

FSIS Statutes, Mission, and Authority

Objectives

After completing this module, participants will be able to do the following:

1. Cite the FSIS mission.
2. Describe from where FSIS derives its legal authority.
3. Identify sections of the EPIA that give FSIS various authorities.
4. Identify which definitions of adulterated apply to given situations.
5. Identify the relevant sections of the EPIA as they apply to inspection verification.

Introduction

This module will provide details about the statutory authority and regulatory framework for day-to-day inspection and verification activities. As we go through this module, keep in mind the inspection and verification activities you performed or supervised while in the egg products plant. Feel free to ask questions as we go. It's important for us to discuss some practical examples of how the statutory authorities apply to your work.

FSIS Mission

The Food Safety and Inspection Services (FSIS) is the public health agency in the U.S. Department of Agriculture (USDA) responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged.

FSIS administers the federal meat and poultry inspection program, and the egg products program to ensure the safety, wholesomeness, and truthful labeling of these products. This is done under the authority afforded us under the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). Under these acts, FSIS sets standards for food safety and regulates (Title 9 Code of Federal Regulations) all raw and processed meat, poultry, and egg products sold in interstate and foreign commerce, including imported products.

The Office of Field Operation (OFO) manages a program of regulatory oversight and inspection to ensure that meat and poultry establishments, as well as egg products plants, meet the regulatory requirements set forth in 9 CFR Part 200 to End. Specifically, the egg products regulatory requirements are found in 9 CFR parts 590 (mandatory inspection) and 592 (voluntary inspection).

Overview of the Statutes

The statutes related to FSIS activities include the:

- Federal Meat Inspection Act (FMIA),
- Poultry Products Inspection Act (PPIA), and
- Egg Products Inspection Act (EPIA).

The FMIA was enacted first, in 1906, after the public outrage stirred up by the publication of Upton Sinclair's book, "The Jungle." It contained graphic and detailed descriptions of the insanitary and abhorrent conditions that existed in meat establishments at the turn of the century in the city of Chicago, which was the heart of the meat processing industry at the time. Excerpts from the book were published in newspapers. With this information as background, Congress enacted the FMIA. The PPIA was modeled after the FMIA; there are a number of similarities between the two statutes. The PPIA was enacted in 1957 due to the growing poultry industry. In 1970, Congress enacted the EPIA, in part to prevent the introduction of adulterated or misbranded egg products into commerce. It was drafted to closely model the FMIA and PPIA. The EPIA is used both by the Food and Drug Administration (FDA) and USDA. Therefore, the authority for regulating egg products comes from EPIA.

Basis for FSIS as a Public Health Regulatory Agency

21 U.S.C. Sec. 1043 of the EPIA gives the Secretary the authority to make rules and regulations from this act. This section of the Act states *"The Secretary shall promulgate such rules and regulations as he deems necessary to carry out the purposes or provisions of this chapter, and shall be responsible for the administration and enforcement of this chapter except as otherwise provided in [section 1034\(d\)](#) of this title"*.

The regulations inform the public, including official egg products plants, how FSIS will interpret the EPIA. During the process of rulemaking, and before a regulation can be finalized, it is publicly announced, and there is a period during which the public can comment on it. Industry has the right to later challenge the Agency's interpretation of the acts.

The three Acts provide the basis for FSIS's ability to perform as a public health agency.

Egg Products Inspection Act: Title 21 - Food and Drugs, Chapter 15 - Egg Products Inspection

§1031. Congressional statement of findings

Eggs and egg products are an important source of the Nation's total supply of food, and are used in food in various forms. They are consumed throughout the Nation and the major portion thereof moves in interstate or foreign commerce. It is essential, in the public interest, that the health and welfare of consumers be protected by the adoption of measures prescribed herein for assuring that eggs and egg products distributed to them and used in products consumed by them are wholesome, otherwise not adulterated, and properly labeled and packaged. Lack of effective regulation for the handling or disposition of unwholesome, otherwise adulterated, or improperly labeled or packaged egg products and certain qualities of eggs is injurious to the public welfare and destroys markets for wholesome, not adulterated, and properly labeled and packaged eggs and egg products and results in sundry losses to producers and processors, as well as injury to consumers. Unwholesome, otherwise adulterated, or improperly labeled or packaged products can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged products, to the detriment of consumers and the public generally. It is hereby found that all egg products and the qualities of eggs which are regulated under this chapter are either in interstate or foreign commerce, or substantially affect such commerce, and that regulation by the Secretary of Agriculture and the Secretary of Health and Human Services, and cooperation by the States and other jurisdictions, as contemplated by this chapter, are appropriate to prevent and eliminate burdens upon such commerce, to effectively regulate such commerce, and to protect the health and welfare of consumers.

