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**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:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to remove lists of foreign countries eligible to export meat, poultry, and egg products to the United States from its regulations and, instead, utilize lists posted on FSIS' website. A reference to the web address would be included in FSIS' regulations. This change would allow FSIS to more efficiently provide the public with more accurate and up-to-date information. The criteria FSIS uses to evaluate whether a foreign country is eligible to export meat, poultry, or egg products would remain in the regulations and would not change. FSIS would continue to provide an opportunity for public comment when proposing to list new countries as eligible to export these products to the United States.

**DATES:** Submit comments on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail, including CD-ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250-3700.

- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2018-0027. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

*Docket:* For access to background documents or comments received, call (202) 720-5627 to schedule a time to visit the

FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

**FOR FURTHER INFORMATION CONTACT:** Roberta Wagner, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205-0495.

**SUPPLEMENTARY INFORMATION:**

**Background**

FSIS is the public health agency responsible for ensuring that domestic and imported meat, poultry, and egg products are safe, wholesome, and correctly labeled and packaged. FSIS inspects imported meat, poultry, and egg products under the authority of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 et seq.), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 et seq.). Imported meat, poultry, and egg products must originate from eligible countries and from establishments or plants that are certified to export to the United States (21 U.S.C. 620, 466, and 1046).

Any country can apply for eligibility to export meat, poultry, or processed egg products to the United States. FSIS first reviews documentation that the country submits to determine whether it shows that the country's food safety inspection system provides an equivalent level of protection for the products to be exported to the United States. If the

documentation shows that the foreign food safety system is equivalent, based on FSIS review, FSIS conducts an on-site audit of the inspection system to verify the system is operating consistent with the documents reviewed.

Currently, when both the document review and on-site audit find that the food safety inspection system is equivalent to the FSIS inspection system, FSIS publishes a proposal in the *Federal Register* to add the country to the appropriate list of eligible exporting countries in the regulations. After analysis of public comments and based on all available information, FSIS makes a final decision about whether the country's food safety inspection system is equivalent and, if appropriate, publishes a final rule in the *Federal Register* listing the country as eligible to export meat, poultry, or egg products to the United States. The regulations list the eligible countries in Title 9 of the Code of Federal Regulations (CFR) at 327.2(b)-(c) for meat, 381.196(b) for poultry, 557.2(b)(1) for fish of the order Siluriformes,<sup>1</sup> and 590.910(b) for egg products. Notably, FSIS is

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<sup>1</sup> On December 2, 2015, FSIS published the final rule, "Mandatory Inspection of Fish of the Order Siluriformes and Products Derived from Such Fish," establishing an inspection program for fish of the order Siluriformes (80 FR 75590). On the effective date of this final rule, March 1, 2016, FSIS took jurisdiction over regulation and inspection of this fish from the Food and Drug Administration (FDA). Countries that wished to continue shipping Siluriformes fish and fish products to the United States were required to submit initial documentation during the transitional period provided for in the final rule (March 1, 2016, to September 1, 2017). By the end of the transitional period, these countries were required to apply for equivalence under FSIS' regulations. Although no countries are currently listed in 9 CFR

not legally required to publish the names of eligible countries in the CFR but historically has done so in order to make the information publicly accessible in an organized fashion.

FSIS is now proposing to change the process described above by publishing the lists of countries eligible to export meat, poultry, or egg products to the United States only on its website, rather than in the regulations. FSIS already maintains lists of eligibility by country on its website at:

<http://www.fsis.usda.gov/importlibrary>. Should this rule become final, FSIS would continue to post the lists already on its website and would no longer include lists in the regulations. To add a country to a list, FSIS would announce the results of initial equivalence determinations for meat, poultry, or egg products through a notice with a request for comments in the *Federal Register*, rather than a proposed rule. Following the close of the comment period, FSIS would publish another *Federal Register* notice responding to comments and announcing its final decision. If the final decision is affirmative, FSIS would then add the country to the appropriate list on its website.

Similarly, FSIS will use this process when it is necessary to

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557.2, three countries, China, Thailand, and Vietnam, are currently permitted to ship Siluriformes fish and fish products while FSIS evaluates their food safety inspection systems for these products. On September 19, 2018, FSIS proposed to find these countries' inspection systems for Siluriformes fish equivalent to the United States' inspection system (83 FR 47524; 83 FR 47528; and 83 FR 47532).

terminate the eligibility of a foreign country. Terminating the eligibility of a foreign country will result in permanently removing the country from the list on the website. When a country has not shipped product for an extended period of time, the country will continue to be listed as inactive on the website, consistent with FSIS' current procedures. When a country has not shipped for some time, wants to resume shipping, and FSIS determines that it is eligible to ship, FSIS will announce that it is again eligible through the *Constituent Update*.

Under this proposal, the substantive criteria for determining equivalence, as outlined in 9 CFR 327.2(a)(2), 381.196(a)(2), 557.2(a), and 590.910(a), would not change.<sup>2</sup> This proposed action would allow FSIS to more efficiently propose and finalize equivalence determinations, as well as to terminate the eligibility of foreign countries that do not maintain equivalent inspection systems.<sup>3</sup> In addition to removing the lists from FSIS'

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<sup>2</sup> In a separate rulemaking, FSIS has proposed to amend 9 CFR 590.910, containing the process and criteria that the Agency follows to evaluate the inspection programs of foreign countries interested in gaining eligibility to export egg products to the United States (83 FR 6314, February 13, 2018). If that proposed rule is finalized, FSIS intends to amend the amended version of 9 CFR 590.910 to give effect to the changes proposed in this rulemaking.

<sup>3</sup> The Animal and Plant Health Inspection Service (APHIS) finalized a similar rule to remove lists of regions classified as affected by certain animal diseases and pests. See *Lists of Regions Classified With Respect to Certain Animal Diseases and States Approved To Receive Certain Imported Horses* (77 FR 1388, Jan. 10, 2012). APHIS cited advantages analogous to those in this proposed rule, including being able to make more timely changes to the lists while continuing to provide an opportunity for public comment. The current regulations citing the APHIS website are located in 9 CFR part 94.

regulations, this proposed rule would amend six parts of 9 CFR Chapter III (310, 327, 381, 424, 557, 590) to remove references to the lists.

In addition to more efficiently listing countries eligible to export meat, poultry, or egg products to the United States, the proposal would expedite corrections to the current lists, as FSIS would not have to engage in rulemaking related to geopolitical changes or changes to the names of countries.

**Executive Orders (E.O.s) 12866 and 13563 and the Regulatory Flexibility Act**

E.O. 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 proposed rule has been designated 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 (OMB) under E.O. 12866.

*Expected Cost of the Proposed Rule*

Under the proposed rule, the requirements for importing meat, poultry, and egg products to the United States would not change. FSIS would continue to determine whether a foreign country's food safety inspection system for meat, poultry, or egg products is equivalent to FSIS' inspection system. FSIS would announce the results of equivalence determinations through a notice with a request for comments in the *Federal Register*, rather than a proposed rule. This change in procedure would not alter U.S. production, imports, or consumption; therefore, FSIS does not expect a change in U.S. consumer price due to this proposed rule. The proposed 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 Benefits of the Proposed Rule*

While there is no additional cost associated with this proposed rule, the benefit from the proposed action is an increase in the efficient use of FSIS resources. FSIS would still use the *Federal Register* to receive and respond to public comments on equivalence determinations, but the proposed notice process would allow FSIS to more efficiently propose and finalize equivalence determinations. FSIS expects that the

proposed notice process will take less time than the current rulemaking process.

*Regulatory Flexibility Act Assessment*

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Under this proposed 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 proposed 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 estimates that this proposed rule would yield cost savings. Therefore, if finalized as proposed, this rule is expected to be an E.O. 13771 deregulatory action.

*Paperwork Reduction Act*

FSIS has reviewed the paperwork and recordkeeping requirements in this proposed 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 proposed rule only affects FSIS' 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 proposed 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.

**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](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](mailto: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 also will 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 proposing to amend 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

\* \* \* \* \*

**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>. Such products from listed countries must be accompanied by meat inspection certificates of the country of origin as required by § 327.4, except fresh, chilled, or frozen or other product ineligible for importation into the United States from countries in which the contagious and communicable disease of rinderpest or of foot-and-mouth disease or of African swine fever exists as provided in part 94 of this title, is 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 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)(i), 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.*

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