

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400

#### Farm Service Agency

#### 7 CFR Part 780

#### Appeal Procedures

**AGENCIES:** Federal Crop Insurance Corporation and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) and the Farm Service Agency (FSA) are amending the general administrative regulations and appeal procedure regulations. The intended effect of this rule is to establish procedures for program participant appeals of adverse decisions made by the Risk Management Agency (RMA) and to incorporate the appeals procedures created by the Agricultural Risk Protection Act of 2000 regarding the appealability of determinations of good farming practices.

**DATES:** This rule is effective April 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** Nancy Kreitzer, Director, Appeals, Litigation and Legal Liaison Staff, Federal Crop Insurance Corporation, United States Department of Agriculture, 1400 Independence Avenue, SW., AG STOP 0820, Washington, DC 20250-0820, telephone (202) 690-1683.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order 12866 and, therefore, this rule has not been reviewed by OMB.

#### Paperwork Reduction Act of 1995

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity because this action merely clarifies and establishes provisions for producers to use in filing appeals of adverse decisions. The effect on small entities is the same as that for large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

#### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR

part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order 12988

This rule has been reviewed under the provisions of Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought against FCIC.

#### Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

This rule amends FCIC and FSA informal appeal regulations to reflect the establishment of RMA and the reorganization of crop insurance functions. On September 30, 1999, FCIC and FSA published a notice of proposed rulemaking in the **Federal Register** at 64 FR 52678-52680 to amend 7 CFR part 400, subpart J and 7 CFR part 780.

#### Discussion of Comments

Following publication of the proposed rule the public was afforded 60 days to submit written comments and opinions. A total of three timely comments were received in response to the request for comment on the proposed rule. The comments received and FCIC's responses are as follows:

*Comment 1:* A reinsured company requested clarification regarding (1) the type of adverse decision with respect to "Compliance with program requirements" that is envisioned to be subject to the rule; (2) the intent of the term "indebtedness," notification to the private company, and the option to participate in any appeal proceedings involving Fiscal Operations and Systems Division (FOSD) decisions that involve contracts of insurance of the private insurance company; and (3) the ambiguity of the definition of the term "adverse decision."

*Response:* (1) Section 400.91(c) involves catastrophic risk protection

policies that may be sold directly by FCIC through local FSA offices. While none are currently sold in this manner, the authority to offer such coverage through local FSA offices still exists. In such cases, FCIC would be the entity that makes the decisions regarding eligibility, compliance with the policy provisions, and indemnity payments made. For the purpose of clarity, FCIC has revised the provisions to specifically refer to the crop insurance program. (2) Indebtedness, as used in the definition of the term "FOSD," is one of the grounds upon which an insured can be determined to be ineligible for insurance. Under 7 CFR part 400, subpart U, either FCIC or the reinsured companies make the initial determination that an insured owes a debt and that the debt has not been timely paid based on whether the policy is insured or reinsured by FCIC. Since FCIC makes some direct determinations of indebtedness, the review process of these determinations must be included in the rule. For reinsured policies, the reinsured company provides notice to the producer that the producer owes a debt and the producer must be given an opportunity to dispute the debt. After this process is complete and the debt is determined to be delinquent, the reinsured company notifies FCIC, who then verifies that the debt is delinquent before listing the producer on the Ineligible List. FOSD's role is to determine indebtedness for FCIC insured policies and verify indebtedness for reinsured policies. The definition of the term "FOSD" has been revised to clarify its function with respect to policies that FCIC insures and reinsures. Even though FCIC only verifies the debt, since it is the agency that determines that the producer is ineligible, producers are entitled to appeal FCIC's listing of them on the Ineligible List. However, current regulations limit the reinsured company's role in the review process to that permitted by 7 CFR part 11. That rule does not permit the insurance company participation in these disputes. Until 7 CFR part 11 is revised, reinsured companies are not permitted to directly participate in the administrative review process. (3) FCIC recognizes that the definition of "adverse decisions" in 7 CFR part 11 is much broader than its applicability to FCIC decisions and, therefore, FCIC has revised the definition to limit its applicability to the crop insurance program.

