

## **Prior Notification and Failure to Present:** **Compliance Guidance for** **Importing Meat, Poultry and Egg Products to the United States**

This guidance is designed to help importers of record (IOR), U.S. Customs brokers, and Official Import Inspection Establishment management understand and comply with the Food Safety and Inspection Service's (FSIS) import inspection regulations for meat, poultry, and egg products on prior notification and explains regulatory actions taken when products fail to present for FSIS reinspection, known as "Failure to Present" (FTP).

### **Background: Final Rule and Statutory Authority**

FSIS published [a final rule](#), effective November 18, 2014, that amends the meat, poultry, and egg products import regulations to provide for the Agency's Public Health Information System (PHIS) Import Component. The final rule also clarifies prior notification requirements and the definition of FTP for imported product, among other changes. The regulatory changes in this rule are based on the statutory authority of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695); the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470); and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031–1056). This guidance discusses and clarifies FSIS prior notification and FTP requirements as described in the final rule.

### **Definitions**

For the purposes of this guidance, *electronic applications* are applications for import inspection that are submitted through the Partner Government Agency (PGA) Message Set, which facilitates the transfer of required FSIS-specific data from the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment (ACE) into FSIS' Public Health Information System (PHIS). *Paper applications* are FSIS Form 9540-1, Import Inspection Application. Applying for import inspection electronically (i.e. PGA Message Set) eliminates the need to file a separate paper application with FSIS.

### **Prior Notification of Imported Product**

The final rule clarifies that the applicant (importer of record or designated agent) must apply for the inspection of imported product as far as possible in advance of the anticipated arrival of each consignment, but no later than when entry is filed with CBP (9 CFR 327.5(b), 381.198(b), and 590.920(b)). The objective of the prior notification requirement is to enhance FSIS' ability to identify shipments that are not presented for inspection, as well as to ensure that there is notice and data entry in PHIS is performed well before the shipment arrives at the official import inspection establishment, thus avoiding delays in the re-inspection of the shipment by FSIS at the official import inspection establishment.

It is important to emphasize that applicants automatically meet the prior notice requirement by filing Customs entry with the PGA Message Set (i.e., an electronic application). Applicants using paper applications will meet the prior notice requirement if the application is provided to FSIS at the official import inspection establishment (or other FSIS approved location designated on the import inspection

application) as early as possible, but no later than when entry is filed with CBP).

Of note, FSIS has revised the import inspection application (FSIS Form 9540-1) to include egg products and additional required information, such as production dates, and whether and when a country, foreign establishment, or specific product has been delisted or relisted as eligible for export. This information will help FSIS to verify that the relevant product was produced in the foreign establishment during an eligible timeframe. FSIS announced in the final rule that importers and brokers that do not use the PGA Message Set are to transition from the current FSIS Form 9540-1 (Import Inspection Application and Report) to the [revised FSIS Form 9540-1](#) (Import Inspection Application) no later than March 18, 2015. The revised FSIS Form 9540-1 completed by the importer or broker must be correct.

**Table 1: Options and Requirements for Import Inspection Application**

<b>Mode of CBP Entry</b>	<b>Foreign Inspection Certificate Type</b>	<b>Paper Foreign Inspection Certificate required?</b>	<b>Paper 9540-1 required?</b>	<b>Prior notification met?</b>
<b>ACE/Automated Commercial System (ACS) Entry</b>	Paper	Yes	Yes	Yes, if paper 9540-1 received no later than when entry filed with CBP
<b>ACE/ACS Entry</b>	Electronic certification (eCert)	No	Yes	Yes, if paper 9540-1 received no later than when entry filed with CBP
<b>ACE with PGA Message Set</b>	Paper	Yes	No	Yes
<b>ACE with PGA Message Set</b>	eCert	No	No	Yes

**Failure to Present (FTP) Shipments**

Imported meat, poultry, and egg product that has entered commerce without FSIS import reinspection violates the FMIA, the PPIA, or the EPIA, as well as the implementing regulations for each Act (9 CFR 327.6; 381.199; 590.925). The importer of record is responsible for any product identified as FTP. FSIS will likely request that importers of record recall FTP product. Imported meat, poultry, and egg products are considered “in-commerce” when they are off-loaded at a location other than the official import inspection establishment or other FSIS approved location designated on the import inspection application. The FTP product is no longer eligible for reinspection. Product still in the original shipping container may either be destroyed or returned to the country of origin. When a product has been identified as a FTP, FSIS will request, through CBP, a redelivery of the shipment and appropriate CBP penalties. As part of the Single Window initiative, FSIS is working with CBP to automate the redelivery process by December 2016, which will streamline enforcement of CBP redelivery requirements and meet the goals of Executive Order 13659. Customs has full authority to assess penalties and liquidated damages claims and to seize merchandise for violations of Customs or other laws enforced by the Customs Service. For more information about CBP redelivery requirements and penalties, please

contact CBP's Office of Regulations and Rulings (<http://www.cbp.gov/contact/international-trade-contacts>).

If any imported product identified as FTP has been removed from the original cartons or further processed, FSIS will initiate a regulatory control action on the product, including any further processed product that contains the FTP product, to ensure appropriate disposition (i.e., destruction).