§1032. Congressional declaration of policy

It is hereby declared to be the policy of the Congress to provide for the inspection of certain egg products, restrictions upon the disposition of certain qualities of eggs, and uniformity of standards for eggs, and otherwise regulate the processing and distribution of eggs and egg products as hereinafter prescribed to prevent the movement or sale for human food, of eggs and egg products which are adulterated or misbranded or otherwise in violation of this chapter.

§1033. Definitions

(a) The term "adulterated" applies to any egg or egg product under one or more of the following circumstances -

- (1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause

if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2)(A) if it bears or contains any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Secretary, make such article unfit for human food;

(B) if it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 346a of this title;

(C) if it bears or contains any food additive which is unsafe within the meaning of section 348 of this title;

(D) if it bears or contains any color additive which is unsafe within the meaning of section 379e of this title: Provided, That an article which is not otherwise deemed adulterated under clause (B), (C), or (D) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the Secretary in official plants;

(3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(4) if it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(5) if it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 348 of this title; or

(8) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(b) The term "capable of use as human food" shall apply to any egg or egg product, unless it is denatured, or otherwise identified, as required by regulations prescribed by the Secretary to deter its use as human food.

- (c)** The term "commerce" means interstate, foreign, or intrastate commerce.
- (d)** The term "container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.
- (1) The term "immediate container" means any consumer package; or any other container in which egg products, not consumer packaged, are packed.
- (2) The term "shipping container" means any container used in packaging a product packed in an immediate container.
- (e)** The term "egg handler" means any person who engages in any business in commerce which involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food.
- (f)** The term "egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry, and which may be exempted by the Secretary under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products.
- (g)** The term "egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea.
- (1) The term "check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.
- (2) The term "clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.
- (3) The term "dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.
- (4) The term "incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.
- (5) The term "inedible" means eggs of the following descriptions: black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(6) The term "leaker" means an egg that has a crack or breaks in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(7) The term "loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(8) The term "restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(h) The term "Fair Packaging and Labeling Act" [15 U.S.C. 1451 et seq.] means the Act so entitled, approved November 3, 1966 (80 Stat. 1296), and Acts amendatory thereof or supplementary thereto.

(i) The term "Federal Food, Drug, and Cosmetic Act" [21 U.S.C. 301 et seq.] means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

(j) The term "inspection" means the application of such inspection methods and techniques as are deemed necessary by the responsible Secretary to carry out the provisions of this chapter.

(k) The term "inspector" means:

(1) any employee or official of the United States Government authorized to inspect eggs or egg products under the authority of this chapter; or

(2) any employee or official of the government of any State or local jurisdiction authorized by the Secretary to inspect eggs or egg products under the authority of this chapter, under an agreement entered into between the Secretary and the appropriate State or other agency.

(l) The term "misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the Secretary under [section 1036](#) of this title.

(m) The term "official certificate" means any certificate prescribed by regulations of the Secretary for issuance by an inspector or other person performing official functions under this chapter.

(n) The term "official device" means any device prescribed or authorized by the Secretary for use in applying any official mark.

- (o)** The term "official inspection legend" means any symbol prescribed by regulations of the Secretary showing that egg products were inspected in accordance with this chapter.
- (p)** The term "official mark" means the official inspection legend or any other symbol prescribed by regulations of the Secretary to identify the status of any article under this chapter.
- (q)** The term "official plant" means any plant, as determined by the Secretary, at which inspection of the processing of egg products is maintained by the Department of Agriculture under the authority of this chapter.
- (r)** The term "official standards" means the standards of quality, grades, and weight classes for eggs, in effect upon the effective date of this chapter, or as thereafter amended, under the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621 et seq.).
- (s)** The term "pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful viable micro-organisms by such processes as may be prescribed by regulations of the Secretary.
- (t)** The term "person" means any individual, partnership, corporation, association, or other business unit.
- (u)** The terms "pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).
- (v)** The term "plant" means any place of business where egg products are processed.
- (w)** The term "processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.
- (x)** The term "Secretary" means the Secretary of Agriculture or his delegate.
- (y)** The term "State" means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and the District of Columbia.
- (z)** The term "United States" means the States.