*Comment 2:* A reinsured company questioned whether: (1) Section 400.91(a)(1) could be removed as no contracts were issued by FCIC; all are

issued by private insurance companies; (2) the findings of the Compliance Division are intended to be included under section 400.91(c)(2); (3) section 400.91(c)(3) includes reinsured companies' decisions on claims since it is the reinsured company's decision with respect to whether a claim is paid; (4) sections 400.91(c)(4) and 400.91(d) are in conflict since subsection (c)(4) provides that participants may request an administrative review, mediation or appeal of adverse decisions made by the Agency relative to issuance of payments or other benefits to an individual or entity who is not a participant in the program and subsection (d) states that only a participant may seek an administrative review or mediation under this subpart; (5) the reinsured company will be held harmless by RMA if a mediation decision is arrived at that is counter to policy or procedural provisions; (6) the reinsured company will be made aware of the fact an appellant is seeking mediation, and what time frames apply for such notification; and (7) if "FSA" is included correctly in 780.2(a)(iv), under what authority, circumstances and provisions would FSA make decisions on private insurance carriers' policies.

*Response:* (1) As stated above, even though all policies are currently reinsured by FCIC, FCIC still has the authority to offer insurance directly to producers. As long as such authority exists, the appeal provisions must remain in effect. (2) Section 400.91(c)(2) only applies to decisions of FCIC regarding whether producers have complied with policy requirements under policies insured by FCIC. This provision has no bearing on those policies insured by the insurance companies since decisions regarding compliance are made by the reinsured company and are not appealable under this rule. (3) As stated above, section 400.91(c)(3) is only applicable to policies insured by FCIC and where FCIC is making the decision with respect to whether claims should be paid. (4) There is no conflict between section 400.91(c)(4) and section 400.91(d). Section 400.91(c)(4) specifically refers to situations where the payment was made to a non-participant such as assignments, etc. where the participant may be challenging the payment made under such an assignment to a non-participant. However, it is still only the participant who may challenge the action, not the non-participant. This is consistent with section 400.91(d). (5) A settlement in mediation is no different than any other appeals process whereby the parties

determine their litigative risk. Mediation often assumes a compromise that may entail paying money when it is believed that the producer is not entitled. Reinsured companies do it every day when they settle disputes. If settlement of a dispute can be presumed to be an error or omission, then FCIC would not be required to reinsure such claims when reinsured companies settle a dispute. As in other settlement cases, the risk sharing provisions of the Standard Reinsurance Agreement continue to apply. (6) If the appeal involves a dispute regarding FCIC's conduct regarding a policy it reinsures, the reinsured company will be notified of such appeal in the manner as established in FCIC handbooks. (7) With respect to FSA's 7 CFR 780.2(a)(1), (a)(1)(iii), and (iv) are revised as the references to FCIC exceed the intended current scope of part 780 and because the explicit reference to FSA noninsured crop assistance program is unnecessary in light of other provisions in the section.

*Comment 3:* A trade association (1) commented that the proposed rule should include notification of companies when appeals are requested; (2) questioned whether section 400.93 is meant to refer to "one administrative review" or whether it should say "an administrative review"; and (3) suggested several editorial or grammatical changes.

*Response:* (1) As stated above, reinsured companies will be notified in writing of any appeal of a FCIC decision regarding a policy that the reinsured company insures. (2) Section 400.93 refers to one administrative review to make it clear that producers only have one level of appeal in the informal administrative appeals process, which in some cases may be different than the appeals process that was available under 7 CFR part 780. (3) Some of the grammatical changes have been made.

FCIC also made other technical changes to improve the readability of this rule and remove conflicts with other provisions in this rule or with parts 11 or 780 of this title and other ambiguities that may have existed. FCIC has not made any substantive changes as a result of these technical corrections.

After the proposed rule was published and the comments received, Congress enacted ARPA, which created specific limitations on the appeals of determinations of good farming practices made by FCIC. Since these limitations are statutorily mandated, they are incorporated into this final rule. This entails revisions to many of the provisions to incorporate this new appeals process because mediation and

NAD appeal are not applicable to determinations regarding good farming practices. However, except as stated above, the substantive appeals process for adverse decisions remains the same.

#### List of Subjects in 7 CFR Parts 400 and 780

Administrative practice and procedure, Claims, Crop insurance, Fraud, Reporting and record keeping requirements.

#### Final Rule

For the reasons stated in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400, subpart J, and the Farm Service Agency amends 7 CFR part 780 as follows:

#### PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. Revise subpart J of part 400 to read as follows:

##### Subpart J—Appeal Procedure

- Sec.
- 400.90 Definitions.
  - 400.91 Applicability.
  - 400.92 Appeals.
  - 400.93 Administrative review.
  - 400.94 Mediation.
  - 400.95 Time limitations for filing and responding to requests for administrative review.
  - 400.96 Judicial review.
  - 400.97 Reservations of authority.

