

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Parts 362 and 381

[Docket No. 01–0451F]

RIN 0583–AC84

#### Mandatory Inspection of Ratites and Squabs

**Editorial Note:** Federal Register rule document 01–10679 originally appeared in the issue of Tuesday, May 1, 2001 at 66 FR 21631–21639. Due to several errors (repeated text and missing text on page 21635) the document is being reprinted in its entirety.

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Interim final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Poultry Products Inspection Regulations (Part 381) and the Voluntary Poultry Inspection Regulations (Part 362) to include ratites and squabs under the mandatory poultry products inspection regulations. The Agency is responding to the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the Appropriations Act), signed by the President on October 28, 2000, which provides that 180 days after the date of its enactment, U.S. establishments slaughtering or processing ratites or squabs for distribution into commerce as human food will be subject to the requirements of the Poultry Products Inspection Act (PPIA), rather than the voluntary poultry inspection program under section 203 of the Agricultural Marketing Act of 1946 (AMA). The provision of the Appropriations Act specifying that ratites and squabs come under the Agency's mandatory inspection requirements is effective on

April 26, 2001. Interested parties may comment on this interim final rule.

**DATES:** This interim final rule will be effective April 26, 2001. Comments must be received on this interim final rule by July 2, 2001.

**ADDRESSES:** Submit one original and two copies of written comments within the scope of the rulemaking to FSIS Docket Clerk, Docket #01–0451F, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For information about the interim final rule, contact Dr. Arshad Hussain, Director, Inspection and Enforcement Standards Development Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 202, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, (202) 720–3219.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 28, 2000, the President signed the Appropriations Act, which provides that 180 days after the date of its enactment, U.S. establishments that slaughter or process ratites (such as ostriches, emus, and rheas) or squabs for distribution into commerce as human food will be subject to the requirements of the PPIA (21 U.S.C. 451, *et seq.*), rather than the voluntary poultry inspection program under section 203 of the AMA (7 U.S.C. 1622). This provision of the Appropriation Act is effective on April 26, 2001.

Ratites are members of a superorder (Ratitae) of flightless birds that have small or rudimentary wings and flat breastplates, e.g., ostriches, emus, and rheas. Squabs are young pigeons that have not yet flown.

Ratites are currently inspected under the Voluntary Poultry Inspection Regulations as an experimental program. Operators who wish to continue to slaughter or process ratites or squabs after April 26, 2001, for transport or sale in commerce must apply to FSIS for a grant of inspection for mandatory inspection service (§§ 381.6 and 381.16). As of April 26,

2001, grants of voluntary inspection for ratites and squabs will no longer be valid. Fees for ratite and squab inspection services will no longer be charged, except for overtime and holiday inspection services.

Applications for mandatory inspection must be submitted on an FSIS application form available from any FSIS District Office or from FSIS Headquarters, Washington, DC 20250. FSIS will give notice in writing to each applicant granted (or denied) inspection.

Under the regulations that implement the PPIA, before being granted Federal inspection, an establishment must have written Sanitation Standard Operating Procedures (SOPs) (§ 381.22(a)) and a Hazard Analysis and Critical Control Point (HACCP) plan that the establishment has validated (§ 381.22 (b) and (c)). Establishments can receive conditional grants of inspection for a period of not more than 90 days while they validate their HACCP plans (§ 381.22(b)).

#### Import Inspection

This interim final rule will be effective on April 26, 2001. Within 18 months of that date, imported ratite or squab products will have to originate in countries that are eligible to export poultry to the United States and will have to be processed in establishments certified by the government of the foreign country as eligible to export to the United States. Currently, these countries include Canada, France, Great Britain, and Israel. Hong Kong and Mexico have not yet been approved by the United States to slaughter poultry; therefore, they are only eligible to export to the United States processed poultry products that originate from Canada, France, Great Britain, Israel, or the United States (§ 381.196).

All countries exporting or wanting to export ratite and squabs products to the United States, regardless of their current eligibility status regarding meat and poultry product exports to the United States, may do so for the next 18 months subject to the following. Countries already eligible to export poultry to the United States will be able to export ratites and squabs as soon as they certify to FSIS those establishments eligible to export to the United States. These countries are Canada, Israel, Great Britain, and France. Animal health

restrictions continue to apply so there is no change with regard to the eligibility of specific products based on APHIS regulations.

Countries eligible to export meat to the United States will be permitted to export ratites to the United States provided the animals are slaughtered in an establishment certified to export to the United States and provided the countries submit a request for establishing equivalency. Certified establishments are required to meet FSIS HACCP and Pathogen Reduction requirements. At this point, Australia and New Zealand, which are both eligible to export meat to the United States, have indicated that they want to export ratites.

Countries not eligible to export meat or poultry to the United States will need to submit a request for equivalency and FSIS will need to make an equivalency determination according to 9 CFR Part 327.

As indicated above, however, each country desiring to begin or continue exporting such products to the United States will have to apply for an equivalence determination of its ratite and squab inspection system. Countries' ratite and squab export inspection systems must be found to be equivalent with the U.S. domestic inspection system within 18 months of the effective date of the Agency's new mandatory ratite and squab inspection requirements (April 26, 2001).

After the 18 month period has ended, all shipments of ratites and squabs from eligible countries must be accompanied with the appropriate veterinary health certificate (§ 381.197) and must be presented to FSIS for import reinspection prior to entry (§ 381.199).