§1034. Inspection of egg products

(a) Processing operations and establishments subject to coverage; rules and regulations

For the purpose of preventing the entry into or flow or movement in commerce of, or the burdening of commerce by, any egg product which is capable of use as human food and is misbranded or adulterated, the Secretary shall, whenever processing operations are being conducted, cause continuous inspection to be made, in accordance with the regulations promulgated under this chapter, of the processing of egg products, in each plant processing egg products for commerce, unless exempted under [section 1044](#) of this title. Without restricting the application of the preceding sentence to other kinds of establishments within its provisions, any food manufacturing establishment, institution, or restaurant which uses any eggs that do not meet the requirements of section 1044(a)(1) of this title in the preparation of any articles for human food shall be deemed to be a plant processing egg products, with respect to such operations.

(b) Authority of Secretary to retain, segregate, and reinspect eggs and egg products

The Secretary, at any time, shall cause such retention, segregation, and reinspection as he deems necessary of eggs and egg products capable of use as human food in each official plant.

(c) Condemnation of adulterated products; destruction or reprocessing; procedure upon appeal from determination of adulteration

Eggs and egg products found to be adulterated at official plants shall be condemned and, if no appeal be taken from such determination of condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector: Provided, That articles which may by reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the Secretary determines that the appeal is frivolous. If the determination of condemnation is sustained, the eggs or egg products shall be destroyed for human food purposes under the supervision of an inspector.

(d) Inspection of business premises, facilities, inventory, operations, and records of egg handlers; inspection of records and inventory of others required to keep records; authority of Secretary of Health and Human Services to inspect food manufacturing establishments, institutions, and restaurants; access to places of business

The Secretary shall cause such other inspections to be made of the business premises, facilities, inventory, operations, and records of egg handlers, and the records and inventory of other persons required to keep records under [section 1040](#) of this title, as he deems appropriate (and in the case of shell egg packers, packing eggs for the ultimate consumer, at least once each calendar quarter) to assure that only eggs fit for human food are used for such purpose, and otherwise to assure compliance by egg handlers and other persons with the requirements of [section 1037](#) of this title, except that the Secretary of Health and Human Services shall cause such inspections to be made as he deems appropriate to assure compliance with such requirements at food manufacturing establishments, institutions, and restaurants, other than plants processing egg products. Representatives of said Secretaries shall be afforded access to all such places of business for purposes of making the inspections provided for in this chapter.

(e) Refrigeration and labeling requirements

- (1) Subject to paragraphs (2), (3), and (4), the Secretary shall make such inspections as the Secretary considers appropriate of a facility of an egg handler (including a transport vehicle) to determine if shell eggs destined for the ultimate consumer –
 - (A) are being held under refrigeration at an ambient temperature of no greater than 45 degrees Fahrenheit after packing; and
 - (B) contain labeling that indicates that refrigeration is required.
- (2) In the case of a shell egg packer packing eggs for the ultimate consumer, the Secretary shall make an inspection in accordance with paragraph (1) at least once each calendar quarter.
- (3) The Secretary of Health and Human Services shall cause such inspections to be made as the Secretary considers appropriate to ensure compliance with the requirements of paragraph (1) at food manufacturing establishments, institutions, and restaurants, other than plants packing eggs.
- (4) The Secretary shall not make an inspection as provided in paragraph (1) on any egg handler with a flock of not more than 3,000 layers.
- (5) A representative of the Secretary and the Secretary of Health and Human Services shall be afforded access to a place of business referred to in this subsection, including a transport vehicle, for purposes of making an inspection required under this subsection.

§1035. Sanitary operating practices in official plants

(a) Premises, facilities, and equipment

Each official plant shall be operated in accordance with such sanitary practices and shall have such premises, facilities, and equipment as are required by regulations promulgated by the Secretary to effectuate the purposes of this chapter, including requirements for segregation and disposition of restricted eggs.

(b) Refusal by Secretary to inspect nonconforming plants

The Secretary shall refuse to render inspection to any plant whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section.

§1036. Pasteurization and labeling of egg products at official plants

(a) Contents of label

Egg products inspected at any official plant under the authority of this chapter and found to be not adulterated shall be pasteurized before they leave the official plant, except as otherwise permitted by regulations of the Secretary, and shall at the time they leave the official plant, bear in distinctly legible form on their shipping containers or immediate containers, or both, when required by regulations of the Secretary, the official inspection legend and official plant number, of the plant where the products were processed, and such other information as the Secretary may require by regulations to describe the products adequately and to assure that they will not have false or misleading labeling.