**Authority:** 7 U.S.C. 1506(l), 1506(p)

##### § 400.90 Definitions.

*Act.* The Federal Crop Insurance Act (7 U.S.C. 1501–1524).

*Administrative review.* A review within the Department of Agriculture of an adverse decision.

*Adverse decision.* A decision by an employee or Director of the Agency that is adverse to the participant. The term includes the denial of program benefits, written agreements, eligibility, etc. that results in the participant receiving less funds than the participant believes should have been paid or not receiving a benefit to which the participant believes he or she was entitled.

*Agency.* RMA or FCIC, including the RSO, FOSD or any other division within the Agency with decision making authority.

*Appellant.* Any participant who appeals or requests mediation of an adverse decision of the Agency in accordance with this subpart. Unless otherwise specified in this subpart, the term “appellant” includes an authorized representative.

*Authorized representative.* Any person, whether or not an attorney, who has obtained a Privacy Act waiver and is authorized in writing by a participant

to act for the participant in the administrative review, mediation, or appeal process.

*Certified State.* A State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 1946, subpart A, or a successor regulation.

*FCIC.* The Federal Crop Insurance Corporation, a wholly owned Government corporation within USDA.

*FOSD.* The Fiscal Operations and Systems Division established by the Agency for the purpose of making determinations of indebtedness for policies insured by FCIC and for determining ineligibility for policies both insured and reinsured by FCIC.

*FSA.* The Farm Service Agency, an agency within USDA, or its successor agency.

*Good farming practices.* The farming practices used in the area where the crop is produced, including sustainable farming practices, that are determined by FCIC to be necessary for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance and to be compatible with the agronomic and weather conditions in the area or, for crops grown under an organic practice, the farming practices recommended by a private organization or government agency that certifies organic products and is accredited in accordance with the requirements of the Federal Organic Food Production Act of 1990.

*Mediation.* A process in which a trained, impartial, neutral third party (the mediator), meets with the disputing parties, facilitates discussions, and works with the parties to mutually resolve their disputes, narrow areas of disagreement, and improve communication.

*NAD.* The USDA National Appeals Division. See 7 CFR part 11.

*Non-certified State.* A State that is not approved by the Secretary of Agriculture to participate in the USDA Mediation Program under 7 CFR part 1946, subpart A, or its successor regulation.

*Participant.* An individual or entity that has applied for crop insurance or who holds a valid crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year. The term does not include individuals or entities whose claims arise under the programs excluded in the definition of participant published at 7 CFR 11.1.

*Reinsured company.* A private insurance company, including its agents, that has been approved and

reinsured by FCIC to provide insurance to participants.

*Reviewing authority.* A person assigned the responsibility by the Agency of making a decision on a request for administrative review by the participant in accordance with this subpart.

*RMA.* The Risk Management Agency, an agency within USDA, or its successor agency.

*RSO.* The Regional Service Office established by the Agency for the purpose of providing program and underwriting services for private insurance companies reinsured by FCIC under the Act and for FCIC insurance contracts delivered through FSA offices.

*Secretary.* The Secretary of Agriculture.

*USDA.* United States Department of Agriculture.

##### § 400.91 Applicability.

(a) This subpart applies to:

- (1) Adverse decisions made by personnel of the Agency with respect to:
- (i) Contracts of insurance insured by FCIC; and
- (ii) Contracts of insurance of private insurance companies and reinsured by FCIC under the provisions of the Act.

(2) Determinations of good farming practices made by personnel of the Agency.

(b) This subpart is not applicable to any decision:

- (1) Made by the Agency with respect to any matter arising under the terms of the Standard Reinsurance Agreement with the reinsured company; or
- (2) Made by any private insurance company with respect to any contract of insurance issued to any producer by the private insurance company and reinsured by FCIC under the provisions of the Act.

(c) With respect to matters identified in § 400.91(a)(1), participants may request an administrative review, mediation, or appeal of adverse decisions by the Agency made with respect to:

- (1) Denial of participation in the crop insurance program;
- (2) Compliance with terms and conditions of insurance;
- (3) Issuance of payments or other program benefits to a participant in the crop insurance program; and
- (4) Issuance of payments or other benefits to an individual or entity who is not a participant in the crop insurance program.

(d) Only a participant may seek an administrative review or mediation under this subpart, as applicable.

**§ 400.92 Appeals.**

(a) Except for determinations of good farming practices, nothing in this subpart prohibits a participant from filing an appeal of an adverse decision directly with NAD in accordance with part 11 of this title without first requesting administrative review or mediation under this subpart.