Countries wanting to export ratites and squab to the United States should make a written request to export poultry to FSIS through the United States Embassy located in the country. FSIS will conduct both a document review and an on-site audit to determine if the country operates an equivalent poultry inspection system.

During the review, FSIS will work cooperatively with the Animal and Plant Health Inspection Service, which approves the entry of poultry products according to the disease status of the exporting country.

If the country's export inspection system is found to be equivalent with the U.S. domestic inspection system, FSIS will publish a proposal in the **Federal Register** to list the country as eligible to export poultry products to the United States. After the public has had 60 days to comment on this proposed rule, FSIS will review all of the public

comments and make a final determination of equivalence. The determination to list a country as equivalent, and, therefore, eligible to export poultry products to the United States, is published as a final rule in the **Federal Register**, along with FSIS's responses to the public comments. At that time, the country's inspection service may certify establishments for export of poultry products, including ratites and squabs, to the United States.

#### Summary of Interim Final Rule

FSIS is making a number of technical changes in its regulations, which it believes are noncontroversial, to provide for the inspection of ratites and squabs. The Agency is amending 9 CFR 362.1(d) to remove squab from the definition of "Poultry" in the Voluntary Poultry Inspection Regulations. FSIS is also amending § 362.1(e) to include ratites and squabs with chickens, turkeys, ducks, geese, and guineas in the definition of "Poultry Product." The Agency is also amending § 381.1(b) to include ratites and squabs within the definition of "Poultry" in the Poultry Products Inspection Regulations.

FSIS is amending § 381.36(b) to require a pen for the ante mortem inspection of ratites. It is necessary to specify that a pen be available for ratites because ante mortem inspection of ratites is done on an individual bird basis, rather than a lot basis as is done for other amenable poultry.

The Agency is amending § 381.66 to exempt ratites from the chilling requirements of § 381.66 paragraphs (b), (c), and all of (d), except for (d)(1). Ratites are air-chilled rather than water-chilled, as is the case with most amenable poultry.

FSIS is amending § 381.67 to include squabs with young chickens under traditional inspection procedures. The two types of birds are of similar size and weight and thus can be inspected in a similar manner.

The Agency is amending § 381.70 to permit an exception to examining and inspecting ratites on the day of slaughter for humane reasons or, for low volume establishments, under certain conditions. This amendment allows the humane handling of ratites to be the same as that for livestock.

FSIS is amending § 381.71 to provide information on how suspect and condemned ratites are to be handled. This amendment is necessary because the treatment of suspect and condemned ratites is different than the treatment of suspect and condemned birds of other amenable species.

FSIS is amending § 381.72 to reflect the fact that ratites showing disease

symptoms at ante mortem will be handled differently than other diseased poultry.

The Agency is amending § 381.76 to add Ratite Inspection as the fifth post mortem poultry inspection system. This amendment is necessary because inspection of ratites must be done in a different manner than inspection of other amenable poultry species. Thus, inspection of ratites cannot be done under the existing four inspection systems.

FSIS is amending § 381.96 to provide that ratite carcasses and parts that are shipped unpacked must bear the official brand. This addition is necessary because ratites are the only species of amenable species that are likely to be shipped unpacked.

Finally, FSIS is proposing to make some editorial changes to § 362.1 to correct inaccuracies and to provide for greater clarity.

#### Regulatory Impact Analysis

##### *Basis for Regulatory Action*

Currently, ratites and squabs are inspected on a voluntary, fee-for-service basis under section 203 of the AMA. The interim final rule will amend § 362.1(d) to remove squab from the definition of poultry in the Voluntary Poultry Inspection Regulations and will amend § 381.1 to include ratites and squabs under the Agency's mandatory poultry inspection requirements.

Congress mandated, in the FY 2001 Agriculture Appropriation Act, that 180 days from the date of enactment (April 26, 2001) U.S. establishments that slaughter or process ratites or squabs will come under mandatory inspection by FSIS.

##### *Baseline*

Ratites and squabs are considered non-amenable species and are currently inspected by the Agency on a voluntary, fee-for-service basis.<sup>1</sup> These species are also inspected on a mandatory or voluntary basis under State programs. Ratites are an order of flightless birds that includes ostriches, emus, rheas, cassowaries, and kiwis. The most economically important species of ratites are the ostrich and the emu. Squabs are young domesticated pigeons that have never flown. Ratite and squab

<sup>1</sup> The FMA and PPIA do not mandate the inspection of ratites and squabs. FSIS provides, on a fee-for-service basis, voluntary inspection services under the Agricultural Marketing Act of 1946 for these species and others such as reindeer, elk, deer, antelope, water buffalo, bison, migratory water fowl, game birds, and rabbits. The Food and Drug Administration has primary statutory authority over all food animals and birds not covered by the FMA and the PPIA.

meat is valued for its flavor and nutritional characteristics.

Since 1992, when FSIS first granted a request for voluntary inspection for ostriches, approximately 166 establishments have been issued a grant of inspection for ratite operations.

Currently 99 establishments possess a grant of inspection. In 1999, there were a total of 48,286 (76%) ratites inspected in Federal establishments and 14,427 (24%) ratites inspected in State establishments, or a total of 62,713

ratites inspected (Table 1). Ostriches made up the largest share (69%) of the ratites inspected under the Federal program, whereas emu made up the largest share (56%) of the ratites inspected under State programs.