(b) False or misleading or use of nonapproved labeling or containers; determination by Secretary; procedures applicable; appeal

No labeling or container shall be used for egg products at official plants if it is false or misleading or has not been approved as required by the regulations of the Secretary. If the Secretary has reason to believe that any labeling or the size or form of any container in use or proposed for use with respect to egg products at any official plant is false or misleading in any particular, he may direct that such use be withheld unless the labeling or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the Secretary, such person may request a hearing, but the use of the labeling or container shall, if the Secretary so directs, be withheld pending hearing and final determination by the Secretary. Any such determination by the Secretary shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the United

States court of appeals for the circuit in which such person has its principal place of business or to the United States Court of Appeals for the District of Columbia Circuit. The provisions of section 194 of title 7, shall be applicable to appeals taken under this section.

§1037. Prohibited acts

(a) (1) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in any business in commerce any restricted eggs, capable of use as human food, except as authorized by regulations of the Secretary under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(2) No egg handler shall possess with intent to use, or use, any restricted eggs in the preparation of human food for commerce except that such eggs may be so possessed and used when authorized by regulations of the Secretary under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(b) (1) No person shall process any egg products for commerce at any plant except in compliance with the requirements of this chapter.

(2) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in commerce any egg products required to be inspected under this chapter unless they have been so inspected and are labeled and packaged in accordance with the requirements of [section 1036](#) of this title.

(3) No operator of any official plant shall fail to comply with any requirements of [section 1035\(a\)](#) of this title or the regulations there under.

(4) No operator of any official plant shall allow any egg products to be moved from such plant if they are adulterated or misbranded and capable of use as human food.

(c) No egg handler shall possess any eggs after the eggs have been packed into a container that is destined for the ultimate consumer unless the eggs are stored and transported under refrigeration at an ambient temperature of no greater than 45 degrees Fahrenheit, as prescribed by rules and regulations promulgated by the Secretary.

(d) No person shall violate any provision of [section 1039](#), [1040](#) or [1046](#) of this title.

(e) No person shall –

- (1) manufacture, cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Secretary;
- (2) forge or alter any official device, mark, or certificate;
- (3) without authorization from the Secretary, use any official device, mark, or certificate, or simulation thereof, or detach, deface, or destroy any official device or mark; or use any labeling or container ordered to be withheld from use under [section 1036](#) of this title after final judicial affirmance of such order or expiration of the time for appeal if no appeal is taken under said section;
- (4) contrary to the regulations prescribed by the Secretary, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;
- (5) knowingly possess, without promptly notifying the Secretary or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label, or any eggs or egg products bearing any counterfeit, simulated, forged, or improperly altered official mark;
- (6) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Secretary;
- (7) knowingly represent that any article has been inspected or exempted, under this chapter, when, in fact, it has, respectively, not been so inspected or exempted; and
- (8) refuse access, at any reasonable time, to any representative of the Secretary of Agriculture or the Secretary of Health and Human Services, to any plant or other place of business subject to inspection under any provisions of this chapter.

(f) No person, while an official or employee of the United States Government or any State or local governmental agency, or thereafter, shall use to his own advantage, or reveal other than to the authorized representatives of the United States Government or any State or other government in their official capacity, or as ordered by a court in a judicial proceeding, any information acquired under the authority of this chapter concerning any matter which is entitled to protection as a trade secret.

§1038. Cooperation with appropriate State and other governmental agencies; utilization of employees; reimbursement

The Secretary shall, whenever he determines that it would effectuate the purposes of this chapter, cooperate with appropriate State and other governmental agencies, in carrying out any provisions of this chapter. In carrying out the provisions of this chapter, the Secretary may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any such agency commissioned by him for such purpose. The Secretary shall reimburse the States and other agencies for the costs incurred by them in such cooperative programs.

§1039. Eggs and egg products not intended for use as human food; inspection; denaturing or otherwise identifying

Inspection shall not be provided under this chapter at any plant for the processing of any egg products which are not intended for use as human food, but such articles, prior to their offer for sale or transportation in commerce, shall be denatured or otherwise identified as prescribed by regulations of the Secretary to deter their use for human food. No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation, in commerce, any restricted eggs or egg products which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Secretary.

§1040. Recordkeeping requirements; persons required to maintain records; scope of disclosure; access to records

For the purpose of enforcing the provisions of this chapter and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in commerce or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form and manner, as the Secretary of Agriculture or the Secretary of Health and Human Services may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of a duly authorized representative of either of said Secretaries, permit him at reasonable times to have access to and to copy all such records.