(b) If the participant has timely requested administrative review or mediation, the participant may not participate in a NAD hearing until such administrative review or mediation is concluded. The time for appeal to NAD is suspended from the date of receipt of a request for administrative review or mediation until the conclusion of the administrative review or mediation. The participant will have only the remaining time to appeal to NAD after the conclusion of the administrative review or mediation.

(c) There is no appeal to NAD of determinations regarding good farming practices.

**§ 400.93 Administrative review.**

(a) With respect to adverse decisions, an appellant may seek one administrative review or seek mediation under § 400.94, but not both. Only an administrative review is available for determinations of good farming practices. Mediation is not available for determinations of good farming practices.

(b) If the appellant seeks an administrative review, the appellant must file a written request for administrative review with the reviewing authority in accordance with § 400.95. The written request must state the basis upon which the appellant relies to show that:

(1) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(2) All material facts were not properly considered in such decision.

(c) The reviewing authority will issue a written decision that will not be subject to further administrative review by the Agency.

**§ 400.94 Mediation.**

For adverse decisions only:

(a) Appellants have the right to seek mediation or other forms of alternative dispute resolution instead of an administrative review under § 400.93.

(b) All requests for mediation under this subpart must be made after issuance of the adverse decision by the Agency and before the appellant has a NAD hearing on the adverse decision.

(c) An appellant who chooses mediation must request mediation not later than 30 calendar days from receipt

of the written notice of the adverse decision. A request for mediation will be considered to have been "filed" when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(d) An appellant will have any balance of the days remaining in the 30-day period to appeal to NAD if mediation is concluded without resolution. If a new adverse decision that raises new matters or relies on different grounds is issued as a result of mediation, the participant will have a new 30-day period for appeals to NAD.

(e) An appellant is responsible for contacting the Certified State Mediation Program in States where such mediation program exists. The State mediation program will make all arrangements for the mediation process. A list of Certified State Mediation Programs is available at <http://www.act.fcic.usda.gov>.

(f) An appellant is responsible for making all necessary contacts to arrange for mediation in non-certified States or in certified States that are not currently offering mediation on the subject in dispute. An appellant needing mediation in States without a certified mediation program may request mediation by contacting the RSO, which will provide the participant with a list of acceptable mediators.

(g) An appellant may only mediate an adverse decision once.

(h) If the dispute is not completely resolved in mediation, the adverse decision that was the subject of the mediation remains in effect and becomes the adverse decision that is appealable to NAD.

(i) If the adverse decision is modified as a result of the mediation process, the modified decision becomes the new adverse decision for appeal to NAD.

**§ 400.95 Time limitations for filing and responding to requests for administrative review.**

(a) A request for administrative review must be filed within 30 days of receipt of written notice of the adverse decision or determination regarding good farming practices. A request for an administrative review will be considered to have been "filed" when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(b) Notwithstanding paragraph (a) of this section, an untimely request for administrative review may be accepted and acted upon if the participant can demonstrate a physical inability to timely file the request for administrative review.

**§ 400.96 Judicial review.**

(a) With respect to adverse determinations:

(1) A participant must exhaust administrative remedies before seeking judicial review of an adverse decision. This requires the participant to appeal an Agency adverse decision to NAD in accordance with 7 CFR part 11 prior to seeking judicial review of the adverse decision.

(2) If the adverse decision involves a matter determined by the Agency to be not appealable, the appellant must request a determination of non-appealability from the Director of NAD, and appeal the adverse decision to NAD if the Director determines that it is appealable, prior to seeking judicial review.

(3) A participant with a contract of insurance reinsured by the Agency may bring suit against the Agency if the suit involves an adverse action in a United States district court after exhaustion of administrative remedies as provided in paragraphs (a) and (b) of this section. Nothing in this section can be construed to create privity of contract between the Agency and a participant.

(b) With respect to determinations regarding good farming practices, participants are not required to exhaust their administrative remedies before bringing suit against FCIC in a United States district court. Any determination by the Agency, or reviewing authority, regarding good farming practices shall not be reversed or modified as the result of judicial review unless the determination is found to be arbitrary or capricious.

**§ 400.97 Reservations of authority.**

(a) Representatives of the Agency may correct all errors in entering data on program contracts and other program documents, and the results of computations or calculations made pursuant to the contract.

(b) Nothing contained in this subpart precludes the Secretary, the Manager of FCIC, or the Administrator of RMA, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any adverse decision.