TABLE 1.—RATITES AND SQUAB INSPECTION VOLUME AND ESTABLISHMENTS, FY 1999

Species	Federal establishments		State establishments		Total inspected
	Number inspected	% of total	Number inspected	% of total	
Ratites					
Ostrich .....	33,521	86	5,254	14	38,775
Emu .....	14,745	64	8,068	36	22,813
Other .....	20	2	1,105	98	1,125
Ratites Total .....	48,286	76	14,427	24	62,713
Squabs .....	175,496	14	1,122,131	86	1,297,627
Totals .....	223,782	16	1,136,558	84	1,360,240
Ests.	Number		Number		
Squabs .....	2		2		
Ratites .....	99		95		

In 1999, states with a large share of ratites inspected under the Federal program were California, Georgia, Illinois, Louisiana, Oklahoma, and Texas. Alabama, California, Mississippi, North Carolina, Ohio, and Texas inspected a large share of ratites under State programs. There were almost an equal number of establishments involved in slaughter of ratites under the Federal (99) and State (95) inspection programs.

#### *Ostriches*

Ostrich is the largest bird in the world, standing about seven to eight feet tall and weighing 300–400 pounds when fully grown. Industry representatives indicate that there were about 600 ostrich growers 1998, down from 1000 growers in 1996. There is significant uncertainty about the annual production of ostriches and other ratites at this time. The Agency requests reliable information on the annual number of ratites and squab produced and the number of producers.

Ostriches are slaughtered at an average age of 12 months. The average weight at slaughter is 350 pounds. Ostrich meat is sold as steaks, fillets, medallions, roasts, and ground meat. Currently, ostriches are processed in establishments that are equipped to process other red meat species such as cattle, sheep, goats, and swine.

#### *Emus*

A mature emu reaches a height of 5 to 6 feet tall, weighing 90 to 120 pounds. In 1999, 22,813 emus were inspected under Federal and State programs (Table 1). There are a number of valuable products derived from emus in addition to their meat.

There is also significant uncertainty about the annual production of emus. Some source indicate that there may be as many as 500,000 birds on 5,000 to 6,000 farms in the U.S., with the majority of them in Texas, Oklahoma, and elsewhere in the Southwest.

#### *Squabs*

Squabs are young domesticated pigeons that have never flown. Squabs usually weigh 1 pound or less at the time of slaughter (about 4 weeks old). In 1999, California and Oregon were the only two states that inspected squabs under the Federal voluntary inspection program. In that year, 175,496 squabs were inspected (Table 1). During that same period 1,122,131 squabs were inspected under the inspection programs of California and South Carolina.

#### *Regulatory Alternatives*

FSIS considered two options in developing its interim final rule. The first option the Agency considered was to only change the definition of poultry in the Poultry Products Inspection Regulations to include ratites and squabs. This approach may have caused

confusion in the industry because it would be difficult to apply some of the current poultry regulations to ratites and squabs, e.g., chilling and certain handling requirements.

The Agency's second option was to make the changes required by statute and other changes as noted above. FSIS selected this option because it will provide a more orderly transition from voluntary inspection to mandatory inspection of ratites and squabs than the first option at little or no additional cost.

#### *Benefits*

There are three primary benefits that may result from extending mandatory inspection services to ratites and squabs: industry growth, public health, and industry cost savings.

Having the inspection mark on the ratite and squab products could lead to greater consumer confidence and acceptability of the products. Demand could be expected to increase as a result. Establishments that are able to capitalize on the change in consumer preference may realize increased sales of these products. To the extent that inspection promotes growth in the ratite and squab industry, society could benefit also from the increased employment and earnings of workers in these establishments. Studies are not available to identify the potential growth in the industry that may occur.

The public health benefits of inspection are related to the reduction

in risk associated with consumption of all ratite and squab meat that must be inspected using the same procedures employed in the meat and poultry industries. HACCP systems, Sanitation SOPs, and process control practices have been shown to reduce contamination by harmful foodborne pathogens.

A shift to the mandatory inspection system will eliminate the payment of fees for inspection services. This is not a benefit from an economic perspective as the costs of inspection are transferred elsewhere in the economy. Since FSIS will recover these costs through appropriated funds, the change to a mandatory inspection system results in an income transfer from the public to the ratite and squab industry. The total cost savings to the industry would be about \$2 million in 2001, with the possibility of increasing over time with the expansion of the industry.

**Industry Costs**

The compliance cost of extending mandatory inspection to ratite and squab species will be negligible. All establishments involved in slaughtering amenable species, as of January 25, 2000, must be in compliance with the

provisions of Pathogen Reduction/Hazard Analysis Critical Control Point (PR/HACCP) final rule. Under the provisions of the rule, all slaughter establishments under mandatory inspection are required to have HACCP plans and meet process control requirements. Nearly all establishments that slaughter and process ratites and squabs because they also slaughter other species under mandatory inspection have already implemented HACCP, Sanitation SOPs, and other measures consistent with the requirements of this rule. These establishments will still be required to make changes to their HACCP or sanitation procedures to include ratites and squabs. Establishments that have not included ratites and squabs in their HACCP plans<sup>2</sup> would incur minimal costs associated with HACCP plan modification.

