

48 FR 2958-01, 1983 WL 120316(F.R.)
RULES and REGULATIONS
DEPARTMENT OF AGRICULTURE
Food Safety and Inspection Service
9 CFR Part 381
[Docket Number 82-015F]

Exemptions for Certain Poultry Slaughter and Processing Operations

Monday, January 24, 1983

*2958 AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This is a final rule amending the Federal poultry products inspection regulations to implement Pub. L. 97-206 which revised the Poultry Products Inspection Act by increasing the number of turkeys which may be slaughtered and processed by certain small enterprises without inspection under the Act, and by denying exemptions to enterprises which share their slaughter or processing facilities with other enterprises.

EFFECTIVE DATE: February 23, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. James E. Harbottle, Staff Officer, Meat and Poultry Inspection Operations, Inspection Coordination Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7905.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made an initial determination that this final rule is not a "major" rule under Executive Order 12291 because no new costs are being imposed on the affected industry or others. The rule benefits certain segments of the industry by increasing the number of turkeys allowed to be slaughtered and processed without inspection and provides turkey producers an opportunity to increase their annual production without imposing any additional inspection costs. Consequently, this action is not anticipated to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Background

On June 30, 1982, Pub. L. 97-206 was adopted (96 Stat. 136). This law amends the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 et seq.) by increasing the number of turkeys which a producer may slaughter and/or process annually without inspection for distribution in intrastate commerce. The new law requires, however, that any such poultry producer or other person who slaughters and/or processes poultry at a facility used by another for the same purpose, regardless of the amount, must have the poultry inspected, except when the Secretary grants an exemption from the inspection.

One of the requirements of the PPIA is that the Secretary of Agriculture, through appointed inspectors, provide ante-mortem and post-mortem inspection of poultry and poultry products to assure that such products, when distributed to the consumer, are wholesome, not adulterated, and properly marked, labeled, and packaged.

However, section 15 of the PPIA contains several inspection exemptions for small producers who slaughter and process their own poultry, for their own use, and for other small enterprises distributing poultry products in intrastate commerce.

Prior to the recent amendment, the PPIA provided that certain small producers could raise, slaughter and/or process, and distribute in intrastate commerce up to 5,000 turkeys annually or an equivalent number of any other poultry species (4 birds of another species being considered equivalent to 1 turkey) without inspection. The amendment increased the exemption from 5,000 to 20,000 turkeys, and eliminated the distinction between turkeys and other birds. However, these producers continue to be subject to other provisions of the Act, particularly labeling and sanitary requirements.

*2959 Additionally, under the previous provisions of the PPIA, producers who slaughtered less than 250 turkeys or 1,000 birds of another species were exempt from all requirements of the PPIA, provided that the poultry was raised on their farms and not distributed in interstate commerce. The amendment increased the exemption from 250 to 1,000 turkeys, and eliminated the distinction between turkeys and other birds. The intention of these provisions was to allow small poultry producers to realize a profit without being burdened by costly Federal regulations. *

The legislative history indicates that at the time of the PPIA's implementation, Congress was concerned about the small producers who sold their own slaughtered birds and the imposition of burdensome regulations upon them. Another consideration appears to have been that the average carcass weight or gross income from an average turkey carcass is approximately 5 times greater than that of an average chicken carcass. As such, it appears likely that this was the rationale for the turkey/other species bird ratio. *

Legislative Change

Turkey producers have asserted that the PPIA equivalency ratio of 4 birds equaling 1 turkey is discriminatory, and therefore the exemption limit should be the same regardless of the bird's species. The contention of small turkey producers was that the 5,000 exemption limit prohibited them from earning an adequate income, and slaughtering more turkeys would have required them to come under inspection, thus placing additional requirements and costs on their operations. *

In view of this situation, the turkey industry sought to revise the exemption limit. In response to their efforts, House Resolution 3863 was introduced into Congress. It raised the number of turkeys which could be slaughtered and processed without inspection. On June 30, 1982, Pub. L. 97-206 was adopted which increased the annual turkey exemption limit from 5,000 to 20,000. The 20,000 limit is now equivalent to the existing exemption limit of 20,000 birds of other species (4 birds equal 1 turkey: $5,000 \times 4 = 20,000$). To correspond with this increase, the law also raised the turkey slaughter exemption limit as it applies to poultry producers raising their own turkeys from 250 to 1,000. Again, the 1,000 limit is equivalent to the existing limit of 1,000 birds of another species ($250 \times 4 = 1,000$). *

A new provision was also added to the PPIA concerning the eligibility of any person slaughtering or processing poultry products for exemption from inspection. The provision prohibits inspection exemptions for any person slaughtering or processing poultry products at a facility used by another person for the same purpose. However, the provision is further qualified, inasmuch as it grants the Secretary the authority to allow exemptions to any person if he determines, after reviewing the application of such person, that the exemption would not circumvent the intent of the PPIA.

Final Rule

Section 381.10(b) of the Federal poultry products inspection regulations (9 CFR 381.10(b)) provides that no person is qualified for certain exemptions from inspection if such person slaughters or processes more than 5,000 turkeys or the equivalent number of birds of another species (or 20,000). Section 381.10(c)(1) of the poultry products inspection regulations (9 CFR 381.10(c)(1)) provides that any poultry producer is exempt from the PPIA if he slaughters not more than 250 turkeys or the equivalent number of birds of another species (or 1,000) raised on his own farm. Therefore, in

order to implement the revisions to the PPIA made by Pub. L. 97-206, the Agency is revising the relevant portions of the poultry products inspection regulations.

Section 381.10(b) (9 CFR 381.10(b)) is amended by changing the phrase "5,000 turkeys or an equivalent number of poultry of all species in the calendar year (four birds of other species being deemed the equivalent of one turkey)" to "20,000 poultry" and setting forth the new condition which would disqualify any person for exemption from inspection.

Section 381.10(c)(1) (9 CFR 381.10(c)(1)) would be amended by substituting the phrase "1,000 poultry" for "250 turkeys, or not more than an equivalent number of birds of all species," and by deleting the phrase "(4 birds of other species being deemed the equivalent of 1 turkey)".

List of Subjects in 9 CFR Part 381

Poultry products inspection, Exemption.

PART 381—[AMENDED]

Accordingly, § 381.10 of the poultry products inspection regulations (9 CFR 381.10) is amended by revising paragraphs (b) and (c)(1) to read as follows:

9 CFR § 381.10

§ 381.10 Exemptions for specified operations.

* * * * *

(b) No person qualifies for any exemption specified in paragraph (a)(5), (6), or (7) of this section if, in the current calendar year, such person:

(b)(1) Slaughters or processes the products of more than 20,000 poultry, or

(b)(2) Slaughters or processes poultry products at a facility used for slaughtering or processing poultry products by any other person, except when the Administrator grants such exemption after determining, upon review of a person's application, that such an exemption will not impair effectuating the purposes of the Act.

(c) * * *

(c)(1) Such producer slaughters not more than 1,000 poultry during the calendar year for which this exemption is being determined;

* * * * *

(71 Stat. 441, as amended, 21 U.S.C. 451 et seq.)

Pursuant to the provisions contained in 5 U.S.C. 553 this action is being implemented as a final rule. The Agency has determined that notice and comment requirements are unnecessary because the action is merely revising the poultry products inspection regulations to reflect the statutory provisions contained in Pub. L. 97-206.

* * * * *

Done at Washington, D.C. on January 7, 1983.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

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