## **Prior Notification Q&As**

1. *What action will FSIS take if a shipment is presented for reinspection and FSIS did not receive the paper import inspection application in advance of the shipment's arrival at the official import inspection establishment?*

**Answer:** FSIS inspection program personnel will first check the PHIS Import Component to determine whether the IOR made entry with CBP using the PGA message set. If the IOR submitted the entry using the PGA message set, FSIS will proceed with the reinspection. If the IOR did not submit the entry using the PGA message set, FSIS inspection program personnel will identify the shipment in PHIS as a "Prior Notification Violation." In addition, FSIS personnel will notify the IOR through the official import inspection establishment management of the violation, and that if violations continue, future shipments that do not meet the prior notification requirement will likely be refused entry. FSIS inspection program personnel will document the discussion with establishment management in a Memorandum of Interview (MOI) and then proceed with reinspection unless otherwise directed by FSIS management. If the shipment is not rejected, and FSIS proceeds with reinspection, the importer may experience unnecessary delays in the import inspection process if it does not meet this requirement. For prior notification violations, FSIS will consider using outreach (e.g., education and communication) with the IOR to ensure that prior notice requirements are understood.

2. *Will there be allowances for legitimate, mitigating circumstances, e.g., when ACE is not operational?*

**Answer:** Under the final rule, the applicant is required to submit an Import Inspection Application in advance of the shipment's arrival, but no later than when the entry is filed with CBP (9 CFR 327.5, 381.198, 590.920). FSIS is committed to working through any ACE-to-PHIS Import Component data transfer problems to avoid any delays in completing reinspection.

3. *How will prior notification apply to those who apply for import inspection electronically via the PGA Message Set?*

**Answer:** Applying for FSIS import inspection electronically via the PGA Message Set will fulfill the prior notification requirement.

4. *How will prior notification apply to those who apply for import inspection with a paper-based application?*

**Answer:** For those importers or brokers using the paper-based import inspection application (FSIS Form 9540-1), FSIS must receive the paper application as far as possible in advance of the anticipated arrival of the consignment at the official import inspection establishment (or other FSIS approved location

designated on the import inspection application), but no later than when the entry is filed with CBP (9 CFR 327.5(b), 381.198(b), and 590.920(b)).

5. *How can I learn more about participating in the PGA Message Set? What kind of software or other upgrades do I need?*

**Answer:** More information can be found in [CBP's Federal Register Notice](#) on the PGA Message Set. Regarding technical requirements, please consult CBP's website on [ACE Automated Broker Interface \(ABI\) and CBP and Trade Automated Interface Requirements \(CATAIR\)](#). FSIS will expand its PGA Message Set pilot to include all ports, as well as all interested importers and brokers by November 2015).

## **Failure to Present (FTP) Q&As**

6. *How does FSIS define "in-commerce" for purposes of imported product that has bypassed reinspection and entered commerce?*

**Answer:** Imported meat, poultry, and egg products are considered "in-commerce" when they are off-loaded at a location other than the official import inspection establishment or other FSIS approved location designated on the import inspection application. If the FTP product shipment is in-commerce, the imported product, or any product produced from the ineligible product, is subject to regulatory control action (i.e., FSIS would retain or detain the product if it is not returned to the importer of record), and FSIS may request that the importer of record recall the product.

7. *Is transporting and storing imported product at a U.S. warehouse prior to reinspection considered a FTP?*

**Answer:** Yes. FSIS does not permit storing of imported meat, poultry, or egg products in a warehouse or other facility prior to reinspection unless the warehouse or facility has the same physical address as the official import inspection establishment (or other FSIS-approved location designated on the import inspection application), and it is physically connected to the establishment. Official import inspection establishment managers can notify FSIS import inspection personnel of the shipment's arrival to such a warehouse or facility, so that the status of the shipment can be changed to "On Premises" in the PHIS Import Component so as not to be identified as FTP.

8. *Will FSIS alert importers/agents to potential FTP product problems as soon as they are discovered?*

**Answer:** Yes. FSIS inspection program personnel are instructed in [FSIS Directive 9900.1](#) to notify the applicant electronically (e-mail) through the PHIS Import Component when a shipment has not arrived at the official import inspection establishment or other FSIS-approved location designated on the import inspection application by the Estimated Date of Arrival (EDA) recorded on the import inspection application. When prompted, PHIS will automatically send the e-mail to the applicant e-mail address entered on the Import Inspection Application, which is completed by the IOR or his agent. FSIS will communicate and work with import inspection establishment management to track and control potential FTPs.

9. *Can FTP products be re-exported or removed from the U.S?*

**Answer:** If the product is still in its original containers it may be removed from the United States and returned to the country of origin as part of the disposition process with FSIS. However, FSIS cannot issue an FSIS export certificate for imported product subject to a FTP violation.

## **Reference Links**

Federal Register Final Rule on Electronic Import Inspection Application:

[Electronic Import Inspection Application and Certification of Imported Products and Foreign Establishments; Amendments To Facilitate the Public Health Information System \(PHIS\) and Other Changes to Import Inspection Regulations \(Sep 19, 2014\)](#)

FSIS Federal Register Notice on PGA Message Set Pilot Program:

[Electronic Filing of Import Inspection Applications for Meat, Poultry, and Egg Products: Availability of Draft Compliance Guide and PGA Message Set Pilot Program \(Mar 29, 2013\)](#)

Electronic Import Inspection Application (FSIS Form 9540-1) Guideline:

[Data Samples and Guidelines for Using the PGA Message Set for Electronic Completion of the U.S. Department of Agriculture, Food Safety Inspection Service Application for Import Inspection \(Aug 2013\)](#)

PHIS Import Component: [Public Health Information System \(PHIS\)-Import Component Home Page](#)

askFSIS: <http://askfsis.custhelp.com>