As poultry is subject to mandatory Federal inspection, ratites and squabs will be subject to *E. coli* testing requirements. Establishments that slaughter more than one kind of poultry and livestock are required to test the kind of species slaughtered in the greatest number. The number of establishments where ratites and squabs

will be the species being slaughtered in the greatest number is very low. Consequently, very few establishments will be required to perform additional *E. coli* testing for process control verification. The costs per establishment for *E. coli* testing are shown in Table 2. The Agency is requesting information on the number of establishments where ratites or squabs are, or would become, the major species for slaughter.

For those establishments slaughtering and processing ratites and squabs under voluntary inspection, the transition to mandatory inspection will not require changes in equipment and processing methods. Ratites are currently being slaughtered and processed in establishments that are equipped to process cattle, sheep, goats, and swine. Squabs are processed using the same equipment and procedures as those used for young chickens.

The Agency estimates that 50% of the Federal establishments (50 establishments) and 25% of the State establishments (24 establishments) may be required to make minor changes in their HACCP plan to accommodate mandatory inspection requirements for ratites.

TABLE 2.—POTENTIAL COSTS FOR MANDATORY FEDERAL INSPECTION

Costs	Per est. (dollars)	Industry (\$thousand)
Start up Cost:		
HACCP Plan Modification .....	500	37.0
SSOP Modification .....	100	7.4
Recurring Cost: <i>E. coli</i> Sampling (26 samples@\$20 per sample per establishment) .....	520	38.5
Recordkeeping .....	300	22.2
<b>Total .....</b>	<b>1,420</b>	<b>105.1</b>

The Agency seeks comment or further information pertaining to its cost figures for mandatory inspection.

Other additional costs that would apply to all establishments applying for Federal mandatory inspection will be the application cost. This cost will be negligible, as it is limited to a one-time cost for filling out an application, about \$10. The total compliance cost to the establishments identified above are estimated to be \$105,100.

FSIS is aware that some State inspected ratite product may contain sodium nitrite and/or sodium nitrate even though the Food and Drug Administration (FDA) regulations do not authorize such use of these substances for ratite products. However,

once ratites are officially defined as poultry under PPIA regulations, such use will not be allowed in FSIS inspected products. FSIS does not have information on the types or amounts of product affected by this change, but is seeking information.

**FSIS Costs**

The Agency anticipates the need to conduct baseline microbiological and chemical residue studies. These studies constitute the major costs to the Agency totaling \$600,000.

**Microbiological Testing**

The microbiological studies would help the Agency determine the prevalence of harmful bacteria or pathogens in ratites and squabs. These

studies can also be used to develop performance standards for pathogen reduction. The costs of a microbiological baseline testing for ratites are \$110,000 and for squabs, \$95,000 (Tables 3 and 4).

**Chemical Residue Testing**

Chemical residue studies would help the Agency determine the presence of violative chemical and drug residues in ratites and squabs. Chemical residue testing would be necessary to determine how these additional species would be incorporated in the Agency's annual residue testing program. FSIS' one-time costs for chemical residue studies for ratites and squabs are \$210,000 and \$185,000, respectively (Tables 3 and 4).

<sup>2</sup> HACCP plans are not required to cover non-amenable species.

TABLE 3.—COST TO FSIS OF A MANDATORY RATITE INSPECTION PROGRAM

One-time costs	Inspection hours	Thousands of dollars
Chemical Residue Study .....	.....	210.0
Microbiological Baseline .....	.....	110.0
Total .....	.....	320.0
Transfer Payment: <sup>1</sup> Federally-Inspected Ests .....	38,524	1,959.0

<sup>1</sup> The hourly rate for Federal inspection in FY 2000 is estimated to be \$38.44 per hour.

TABLE 4.—FSIS MANDATORY SQUAB INSPECTION PROGRAM COSTS

One-time costs	Inspection hours	Thousands of dollars
Chemical Residue Study .....	.....	185.0
Microbiological Baseline .....	.....	95.0
Total .....	.....	280.0
Transfer Payment: <sup>1</sup> Federally-Inspected Ests .....	322	16.4

<sup>1</sup> The hourly rate for Federal inspection in FY 2000 is estimated to be \$38.44 per hour.

*Transfer Payments*

Under voluntary inspection, establishments pay for inspection services. The funds for mandatory inspection activities are appropriated from Federal tax revenues. The transition from voluntary to mandatory inspection changes the source of inspection program funding. The Agency estimates that the industry cost of inspection of ratites and squabs for 1999 in Federal establishments was \$1,975,000, of which ratites accounted for \$1,959,000 and squabs, \$16,400, including overhead (Tables 3 and 4).

When ratite and squab inspection becomes mandatory, it is possible that the volume of ratites and squabs inspected at Federally inspected establishments will increase beyond what is currently being inspected. First, there may be significant volumes of ratites and squabs that are currently slaughtered and consumed without

inspection that would be brought under inspection. Second, an establishment currently under a State inspection program that is shipping ratites and squabs in interstate commerce would have to shift to Federal inspection to maintain its markets. It is expected that 25% of the establishments under State voluntary inspection would migrate to the Federal mandatory program. The analysis does not take into account the potential increase in the demand for inspection services. Both species currently account for an extremely small share of meat and poultry inspection. Changes in the required level of inspection program personnel are not expected to be significant in the near-term.