§1041. Enforcement provisions

(a) Violations of section 1037; term of imprisonment and fine; scope of liability

Any person who commits any offense prohibited by [section 1037](#) of this title shall upon conviction be subject to imprisonment for not more than one year, or a fine

of not more than \$5,000, or both such imprisonment and fine, but if such violation involves intent to defraud, or any distribution or attempted distribution of any article that is known to be adulterated (except as defined in section 1033(a)(8) of this title), such person shall be subject to imprisonment for not more than three years or a fine of not more than \$10,000, or both.

(b) Persons preventing enforcement of chapter; term of imprisonment and fine

Any person, who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be fined not more than \$5,000 or imprisoned not more than three years or both. Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. Whoever kills any person while engaged in or on account of the performance of his official duties under this chapter shall be punished as provided under sections 1111 and 1112 of Title 18.

(c) Civil penalty

- (1) (A) Except as otherwise provided in this subsection, any person who violates any provision of this chapter or any regulation issued under this chapter, other than a violation for which a criminal penalty has been imposed under this chapter, may be assessed a civil penalty by the Secretary of not more than \$5,000 for each such violation. Each violation to which this subparagraph applies shall be considered a separate offense.
(B) No penalty shall be assessed against any person under this subsection unless the person is given notice and opportunity for a hearing on the record before the Secretary in accordance with sections 554 and 556 of Title 5.
(C) The amount of the civil penalty imposed under this subsection -
 - (i) shall be assessed by the Secretary, by written order, taking into account the gravity of the violation, degree of culpability, and history of prior offenses; and
 - (ii) may be reviewed only as provided in paragraph (2).
- (2) (A) The determination and order of the Secretary under this subsection shall be final and conclusive unless the person against whom such a violation is found under paragraph (1) files an application for judicial review within 30 days after service of the order in the United States court of appeals for the circuit in which the person has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit.

(B) Judicial review of any such order shall be based on the record on which the determination and order are based.

(C) If the court determines that additional evidence needs to be taken, the court shall order the hearing to be reopened for this purpose in such manner and on such terms and conditions as the court considers proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, on the basis of the additional evidence so taken.

(3) If any person fails to pay an assessment of a civil penalty after the penalty has become a final and unappealable order, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General. The Attorney General shall institute a civil action to recover the amount assessed in an appropriate district court of the United States. In the collection action, the validity and appropriateness of the Secretary's order imposing the civil penalty shall not be subject to review.

(4) All penalties collected under this subsection shall be paid into the Treasury of the United States.

(5) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection.

(6) Paragraph (1) shall not apply to an official plant.

(d) Scope of liability for violations of section 1037

When construing or enforcing the provisions of [section 1037](#) of this title, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(e) Penalties applicable to carriers or warehousemen

No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of [section 1040](#) of this title or subsection (c) of this section, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the Secretary the name and address of the person from whom he received such eggs or egg products and

copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman.

§1042. Reporting of violation to United States attorney for institution of criminal proceedings; procedure; presentation of views

Before any violation of this chapter is reported by the Secretary of Agriculture or Secretary of Health and Human Services to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the Secretary of Agriculture or Secretary of Health and Human Services to report for criminal prosecution violations of this chapter whenever he believes that the public interest will be adequately served and compliance with this chapter obtained by a suitable written notice of warning or an action to assess civil penalties.

§1043. Rules and regulations; administration and enforcement

The Secretary shall promulgate such rules and regulations as he deems necessary to carry out the purposes or provisions of this chapter, and shall be responsible for the administration and enforcement of this chapter except as otherwise provided in [section 1034\(d\)](#) of this title.

§1044. Exemption of certain activities

(a) Regulation for exemptions

The Secretary may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this chapter -

- (1) the sale, transportation, possession, or use of eggs which contain no more restricted eggs than are allowed by the tolerance in the official standards of United States consumer grades for shell eggs;
- (2) the processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the Secretary, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of United States consumer grades for shell eggs, and the egg products processed at such plant;
- (3) the sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the

transportation, possession, and use of such eggs in accordance with this paragraph;

(4) the processing of egg products by any poultry producer from eggs of his own flocks' production for sale of such products directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the egg products so processed when handled in accordance with this paragraph;

(5) the sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this paragraph;

(6) for such period of time (not to exceed two years) during the initiation of operations under this chapter as the Secretary determines that it is impracticable to provide inspection, the processing of egg products at any class of plants and the egg products processed at such plants; and

(7) the sale of eggs by any egg producer with an annual egg production from a flock of three thousand or less hens.

