda.gov

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this

Federal Register publication on-line through the FSIS Web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link to it 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 *Constituent Update* is available on the FSIS Web page. Through 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/subscribe> . Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects

9 CFR Part 310

Animal diseases, Meat inspection.

9 CFR Part 327

Food labeling, Food packaging, Imports, Meat inspection.

9 CFR Part 381

Administrative practice and procedure, Animal diseases, Crime, Exports, Food grades and standards, Food labeling, Food packaging, Government employees, Grant programs-agriculture, Intergovernmental relations, Laboratories, Meat inspection, Nutrition, Polychlorinated biphenyls (PCB's), Poultry and poultry products, Reporting and recordkeeping requirements, Seizures and forfeitures, Signs and symbols, Technical assistance, Transportation.

9 CFR Part 424

Food additives, Food packaging, Meat inspection, Poultry and poultry products.

9 CFR Part 557

Fish, Food grades and standards, Food labeling, Food packaging, Imports, Seafood.

9 CFR Part 590

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FSIS is amending 9 CFR Chapter III as follows:

PART 310 -- POST-MORTEM INSPECTION

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

AUTHORITY: 21 U.S.C. 601-695; 7 CFR 2.18, 2.53.

2. In § 310.22, revise paragraph (d)(1)(i) to read as follows:

§ 310.22 Specified risk materials from cattle and their handling and disposition.

* * * * *

(d) * * *

(1) * * *

(i) It is derived from cattle that were inspected and passed in an official establishment in the United States or in a certified foreign establishment in a country eligible to export meat and meat products to the United States under 9 CFR 327.2(b) and it is otherwise eligible for importation under 9 CFR 327.1(b), and

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PART 327 — IMPORTED PRODUCTS

3. The authority citation for part 327 continues to read as follows:

AUTHORITY: 21 U.S.C. 601-695; 7 CFR 2.18, 2.53.

§ 327.2 [Amended]

4. In § 327.2:

a. Remove the phrase "by including the name of such foreign country in" and add in its place "in accordance with" in paragraph (a)(1);

b. Revise paragraphs (a)(4) and (b); and

c. Remove paragraph (c).

The revisions read as follows:

§ 327.2 Eligibility of foreign countries for importation of products into the United States.

(a) * * *

(4) Meat and meat food products from foreign countries not deemed eligible in accordance with paragraph (b) of this section are not eligible for importation into the United States, except as provided by § 327.16 or § 327.17. Eligibility of any foreign country under this section may be withdrawn whenever the Administrator determines that the system of meat inspection maintained by such foreign country does not assure compliance with requirements equivalent to all the inspection, building construction standards, and other requirements of the Act and the regulations in this subchapter as applied to official establishments in the United States; or that reliance cannot be placed upon certificates required under this part from authorities of such foreign country; or that, for lack of current information concerning the system of meat inspection being maintained by such foreign country, such foreign country should be required to reestablish its eligibility.

(b) A list of countries eligible to export specific process categories of meat and meat food products is maintained at <http://www.fsis.usda.gov/importlibrary>. Meat and meat food

products from listed countries must be accompanied by foreign inspection certificates of the country of origin, as required by § 327.4, and are eligible under the regulations in this subchapter for entry into the United States after inspection and marking as required by the applicable provisions of this part. Fresh, chilled, or frozen or other product from countries in which rinderpest, foot-and-mouth disease or African swine fever exist, as provided in part 94 of this title, are ineligible for importation into the United States.

PART 381 — POULTRY PRODUCTS INSPECTION REGULATIONS

5. The authority citation for part 381 continues to read as follows:

AUTHORITY: 7 U.S.C. 138f, 450; 21 U.S.C. 451-470; 7 CFR 2.7, 2.18, 2.53.

§ 381.145 [Amended]

6. In § 381.145, amend paragraph (a) by removing the phrase "listed in §381.196(b)," and adding in its place "eligible to export such poultry and poultry products to the United States under §381.196(b),".

7. In § 381.195, revise paragraph (c) to read as follows:

§ 381.195 Definitions; requirements for importation into the United States.

* * * * *

(c) Except as provided in § 381.207, slaughtered poultry and other poultry products may be imported only if they were processed solely in countries found eligible to export poultry products to the United States under § 381.196(b). Slaughtered poultry may be imported only if it qualifies as ready-to-cook poultry.

§ 381.196 [Amended]

8. Amend § 381.196 as follows:

a. In paragraph (a)(1), remove the phrase "by including the name of such foreign country in" and add in its place "in accordance with"; and

b. Revise paragraphs (a)(4) and (b).