The estimated total cost of inspection in State establishments is \$554,400 for 14,427 ratites and 1,122,131 squabs for FY 1999. Under the current agreement the Agency has with state having a

voluntary inspection program, the Agency pays half of the inspection program costs, or \$277,191 (Table 5).

Under a mandatory program, states would no longer be able to collect fees for inspection services. States may decide to terminate their ratite and squab inspection program. If this occurs, FSIS will take over inspection at the facilities operating under a State program and thereby absorb the total costs of inspection at these establishments. For those states that do not have a State voluntary program for ratites and squabs, the impact of a Federal mandatory inspection program will be minimal. The payment of these costs at previously State inspected establishments is an income transfer similar to that occurring for Federally inspected establishments.

The total transfer payment to Federal and State establishments is \$2,252,000 (1,975,000 plus 277,000).

TABLE 5.—RATITES AND SQUABS INSPECTION COST AT STATE ESTABLISHMENTS—FY 1999

Species	Number inspected	Total inspection hours required	Total cost of inspections <sup>1</sup> (\$thousand)
Ratites .....	14,427	11,510	442.4
Squabs .....	1,122,131	2,912	111.9
Total .....	1,136,558	14,422	554.4

<sup>1</sup> FSIS hourly base rate of \$38.44 times inspection hours required.

*Consumer Cost*

In large part, the costs of ratite and squab inspection are transferred from producers to taxpayers. As the burden of paying for inspection service is eliminated, establishments may transfer

these cost savings to consumers through lower prices.

*Economic Impact on International Trade Assessment*

Countries that previously had little interest in export certification may petition FSIS if additional species come under mandatory inspection. Foreign

establishments that specialize in exotic species may seek to broaden their markets by exporting to the United States. The Agency may need to evaluate the equivalence of a greater number of foreign food regulatory inspection systems.

*Executive Order 12866 and Regulatory Flexibility Act*

Because this interim final rule has been determined to be significant, the Office of Management and Budget (OMB) has reviewed it under Executive Order 12866.

The Administrator, FSIS, has determined that this interim final rule would not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Small establishments will not be adversely affected by this interim final rule. Few establishments slaughter and process ratites or squabs exclusively. They usually slaughter and process both amenable and non-amenable species. For small slaughtering establishments as well as large ones, ratites and squabs do not comprise all or even most of their business. Of the 100 establishments that slaughter or process ratites and squabs, only two slaughter over 90% of the squabs consumed in the market. There are no establishments that dominate the slaughtering of ratites. Small entities will benefit along with the rest of the industry with the increased marketability of their product and the cost savings realized because they will no longer have to pay fees to either FSIS or the state for voluntary inspection service.

*Executive Order 12988*

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule: (1) Preempts State and local laws and regulations that are inconsistent 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. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.320 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the PPIA.

*Executive Order 13132*

Executive Order 13132, "Federalism," requires that Agencies assess the federalism implications of their policy statements and actions, i.e., the effects

of those statements and actions on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) preempt State and local laws in regard to the manufacture and distribution of meat and poultry products. Therefore, FSIS policy statements and actions impact federalism within the context of these statutory preemptions.

States and local jurisdictions are preempted by the FMIA and PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

Specifically, under section 301 of the FMIA and section 5 of the PPIA, a State may administer State meat and poultry inspection programs provided that it has developed and is effectively enforcing State meat and poultry inspection requirements at least equal to those imposed under titles I and IV of the FMIA and sections 1-4, 6-10, and 12-22 of the PPIA. These titles contemplate continuous ongoing programs. When States can no longer effectively enforce meat and poultry inspection requirements at least equal to Federal requirements, they must be "designated" by the Secretary to receive Federal inspection.

When FSIS revises its meat and poultry inspection requirements, States that administer their own inspection programs may be impacted, since they must continue to enforce requirements equal to those of FSIS. To minimize any additional costs States must incur to modify their inspection programs, FSIS grants the States significant flexibility under the "equal to" provisions of the FMIA and PPIA. Further, States are eligible to receive up to 50 percent Federal matching funds to cover the costs of their inspection programs.

*Paperwork Reduction Act Requirements*

*Title:* Mandatory Inspection of Ratites and Squabs.

*Type of Collection:* New.

The paperwork and recordkeeping requirements in this final rule will be approved on an emergency basis by OMB under control number 0583-01120. FSIS is seeking comments on the paperwork and recordkeeping requirements in this interim final rule so that the Agency may receive a three-year approval for these requirements.

*Abstract:* FSIS has reviewed the paperwork and record keeping requirements in this interim final rule in accordance with the Paperwork Reduction Act. Under this proposed rule, FSIS is requiring several information collection and record keeping activities. FSIS is requiring that establishments slaughtering and processing ratites and squabs apply for Federal Inspection. Also, these establishments will need to develop and maintain Sanitation SOPs, HACCP plans, and perform testing for *E. coli*.

*Estimate of Burden:* FSIS estimates that the time to apply for inspection would be two hours. The time to develop a Sanitation SOP will be two days (16 hours) and five minutes to file. FSIS estimates that an establishment will spend about 5 minutes a day developing an average of eight monitoring records, per Sanitation SOP, and two minutes a day filing each record. The time to develop a HACCP plan or process schedule would take an average of two days (16 hours) and five minutes to file. FSIS estimates that an establishment will spend about five minutes a day developing an average of eight monitoring records, per HACCP plan or process schedule, and two minutes a day filing each record. The time to record *E. coli* testing results would be five minutes a day.