(b) Plants located in noncontiguous areas of United States

The Secretary shall, by regulation and under such procedures as he may prescribe, exempt any plant located within noncontiguous areas of the United States from specific provisions of this chapter, where, despite good faith efforts by the owner of such plant, such owner has not been able to bring his plant into full compliance with this chapter: Provided, That in order to provide at least minimum standards for the protection of the public health, whenever processing operations are being conducted at any such plant, continuous inspection shall be maintained to assure that it is operated in a sanitary manner. No exemption under this subsection shall be granted for a period extending beyond December 31, 1971.

(c) Suspension or termination of exemptions

The Secretary may immediately suspend or terminate any exemption under subsection (a)(2) or (6) of this section at any time with respect to any person, if the conditions of exemption prescribed by this section or the regulations of the Secretary are not being met. The Secretary may modify or revoke any regulation granting exemption under this chapter whenever he deems such action appropriate to effectuate the purposes of this chapter.

§1045. Limitation on entry of eggs and egg products and other materials into official plants

The Secretary may limit the entry of eggs and egg products and other materials into official plants under such conditions as he may prescribe to assure that allowing the entry of such articles into such plants will be consistent with the purposes of this chapter.

§1046. Imports

(a) Authorization for importation of restricted eggs; prerequisites for importation of egg products; treatment as domestic articles subject to this chapter; marking and labeling exemption for personal consumption

- (1) No restricted eggs capable of use as human food shall be imported into the United States except as authorized by regulations of the Secretary.
- (2) No egg products capable of use as human food shall be imported into the United States unless they were processed under an approved continuous inspection system of the government of the foreign country of origin or subdivision thereof and are labeled and packaged in accordance with, and otherwise comply with the standards of this chapter and regulations issued there under applicable to such articles within the United States.
- (3) No eggs packed into a container that is destined for the ultimate consumer shall be imported into the United States unless the eggs are accompanied by a certification that the eggs have at all times after packaging been stored and transported under refrigeration at an ambient temperature of no greater than 45 degrees Fahrenheit, as required by [sections 1034\(e\)](#) and [1037\(c\)](#) of this title.
- (4) All such imported articles shall upon entry into the United States be deemed and treated as domestic articles subject to the other provisions of this chapter: Provided, That they shall be labeled as required by such regulations for imported articles: Provided further, That nothing in this section shall apply to eggs or egg products purchased outside the United States by any individual for consumption by him and members of his household and his nonpaying guests and employees.

(b) Terms and conditions for destruction

The Secretary may prescribe the terms and conditions for the destruction of all such articles which are imported contrary to this section, unless

- (1) they are exported by the consignee within the time fixed there for by the Secretary or

(2) in the case of articles which are not in compliance solely because of misbranding, such articles are brought into compliance with this chapter under supervision of authorized representatives of the Secretary.

(c) Payment of storage, cartage, and labor charges by owner or consignee; liens

All charges for storage, cartage, and labor with respect to any article which is imported contrary to this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against such article and any other article thereafter imported under this chapter by or for such owner or consignee.

(d) Prohibition

The importation of any article contrary to this section is prohibited.

§1047. Refusal or withdrawal of inspection services; hearing; grounds; person deemed to have responsible connection with business; finality of order of Secretary; judicial review; other provisions for refusal of services unaffected

The Secretary (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this chapter) may refuse to provide or may withdraw inspection service under this chapter with respect to any plant if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under this chapter because the applicant or recipient or anyone responsibly connected with the applicant or recipient has been convicted in any Federal or State court, within the previous ten years, of

(1) any felony or more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food or fraud in connection with transactions in food, or

(2) any felony, involving fraud, bribery, extortion, or any other act or circumstances indicating a lack of the integrity needed for the conduct of operations affecting the public health.

For the purpose of this section, a person shall be deemed to be responsibly connected with the business if he is a partner, officer, director, holder, or owner of 10 per centum or more of its voting stock, or employee in a managerial or executive capacity.

The determination and order of the Secretary with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient

of, inspection service files application for judicial review within thirty days after the effective date of such order in the United States court of appeals for the circuit in which such applicant or recipient has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. Judicial review of any such order shall be upon the record upon which the determination and order are based. The provisions of section 194 of Title 7 shall be applicable to appeals taken under this section.