**PART 780—APPEAL REGULATIONS**

2. The authority citation for 7 CFR part 780 continues to read as follows:

**Authority:** 5 U.S.C. 301; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h.

**§ 780.1 [Amended]**

3. Amend § 780.1 to remove the definition of "Regional Service Office,"

the term "FCIC" in the definition of "agency," and "or the FCIC Regional Service Office" in the definition of "final decision."

#### § 780.2 [Amended]

4. In § 780.2:

a. Amend paragraph (a)(2) to remove the initials "FCIC" wherever they appear.

b. Remove paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(3).

#### § 780.7 [Amended]

5. In § 780.7:

a. Amend the to remove the phrase "and reconsideration with the regional service offices."

b. Amend §§ 780.7(b), (c) and (e), to remove the phrase "or the Regional Service Office," wherever it may appear.

#### § 780.11 [Amended]

6. Amend § 780.11 to remove the words "FCIC," and "the Manager of FCIC," wherever they may appear.

Signed in Washington, DC, March 15, 2002.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

**James R. Little,**

*Administrator, Farm Service Agency.*

[FR Doc. 02-6888 Filed 3-21-02; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Parts 362 and 381

[Docket No. 01-045F]

RIN 0583-AC84

#### Mandatory Inspection of Ratites and Squabs

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

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is affirming the interim final rule that it published on May 7, 2001 (66 FR 22899) that amended the Poultry Products Inspection Regulations and the Voluntary Poultry Inspection Regulations to make the slaughtering and processing of ratites and squabs subject to mandatory inspection. The Agency acted in response to the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the Appropriations Act). The Agency invited interested parties to comment on

the interim final rule. FSIS is also making minor clarifying modifications to the regulations concerning ratites and squabs and is extending for an additional 12 months the time allowed for foreign countries to become equivalent for exporting ratites or squabs to the United States.

**DATES:** This final rule will be effective April 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** For information about the final rule, contact Robert Ragland, DVM, Acting 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 May 7, 2001, the Food Safety and Inspection Service (FSIS) published an interim final rule (66 FR 22899) that amended 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 interim final rule was originally published on May 1, 2001 (66 FR 21631), but had to be republished on May 7, 2001 because of printing errors.) The Agency acted in response 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 provided 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 (21 U.S.C. 451, *et seq.*) (PPIA), rather than the voluntary poultry inspection program under section 203 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622) (AMA). That provision of the Appropriations Act was effective on April 26, 2001.

##### Import Inspection

In the interim final rule FSIS allowed foreign countries 18 months from the effective date (April 26, 2001) to become equivalent for exporting ratites and squabs to the U. S. Thus, foreign countries had until October 26, 2002 to do so. FSIS is now extending this time for an additional 12 months to allow countries exporting or wanting to export ratite and squab products to go through

the equivalency process. A 12 month extension is being granted because the original 18 month period has proved to be inadequate to complete both the equivalence evaluations and the notice and comment period rulemaking that are necessary to complete an equivalence process. The extended effective date will now be October 26, 2003.

FSIS will make equivalency determinations in accordance with 9 CFR part 327. If FSIS finds the country's export inspection system to be equivalent to the U.S. domestic inspection system, FSIS will publish a proposal in the **Federal Register** to list the country as eligible to export ratites or squabs to the United States. After the public has had 60 days to comment on the proposed rule, FSIS will review all of the public comments and make a final determination of equivalency and a determination whether to list the country as equivalent and, therefore, eligible to export ratites or squabs to the United States. This determination will be announced in 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 ratites and squabs to the United States. In the interim final rule FSIS also set out what countries exporting or wanting to export ratites and squabs needed to do prior to receiving an equivalency determination. These instructions remain unchanged.

##### Comments on the Interim Final Rule

FSIS provided 60 days for public comment on the interim final rule, ending July 2, 2001. The Agency received comments from industry groups, the European Union, and one individual. FSIS addresses their specific comments.

**Comment:** The commenters took issue with the definition of "squab" as a "young flightless pigeon." They pointed out that this definition is not always correct and is unenforceable. The commenters requested that the definition of "squab" be changed to a "young pigeon from one to about thirty days of age," the definition used by Wendell Levi in his authoritative book, *The Pigeon*.

**Response:** FSIS agrees that program inspection personnel have no way of distinguishing between squabs that have flown and those that have not flown and, therefore, is changing the definition of "squabs" to "young pigeons from one to about thirty days of age."

**Comment:** Commenters stated that the Agency made a mistake including just