*Respondents:* Meat and poultry product establishments and irradiation facilities.

*Estimated Number of Respondents:* 105 (100 ratite and 5 squab establishments).

*Estimated Number of Responses per Respondent:* 8,252.

*Estimated Total Annual Burden on Respondents:* 54,758 hours.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 112 Annex, 300 12th SW., Washington, DC 20250.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the collection of information including the validity of the methodology and

assumptions used: (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments are requested by July 2, 2001. To be most effective, comments should be sent to OMB within 30 days of the publication date.

#### List of Subjects

##### 9 CFR Part 362

Poultry and poultry products.

##### 9 CFR Part 381

Poultry and poultry products.

### PART 362—VOLUNTARY POULTRY INSPECTION REGULATIONS

For the reasons stated in the preamble, FSIS is amending 9 CFR chapter III as follows:

1. The authority citation for part 362 is revised to read as follows:

**Authority:** 7 U.S.C. 1622; 7 CFR 2.18 (g) and (i) and 2.53.

2. Sections 362.1 and 362.2 are revised to read as follows:

#### § 362.1 Definitions.

The definitions in § 381.1 are incorporated in this part except for the definitions excluded in § 362.2(a). In addition to those definitions, the following definitions will be applicable to the regulations in this part.

(a) *Act*. “Act” means the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087, as amended; 7 U.S.C. 1621 et seq.).

(b) *Inspector*. “Inspector” means any officer or employee of the Department authorized to perform any duties under the regulations in this part.

(c) *Person*. “Person” means any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other organized business unit.

(d) *Poultry*. “Poultry” means any migratory water fowl or game bird, whether dead or alive.

(e) *Poultry Product*. “Poultry product” means any poultry carcass or part thereof; or any human food product which is made wholly or in part from the carcass of any domesticated bird (as defined in § 381.1(b) of this chapter) and is excepted from the inspection requirements of the Poultry Products Inspection Act (21 U.S.C. 451 et seq.).

#### § 362.2 Types and availability of service.

Upon application, in accordance with § 362.3, the following types of service may be furnished under the regulations in this part:

(a) *Inspection service*. An inspection and certification service for wholesomeness relating to the slaughter and processing of poultry and the processing of poultry products. All provisions of Part 381 and §§ 416.1 through 416.6 of this chapter shall apply to the slaughter of poultry, and the preparation, labeling, and certification of the poultry and poultry products processed under this poultry inspection service except for the following provisions: the definitions of “Act,” “animal food manufacturer,” “Inspection Service,” “inspector,” “Inspector in Charge,” “poultry,” “poultry product,” “poultry food product,” “poultry products broker,” “renderer,” and “U.S. Refused Entry” in §§ 381.1 (b), 381.3 (a), 381.6, 381.10, 381.13–381.17, 381.21, 381.29, 381.39–381.42, 381.175 (a)(2), 381.175 (a)(3), 381.179, 381.185–381.187, 381.192, and 381.195–381.225.

(b) *Export certification service*. At the request of any person intending to export any slaughtered poultry or poultry product, inspectors may make certification regarding products for human food purposes, to be exported, as meeting conditions or standards that are not imposed or are in addition to those imposed by the regulations in this chapter and the laws under which such regulations were issued.

(c) *Identification Service*. (1) Poultry or other product that is federally inspected and passed at an official establishment, or upon importation, under the Poultry Products Inspection Act, is officially marked to identify it as federally inspected and passed. In order to facilitate the division of such poultry or other product into smaller portions or its combination into larger units and still maintain its identify as product which has been federally inspected and passed and so marked, inspectors may supervise the handling and weighing of the product and mark such portions and units with the official mark of inspection when they determine that identify has been maintained.

(2) At the time service is furnished, product must be sound, wholesome, and fit for human food. The service will be available only on premises other than those of an official establishment. The sanitation of the place or area where service is furnished must comply with provisions of §§ 416.1 through 416.6 of this chapter.

(3) The mark of inspection shall be applied only under the immediate supervision of an inspector.

(4) This service does not cover further cutting and processing of products. These activities must take place at an official establishment.

(5) The registration and recordkeeping requirements enumerated in Part 381, subpart Q, of this chapter shall apply to persons requesting voluntary identification service under this paragraph (c).

### PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for Part 381 continues to read as follows:

**Authority:** 7 U.S.C. 138f, 450; 21 USC 451–470; 7 CFR 2.18, 2.53.

4. Section 381.1 (b) is amended by revising the definition of poultry to read as follows:

*Poultry*. “Poultry” means any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs, also termed young flightless pigeons), whether live or dead.

\* \* \* \* \*

5. Amend § 381.36 by revising the first sentence of paragraph (b) to read as follows:

#### § 381.36 Facilities required.

(b) *Facilities for ante mortem inspection*. A suspect pen is required for adequate ratite inspection. \* \* \*

\* \* \* \* \*

6. Amend § 381.66 by revising the headings of paragraphs (b) and (c), and by revising paragraph (d)(1) to read as follows:

#### § 381.66 Temperatures and chilling and freezing procedures.

\* \* \* \* \*

(b) *General chilling requirements, except for ratites*. \* \* \*

(c) *Ice and water chilling requirements, except for ratites*. \* \* \*

(d) (1) *Moisture absorption and retention limits*.