The revisions read as follows:

§ 381.196 Eligibility of foreign countries for importation of poultry products into the United States.

(a) * * * * *

(4) Poultry products from foreign countries not deemed eligible in accordance with paragraph (b) of this section may not be imported into the United States, except as provided by §§ 381.207 and 381.209. Eligibility of any foreign country under this section may be withdrawn whenever the Administrator determines that the system of poultry inspection maintained by such foreign country does not assure compliance with requirements equivalent to all the requirements of the Act and

the regulations as applied to official establishments in the United States; or that reliance cannot be placed upon certificates required under this subpart from authorities of such foreign country; or that, for lack of current information concerning the system of poultry inspection being maintained by such foreign country, such foreign country should be required to reestablish its eligibility.

(b) A list of countries eligible to export specific process categories of poultry products to the United States is maintained at <http://www.fsis.usda.gov/importlibrary>. Such products from listed countries must be accompanied by inspection certificates of the country of origin, as required by § 381.197, and are eligible under the regulations in this subpart for entry into the United States, after inspection and marking as required by the applicable provisions of this subpart.

PART 424 – PREPARATION AND PROCESSING OPERATIONS

9. The authority citation for part 424 continues to read as follows:

AUTHORITY: 7 U.S.C. 138f, 450; 21 U.S.C. 451-470; 7 CFR 2.7, 2.18, 2.53.

§ 424.21 [Amended]

10. Amend § 424.21 as follows:

a. In paragraph (a) (2) (i), remove the phrase "listed in" and add in its place "determined to be eligible to export such products to the United States under"; and

b. In paragraph (a) (3), remove the phrase "listed in" and add in its place "determined to be eligible to export such products to the United States under".

PART 557 – IMPORTATION

11. The authority citation for part 557 continues to read as follows:

AUTHORITY: 21 U.S.C. 601-602, 606-622, 624-695; 7 CFR 2.7, 2.18, 2.53.

12. In § 557.2, revise paragraph (b) to read as follows:

§ 557.2 Eligibility of foreign countries for importation of fish and fish products into the United States.

* * * * *

(b) The countries eligible to export specific process categories of fish and fish products are listed at <http://www.fsis.usda.gov/importlibrary>. Such products must be covered by foreign inspection certificates of the country of origin as required by § 557.4. Products from such countries are eligible under the regulations in this subchapter for entry into the United States after inspection and marking as required by the applicable provisions of this part.

**PART 590 — INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS
INSPECTION ACT)**

13. The authority citation for part 590 continues to read as follows:

AUTHORITY: 21 U.S.C. 1031-1056.

14. Revise § 590.910 to read as follows:

§ 590.910 Eligibility of foreign countries for importation of egg products into the United States.

(a) Whenever it is determined by the Administrator that the system of egg products inspection maintained by any foreign country is such that the egg products produced in such country are processed, labeled, and packaged in accordance with, and otherwise comply with, the standards of the Act and these regulations including, but not limited to the same sanitary, processing, facility requirements, and continuous Government inspection as required in §§ 590.500 through 590.580 applicable to inspected articles produced within the United States, notice of that fact will be given according to paragraph (b) of this section. Thereafter, egg products from such countries shall be eligible for importation into the United States, subject to the provisions of this part and other applicable laws and regulations. Such products must meet, to the extent applicable, the same standards and requirements that apply to comparable domestic products as set forth in these regulations. Egg

products from foreign countries not deemed eligible in accordance with paragraph (b) of this section are not eligible for importation into the United States, except as provided by § 590.960. In determining if the inspection system of a foreign country is the equivalent of the system maintained by the United States, the Administrator shall review the inspection regulations of the foreign country and make a survey to determine the manner in which the inspection system is administered within the foreign country. The survey of the foreign inspection system may be expedited by payment by the interested Government agency in the foreign country of the travel expenses incurred in making the survey. After approval of the inspection system of a foreign country, the Administrator may, as often and to the extent deemed necessary, authorize representatives of the Department to review the system to determine that it is maintained in such a manner as to be the equivalent of the system maintained by the United States.

(b) A list of countries eligible to export egg products to the United States is maintained at

<http://www.fsis.usda.gov/importlibrary>.

Done at Washington, DC.

Carmen M. Rottenberg,

Administrator.

[FR Doc. 2019-25750 Filed: 11/26/2019 8:45 am; Publication Date: 11/27/2019]