This section shall not affect in any way other provisions of this chapter for refusal of inspection services.

§1048. Administrative detention of violative articles; duration; release; removal of official marks

Whenever any eggs or egg products subject to this chapter, are found by any authorized representative of the Secretary upon any premises and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of this chapter or that they are in any other way in violation of this chapter, or whenever any restricted eggs capable of use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations of the Secretary, such articles may be detained by such representative for a reasonable period but not to exceed twenty days, pending action under [section 1049](#) of this title or notification of any Federal, State, or other governmental authorities having jurisdiction over such articles and shall not be moved by any person from the place at which they are located when so detained until released by such representative. All official marks may be required by such representative to be removed from such articles before they are released unless it appears to the satisfaction of the Secretary that the articles are eligible to retain such marks.

§1049. Seizure and condemnation proceedings

(a) Jurisdiction; disposal of condemned articles; court costs and fees; conformity to supplemental rules for admiralty and maritime claims; jury trial; United States as plaintiff

Any eggs or egg products that are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation, in violation of this chapter, or in any other way are in violation of this chapter; and any restricted eggs, capable of use as human food, in the possession of any person not authorized to acquire such eggs under the regulations of the Secretary shall be liable to be proceeded against and seized and condemned, at any time, on a complaint in any United States district court or other proper court as provided in [section 1050](#) of this title within the jurisdiction of which the articles are found. If the articles are condemned they shall, after entry of the decree, be

disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the Treasury of the United States, but the articles shall not be sold contrary to the provision of this chapter, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.), or the laws of the jurisdiction in which they are sold: Provided, That upon the execution and delivery of a good and sufficient bond conditioned that the articles shall not be sold or otherwise disposed of contrary to the provisions of this chapter, the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, or the laws of the jurisdiction in which disposal is made, the court may direct that they be delivered to the owner thereof subject to such supervision by authorized representatives of the Secretary as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the articles and they are released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant thereof. The proceedings in such cases shall conform, as nearly as may be, to the supplemental rules for certain admiralty and maritime claims, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

(b) Condemnation or seizure under other provisions unaffected

The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this chapter, or other laws.

§1050. Jurisdiction of district courts; United States as plaintiff in enforcement and restraining proceedings; subpoenas for witnesses

The United States district courts and the District Court of the Virgin Islands are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this chapter, and shall have jurisdiction in all other cases, arising under this chapter, except as provided in [section 1047](#) of this title. All proceedings for the enforcement or to restrain violations of this chapter shall be by and in the name of the United States. Subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district in any such proceeding.

§1051. Other Federal laws applicable for administration and enforcement of chapter; prosecution of inquiries; exercise of jurisdiction

For the efficient administration and enforcement of this chapter, the provisions (including penalties) of sections 46, 48, 49, and 50 of Title 15 (except paragraphs (c) through (h) of section 46 and the last paragraph of section 49 [1] of Title 15), and the provisions of section 409(l) [1] of Title 47, are made applicable to the

jurisdiction, powers, and duties of the Secretary in administering and enforcing the provisions of this chapter and to any person with respect to whom such authority is exercised. The Secretary, in person or by such agents as he may designate, may prosecute any inquiry necessary to his duties under this chapter in any part of the United States, and the powers conferred by said sections 49 and 50 of Title 15, on the district courts of the United States may be exercised for the purposes of this chapter by any court designated in [section 1050](#) of this title.

§1052. State or local regulation

(a) Prohibition against additional or different requirements than Federal requirements relating to premises, facilities, and operations at official plants; authority to impose recordkeeping and related requirements consistent with Federal requirements

Requirements within the scope of this chapter with respect to premises, facilities, and operations of any official plant which are in addition to or different than those made under this chapter may not be imposed by any State or local jurisdiction except that any such jurisdiction may impose recordkeeping and other requirements within the scope of [section 1040](#) of this title, if consistent therewith, with respect to any such plant.