(1) Poultry washing, chilling, and draining practices and procedures shall be such as will minimize moisture absorption and retention at time of packaging. Ratites must meet the requirements of this paragraph but are exempt from the rest of § 381.66(d).

\* \* \* \* \*

7. Amend § 381.67, by revising the text preceding the table and the heading of the table, to read as follows:

**§ 381.67 Young chicken and squab slaughter inspection rate maximums under traditional inspection procedure under traditional inspection procedure.**

The maximum number of birds to be inspected by each inspector per minute under the traditional inspection procedure for the different young chicken and squab slaughter line configurations are specified in the following table. These maximum rates will not be exceeded. The inspector in charge will be responsible for reducing production line rates where in the inspector's judgment the prescribed inspection procedure cannot be adequately performed within the time available, either because the birds are not presented by the official establishment in such a manner that the carcasses, including both internal and external surfaces and all organs, are readily accessible for inspection, or because the health conditions of a particular flock dictate a need for a more extended inspection procedure. The standards in 381.170(a) of this part specify which classes of birds constitute young chickens and squabs. Section 381.76(b) specifies when either the traditional inspection procedure or the modified traditional inspection procedure can or must be used.

**Maximum Production Line Rates—Chickens and Squabs-Traditional Inspection Procedures**

\* \* \* \* \*

8. Amend § 381.70 by designating the text as paragraph (a) and by adding paragraph (b) to read as follows:

**§ 381.70 Ante mortem inspection; when required; extent.**

\* \* \* \* \*

(b) The examination and inspection of ratites will be on the day of slaughter, except:

(1) When it is necessary for humane reasons to slaughter an injured animal at night or on a Sunday or holiday, and the FSIS veterinary medical officer cannot be obtained; or

(2) In low volume establishments, when ante mortem inspection cannot be done on the day of slaughter, and the birds to be slaughtered have received ante mortem inspection in the last 24 hours, provided the establishment has an identification and control system over birds that have received ante mortem inspection.

9. Amend § 381.71 by designating the text as paragraph (a) and by adding paragraphs (b), (c), (d), (e), and (f) to read as follows:

**§ 381.71 Condemnation on ante mortem inspection.**

\* \* \* \* \*

(b) Dead-on-arrival ratite carcasses and ratites condemned on ante mortem inspection will be tagged "U.S. Condemned" by an establishment employee under FSIS supervision and disposed of by one of the methods prescribed in § 381.95.

(c) All seriously crippled ratites and non-ambulatory ratites, commonly termed "downers," shall be identified as "U.S. Suspects."

(d) Ratites exhibiting signs of drug or chemical poisoning shall be withheld from slaughter.

(e) Ratites identified as "U.S. Suspects" or "U.S. Condemned" may be set aside for treatment. The "U.S. Suspect" or "U.S. Condemned" identification device will be removed by an establishment employee under FSIS supervision following treatment if the bird is found to be free of disease. Such a bird found to have recovered from the condition for which it was treated may be released for slaughter or for purposes other than slaughter, provided that in the latter instance permission is first obtained from the local, State, or Federal sanitary official having jurisdiction over movement of such birds.

(f) When it is necessary for humane reasons to slaughter an injured ratite at night or Sunday or a holiday, and the Agency veterinary medical officer cannot be obtained, the carcass and all parts shall be kept for inspection, with the head and all viscera except the gastrointestinal tract held by the natural attachment. If all parts are not so kept for inspection, the carcass shall be condemned. If on inspection of a carcass slaughtered in the absence of an inspector, any lesion or other evidence is found indicating that the bird was sick or diseased, or affected with any other condition requiring condemnation of the animal on ante mortem inspection, or if there is lacking evidence of the condition that rendered emergency slaughter necessary, the carcass shall be condemned. Ratites that are sick, dying, or that have been treated with a drug or chemical and presented for slaughter before the required withdrawal period, are not covered by emergency slaughter provisions.

10. Revise § 381.72 to read as follows:

**§ 381.72 Segregation of suspects on ante mortem inspection.**

(a) All birds, except ratites, that on ante mortem inspection do not plainly show, but are suspected of being affected with, any disease or condition that under §§ 381.80 to 381.93 of this Part may cause condemnation in whole or in part on post mortem inspection,

shall be segregated from the other poultry and held for separate slaughter, evisceration, and post mortem inspection. The inspector shall be notified when such segregated lots are presented for post mortem inspection, and inspection of such birds shall be conducted separately. Such procedure for the correlation of ante mortem and post mortem findings by the inspector, as may be prescribed or approved by the Administrator, shall be carried out.

(b) All ratites showing symptoms of disease will be segregated, individually tagged as "U.S. Suspects" by establishment personnel under FSIS supervision with a serially numbered metal or plastic leg band or tag bearing the term "U.S. Suspect," and held for further examination by an FSIS veterinarian. Depending upon the findings of the veterinarian's examination, these birds will either be passed for regular slaughter, slaughtered as suspects, withheld from slaughter, or condemned on ante mortem. Those ratites affected with conditions that would be readily detected on post mortem inspection need not be individually tagged on ante mortem inspection with the "U.S. Suspect" tag provided that such ratites are segregated and otherwise handled as "U.S. Suspects." All ratites identified as "U.S. Condemned" shall be tagged by establishment personnel, under FSIS supervision, with a serially numbered metal or plastic leg band or tag bearing the term "U.S. Condemned."

