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This document is scheduled to be published in the Federal Register on 07/15/2021 and available online at [federalregister.gov/d/2021-15062](https://www.federalregister.gov/d/2021-15062), and on [govinfo.gov](https://www.govinfo.gov)

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 352

[Docket No. FSIS-2019-0028]

RIN [0583-AD73]

Inspection of Yak and Other Bovidae, Cervidae, and Camelidae

Species

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations to define yak and include it among “exotic animals” eligible for voluntary inspection under 9 CFR part 352. This change is in response to a petition for rulemaking from a yak industry association, which FSIS granted in 2015. Additionally, FSIS is revising the definitions of antelope, bison, buffalo, catalo, deer, elk, reindeer, and water buffalo to make them more scientifically accurate. Moreover, FSIS is responding to comments on whether all farmed-raised species in the biological families Bovidae, Cervidae, and Camelidae, if not already subject to mandatory inspection, should be eligible for voluntary inspection, and whether any species in these families should be added to the list of amenable species requiring mandatory inspection.

DATES: Effective [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205-0495.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2020, FSIS proposed to amend its regulations (9 CFR 352.1) to add yak to its list of "exotic animals" eligible for voluntary inspection (85 FR 33034, June 1, 2020). FSIS proposed to define yak as a long-haired bovid animal originally found throughout the Himalaya region of southern Central Asia and the Tibetan Plateau. The proposed rule explained that while yak was not listed in the regulations as an "exotic animal," the Agency has inspected yak under its voluntary program for several years.

As FSIS explained in the proposed rule, on September 3, 2014, the International Yak Association (IYAK) submitted a petition for rulemaking,¹ under 9 CFR part 392, requesting that FSIS amend 9 CFR 352.1(k) to include yak under the definition of an "exotic animal." The petitioner stated that because FSIS had voluntarily inspected yak for many years, it had created an expectation among breeders and buyers that FSIS would continue to inspect yak. On November 21, 2014, IYAK submitted additional supporting data.² IYAK had surveyed United States yak producers

¹ See: <https://www.fsis.usda.gov/wps/wcm/connect/db2ac10c-7b92-4bb4-a0d3-885641738711/Petition-YAK-112014.pdf?MOD=AJPERES>.

² IYAK asked that the supporting data remain confidential because it contains proprietary information.

and found that continued FSIS inspection of yak meat was critical to the industry as a whole.

After reviewing the petition and supporting data, FSIS decided to grant the petition, and stated that it would continue to voluntarily inspect yak while FSIS went through rulemaking to add yak to the list of exotic animals eligible for voluntary inspection.^{3,4}

In the proposed rule, FSIS also requested comments on whether the regulations should be amended to list as eligible for voluntary inspection all farm-raised species in the biological families Cervidae (e.g., moose, all deer and elk), all Bovidae not currently subject to mandatory inspection (e.g., water buffalo and impalas), and Camelidae (e.g., camel, llama, and alpaca). And, based on interest from stakeholders, FSIS requested comment as to whether any species in these families, if not currently subject to mandatory inspection, should be. FSIS already requires the inspection of some species of the biological family Bovidae under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(w)). These species include cattle, sheep, and goats.

After considering the comments received on the proposed rule, discussed below, FSIS is finalizing the proposed rule with some changes. In response to public comment, the final rule will also amend 9 CFR 352.1 to revise the definitions of antelope (9

³ See: <https://www.fsis.usda.gov/wps/wcm/connect/aa5f69d7-ddc6-44bc-9ff3-bc9489fcd338/IYAK-FSIS-response-120314.pdf?MOD=AJPERES>.

⁴ See: <https://www.fsis.usda.gov/wps/wcm/connect/c109452f-4497-4144-815e-6a382b94a113/FSIS-Final-Response-IAK-080315.pdf?MOD=AJPERES>.

CFR 352.1(c)), bison (9 CFR 352.1 (e)), buffalo (9 CFR 352.1(f)), catalo (9 CFR 352.1(g)), deer (9 CFR 352.1(j)), elk (9 CFR 352.1(l)), reindeer (9 CFR 352.1(x)), and water buffalo (9 CFR 352.1(aa)) to make them more taxonomically accurate.

Responses to Comments

FSIS received seven comments from individuals, a yak producer, and a llama and alpaca producer. A summary of the comments and FSIS's responses follows.

A yak producer and an individual supported defining yak and including it among "exotic animals" eligible for voluntary inspection under 9 CFR part 352. The individual stated that formally allowing for voluntary inspection of yak will help the continued growth of the yak industry by creating consumer trust in the product. Both commenters stated that allowing for voluntary inspection of yak gives consumers a healthy and sustainable red meat alternative.

Comment: Comments from three individuals stated that species from the families Bovidae, Cervidae, and Camelidae could be slaughtered and processed under either mandatory or voluntary inspection, depending on whether certain criteria are met, including whether there is a sufficient market for consumers to justify mandatory inspection. Furthermore, the same three individuals suggested that yak should be slaughtered and prepared under mandatory FSIS inspection. According to these commenters, yak should be amenable under the FMIA, because it meets the dictionary definition of "cattle," and yak are

transported and held in pens for slaughter like other amenable cattle.

A producer of deer, elk, bison, llama, and alpaca recommended that FSIS revise 9 CFR part 352 to allow for any "large farm-raised mammals" to be eligible for voluntary inspection. Specifically, the commenter requested that FSIS provide voluntary inspection for llamas and alpacas. The commenter argued that producers of llamas and alpacas would benefit from FSIS voluntary inspection, because it would alleviate confusion and create consistency for the llama and alpaca industry.

Response: FSIS would need to gather more economic and scientific information before deciding whether to expand the list of species eligible for voluntary inspection or subject to mandatory inspection. Therefore, FSIS is not making any additional changes to the regulations at this time.

Comment: A few individuals noted that 9 CFR 352.1(f) defines "buffalo" as "any animal belonging to the buffalo family." The commenters argued that definition should be revised because "buffalo family" is not an accurate scientific classification.

Response: FSIS acknowledges that the definition of "buffalo" in 9 CFR 352.1(f) is not taxonomically accurate. In addition to "buffalo," FSIS is correcting the definitions of all the exotic species covered under 9 CFR 352.1. Specifically, FSIS has corrected the definitions of antelope (9 CFR 352.1(c)),

bison (9 CFR 352.1 (e)), buffalo (9 CFR 352.1(f)), catalo (9 CFR 352.1(g)), deer (9 CFR 352.1(j)), elk (9 CFR 352.1(l)), reindeer (9 CFR 352.1(x)), and water buffalo (9 CFR 352.1(aa)) to make them taxonomically accurate.

Comment: A few individuals questioned why the proposed rule did not address rabbits and other lagomorphs that are produced under voluntary inspection.

Response: These comments are outside of the scope of this rulemaking, since voluntary inspection of rabbits is addressed in a different part of its regulations, in 9 CFR part 354.

Executive Orders (E.O.s) 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated as a "non-significant" regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

FSIS has updated the number of yak establishments under the voluntary inspection program in this final rule from those published in the proposed rule based on more recent labeling

data. In response to comments on the proposed rule, FSIS is also clarifying the definitions of antelope, bison, buffalo, catalo, deer, elk, reindeer, and water buffalo in the regulations to make them more taxonomically accurate. FSIS does not expect any quantifiable costs or benefits will be associated with these revisions.

Expected Costs of the Final Rule

FSIS does not expect any additional industry or Agency costs as a result of this final rule because, although yak is not currently listed as an "exotic animal" eligible for voluntary inspection, FSIS has been inspecting yak under the voluntary inspection program for many years.

Expected Benefits of the Final Rule

In 2014, IYAK conducted a National Yak Industry Survey to support its petition requesting that FSIS amend 9 CFR 352.1(k) to include Yak under the definition of an "exotic animal." According to IYAK's survey, FSIS voluntarily inspected 109 yaks from 22 establishments in 2014. The IYAK survey also stated that there were 33 total establishments slaughtering yak in 2014. From 2014 to December 3, 2020, 23 unique establishments submitted a total of 76 yak product labels to the FSIS Labeling and Program Delivery Staff (LPDS) for approval.⁵ These establishments will benefit from being able to continue to use their labels with FSIS's voluntary mark of inspection. According

⁵ FSIS used data from the Labeling and Program Delivery Staff's Label Submission and Approval System (LSAS). This data was received on December 4, 2020.

to the 2014 IYAK survey, 90 percent of the establishments surveyed noted that USDA inspection is critical to the yak industry. Amending 9 CFR 352.1 to list yak as an “exotic animal” eligible for FSIS’s voluntary inspection service will avoid disruption to the yak industry and possible economic harm to producers if FSIS stopped voluntarily inspecting yak.

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule will allow FSIS to continue to voluntarily inspect yak and there will be no increased costs to industry. Small and very small yak establishments that choose to continue to receive voluntary inspection will benefit from being able to continue to use their labels with FSIS’s voluntary mark of inspection. About 17 percent of the establishments that submitted yak labels from 2014 to December 3, 2020, were classified as small under Hazard Analysis and Critical Control Point (HACCP) sizes and 83 percent were classified as very small.⁶ The final rule will benefit small and very small establishments because it will continue to give these establishments access to the FSIS voluntary mark of inspection and access to buyers who look for that mark of inspection when making purchasing decisions.

⁶ FSIS used data from the Public Health Information System (PHIS) to identify these establishments by HACCP category.

Paperwork Reduction Act

There are no new paperwork or recordkeeping requirements associated with this final rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

E-Government Act

FSIS and USDA are committed to achieving the purpose of the E-Government Act (44 U.S.C. 3601, et seq.) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizens access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS website located at: <https://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations,

Federal Register notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS website. Through the website, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at:

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List of Subjects in 9 CFR Part 352

Exotic Animals.

For the reasons set out in the preamble, FSIS amends 9 CFR part 352 as follows:

PART 352-- EXOTIC ANIMALS AND HORSES: VOLUNTARY INSPECTION

1. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.53.

2. Amend § 352.1 by revising paragraphs (c), (e), (f), (g), (j), (k), (l), (x), and (aa) and adding paragraph (bb) to read as follows:

§ 352.1 Definitions.

* * * * *

(c) *Antelope* means any of various ruminant deerlike mammals (family Bovidae) chiefly of Africa and southwest Asia that have a slender lean build and usually horns directed upward and backward.

* * * * *

(e) *Bison* (*Bison bison*), commonly known as the American bison or buffalo, is a species of the genus *Bison* native to North America. *Bison* includes *catalo* or *cattalo*.

(f) *Buffalo* refers to a subtribe *Bubalina* of the tribe Bovini within the subfamily Bovinae that includes the water buffalo (*Bubalus bubalis*) and Cape buffalo (*Syncerus caffer*).

(g) *Catalo* or *Cattalo* means any hybrid animal with bison (*Bison bison*) appearance resulting from direct crossbreeding of bison (*Bison bison*) and cattle (*Bos taurus*).

* * * * *

(j) *Deer* refers to the any farm-raised species of the family Cervidae.

(k) *Exotic animal* means any reindeer, elk, deer, antelope, water buffalo, bison, buffalo, or yak.

(l) *Elk (Cervus canadensis)* refers to one of the largest species within the family Cervidae. It is native to North America and in high mountains of Central Asia.

* * * * *

(x) *Reindeer (Rangifer tarandus)*, commonly referred to as caribou, is a species within the family Cervidae with circumpolar distribution, native to Arctic, sub-Arctic, tundra, boreal, and mountainous regions of northern Europe, Siberia, and North America.

* * * * *

(aa) *Water buffalo (Bubalus bubalis)*, commonly known as the domestic water buffalo or Asian water buffalo, is a large bovid originating in the Indian subcontinent, Southeast Asia, and China.

(bb) *Yak (Bos grunniens)* means a long-haired bovid animal originally found throughout the Himalaya region of southern Central Asia and the Tibetan Plateau.

Done at Washington, DC:

Paul Kiecker,
Administrator.