(b) Prohibition against additional or different standards than Federal standards of quality, etc., or requiring labeling to show area of production or origin; authority to require name, address, and license number of processor or packer on containers; prohibition against additional or different requirements than Federal requirements relating to labeling, packaging or ingredients; authority to prevent distribution of violative articles; validity of nonconflicting laws

For eggs which have moved or are moving in interstate or foreign commerce,

(1) no State or local jurisdiction may require the use of standards of quality, condition, weight, quantity, or grade which are in addition to or different from the official Federal standards,

(2) with respect to egg handlers specified in paragraphs (1) and (2) of [section 1034\(e\)](#) of this title, no State or local jurisdiction may impose temperature requirements pertaining to eggs packaged for the ultimate consumer which are in addition to, or different from, Federal requirements, and

(3) no State or local jurisdiction other than those in noncontiguous areas of the United States may require labeling to show the State or other geographical area of production or origin: Provided, however, That this shall not preclude a State from requiring that the name, address, and license number of the person processing or packaging eggs, be shown on each container. Labeling, packaging, or ingredient requirements, in addition to or

different than those made under this chapter, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.), may not be imposed by any State or local jurisdiction, with respect to egg products processed at any official plant in accordance with the requirements under this chapter and such Acts. However, any State or local jurisdiction may exercise jurisdiction with respect to eggs and egg products for the purpose of preventing the distribution for human food purposes of any such articles which are outside of such a plant and are in violation of any of said Federal Acts or any State or local law consistent therewith. Otherwise the provisions of this chapter shall not invalidate any law or other provisions of any State or other jurisdiction in the absence of a conflict with this chapter.

(c) Applicability of other Federal laws and authority of other Federal officials relating to eggs, egg products, or other food products unaffected; authority of Secretary of Agriculture to regulate official plants processing egg products

The provisions of this chapter shall not affect the applicability of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) or other Federal laws to eggs, egg products, or other food products or diminish any authority conferred on the Secretary of Health and Human Services or other Federal officials by such other laws, except that the Secretary of Agriculture shall have exclusive jurisdiction to regulate official plants processing egg products and operations thereof as to all matters within the scope of this chapter.

(d) Detainer authority

The detainer authority conferred on representatives of the Secretary of Agriculture by [section 1048](#) of this title shall also apply to any authorized representative of the Secretary of Health and Human Services for the purposes of [section 1034](#)(d) of this title, with respect to any eggs or egg products that are outside any plant processing egg products.

§1053. Inspection and administration costs

(a) Overtime and holiday work costs; availability of funds

The cost of inspection rendered under the requirements of this chapter, and other costs of administration of this chapter, shall be borne by the United States, except that the cost of overtime and holiday work performed in official plants subject to the provisions of this chapter at such rates as the Secretary may determine shall be borne by such official plants. Sums received by the Secretary from official plants under this section shall be available without fiscal year limitation to carry out the purposes of this chapter.

(b) "Holiday" defined

The term "holiday" for the purposes of assessment or reimbursement of the cost of inspection performed under this chapter, the Wholesome Poultry Products Act (21 U.S.C. 467a et seq.) and the Wholesome Meat Act (21 U.S.C. 601 et seq.) shall mean the legal public holidays specified by the Congress in section 6103(a) of Title 5.

§1054. Annual report to Congressional committees

(a) Not later than March 1 of each year following December 29, 1970, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a comprehensive and detailed written report with respect to -

- (1) the processing, storage, handling, and distribution of eggs and egg products subject to the provisions of this chapter; the inspection of establishments operated in connection therewith; the effectiveness of the operation of the inspection, including the effectiveness of the operations of State egg inspection programs; and recommendations for legislation to improve such program; and
- (2) the administration of [section 1046](#) of this title (relating to imports) during the immediately preceding calendar year, including but not limited to -
 - (A) a certification by the Secretary that foreign plants exporting eggs or egg products to the United States have complied with requirements of this chapter and regulations issued there under;
 - (B) the names and locations of plants authorized or permitted to export eggs or egg products to the United States;
 - (C) the number of inspectors employed by the Department of Agriculture in the calendar year concerned who were assigned to inspect plants referred to in paragraph (B) hereof and the frequency with which each such plant was inspected by such inspectors;
 - (D) the number of inspectors that were licensed by each country from which any imports were received and that were assigned, during the calendar year concerned, to inspect such imports and the facilities in which such imports were handled; and the frequency and effectiveness of such inspections;
 - (E) the total volume of eggs and egg products which was imported into the United States during the calendar year concerned from each country, including a separate itemization of the volume of each major category of such imports from each country during such year, and a detailed report of rejections of plants and products because of failure to meet appropriate standards prescribed by this chapter; and
 - (F) recommendations for legislation to improve such program.

§1055. - Authorization of appropriations

Such sums as are necessary to carry out the provisions of this chapter are hereby authorized to be appropriated.

§1056. Separability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the chapter and of the application of such provision to other persons and circumstances shall not be affected thereby.

As of : Aug 6, 2004