11. Amend § 381.76 by revising the introductory text of paragraph (b) (1) to read as follows:

**§ 381.76 Post-mortem inspection, when required; extent; traditional, Streamlined Inspection System (SIS), New Line Speed (NELS) Inspection System and the New Turkey Inspection (NTI) System; rate of inspection.**

\* \* \* \* \*

(b)(1) There are five systems of post-mortem inspection: Streamlined Inspection System (SIS) and the New Line Speed (NELS) Inspection System, both of which shall be used only for broilers and cornish game hens; the New Turkey Inspection (NTI) System, which shall be used only for turkeys; Traditional Inspection; and Ratite Inspection.

\* \* \* \* \*

12. Revise § 381.96 to read as follows:

**§ 381.96 Wording and form of the official inspection legend.**

Except as otherwise provided in this subpart, the official inspection legend required to be used with respect to inspected and passed poultry products

shall include wording as follows: "Inspected for wholesomeness by U.S. Department of Agriculture." This wording shall be contained within a circle. The form and arrangement of such wording shall be exactly as indicated in the example in Figure 1, except that the appropriate official establishment number shall be shown, and if the establishment number appears elsewhere on the labeling material in the manner prescribed in § 381.123(b), it may be omitted from the inspection mark. The administrator may approve the use of abbreviations of such inspection mark; and such approved abbreviations shall have the same force and effect as the inspection mark. The official inspection legend, or the approved abbreviation thereof, shall be printed on consumer packages and other immediate containers of inspected and passed poultry products, or on labels to be securely affixed to such containers of such products and may be printed or stenciled thereon, but shall not be applied by rubber stamping. When applied by a stencil, the legend shall not be less than 4 inches in diameter. An official brand must be applied to inspected and passed carcasses and parts of ratites that are shipped unpacked.

Done at Washington, DC, on: April 25, 2001.

**Thomas J. Billy,**  
Administrator.

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**BILLING CODE 3410-DM-P**

**Editorial Note:** Federal Register rule document 01-10679 originally appeared in the issue of Tuesday, May 1, 2001 at 66 FR 21631-21639. Due to several errors (repeated text and missing text on page 21635) the document is being reprinted in its entirety.

[FR Doc. R1-10679 Filed 5-4-01; 8:45 am]

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## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 9**

**[3150-AG78]**

#### **Charges for Reproducing Records**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is revising its regulations to permit its contractor to increase the charges for copying publicly available documents at the NRC's Public Document Room (PDR). The increases are necessary to adjust for

inflation and a decrease in the projected volume of copying by the NRC contractor. In addition, the revisions will provide for electronic copying to CD-ROM.

**EFFECTIVE DATE:** The rule is effective June 6, 2001.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Smith, Acting Chief, Public Document Room, Office of the Chief Information Officer, Nuclear Regulatory Commission, Washington, DC 20555, 301-415-7204, or 1-800-397-4209 (toll-free).

**SUPPLEMENTARY INFORMATION:** The PDR retains a copy service to reproduce for a fee publicly available documents whatever their format. Since the NRC's Agency-wide Document Access and Management System (ADAMS) was implemented in November 2000, making recently released documents available in full text online, there has been a significant reduction in the volume of document reproduction. The total volume of copying has fallen from over 3,000,000 pages a year to 1,600,000 in 2000. Based on first quarter data, the projected level of copying for 2001 will be just under 1,000,000 pages. Since the copy service contract is at no cost to the government, the contractor must provide all supplies and equipment. The NRC believes that the price increase is reasonable and in line with the prices charged by other Federal agencies. A market survey showed that the average price is 20 cents per page for paper-to-paper copies and 27 cents for microfiche-to-paper copies.

The contractor will offer two new services to the public: copying documents from ADAMS to CD-ROM and copying color documents from ADAMS to paper. The contractor will be able to accept orders directly online from ADAMS through the new ADAMS Online Order Module scheduled to be released shortly.

Because this amendment concerns an agency practice and procedure, the NRC has determined that notice and comment under the Administrative Procedures Act, 5 U.S.C. 553(b) (A) and (B), is unnecessary and that good cause exists to dispense with the comment.

#### **Environmental Impact: Categorical Exclusion**

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22 (c) (1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

#### **Paperwork Reduction Act Statement**

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### **Public Protection Notification**

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

#### **Regulatory Analysis**

A regulatory analysis has not been prepared for this final rule because the final rule makes only minor conforming changes to the regulations that reference Section 202 of the Energy Reorganization Act and minor changes to other regulations.

#### **Backfit Analysis**

The NRC has determined that these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1); therefore a backfit analysis need not be prepared.

#### **Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

#### **List of Subjects in 10 CFR Part 9**

Criminal penalties, freedom of information, privacy, reporting and recordkeeping requirements, the Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 9.

#### **PART 9—PUBLIC RECORDS**

1. The authority citation for Part 9 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A is also issued under 5 U.S.C. 552 and 31 U.S.C. 9701; (Pub. L. 99-570). Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

2. Section 9.35 is amended by revising paragraph (a)(1) to read as follows: