

§ 1240.62

Temperature	Time
204 °F (96 °C) .....	0.05 second.
212 °F (100 °C) .....	0.01 second.

(c) Eggnog shall be heated to at least the following temperature and time specification:

Temperature	Time
155 °F (69 °C) .....	30 minutes.
175 °F (80 °C) .....	25 seconds.
180 °F (83 °C) .....	15 seconds.

(d) Neither paragraph (b) nor (c) of this section shall be construed as barring any other pasteurization process that has been recognized by the Food and Drug Administration to be equally efficient in the destruction of microbial organisms of public health significance.

[52 FR 29514, Aug. 10, 1987, as amended at 57 FR 57344, Dec. 4, 1992]

**§ 1240.62 Turtles intrastate and interstate requirements.**

(a) *Definition.* As used in this section the term “turtles” includes all animals commonly known as turtles, tortoises, terrapins, and all other animals of the order Testudinata, class Reptilia, except marine species (families Dermachelidae and Chelonidae).

(b) *Sales; general prohibition.* Except as otherwise provided in this section, viable turtle eggs and live turtles with a carapace length of less than 4 inches shall not be sold, held for sale, or offered for any other type of commercial or public distribution.

(c) *Destruction of turtles or turtle eggs; criminal penalties.* (1) Any viable turtle eggs or live turtles with a carapace length of less than 4 inches which are held for sale or offered for any other type of commercial or public distribution shall be subject to destruction in a humane manner by or under the supervision of an officer or employee of the Food and Drug Administration in accordance with the following procedures:

(i) Any District Office of the Food and Drug Administration, upon detecting viable turtle eggs or live turtles with a carapace length of less than 4 inches which are held for sale or offered for any other type of commercial or public distribution, shall serve upon

the person in whose possession such turtles or turtle eggs are found a written demand that such turtles or turtle eggs be destroyed in a humane manner under the supervision of said District Office, within 10 working days from the date of promulgation of the demand. The demand shall recite with particularity the facts which justify the demand. After service of the demand, the person in possession of the turtles or turtle eggs shall not sell, distribute, or otherwise dispose of any of the turtles or turtle eggs except to destroy them under the supervision of the District Office, unless and until the Director of the Center for Food Safety and Applied Nutrition withdraws the demand for destruction after an appeal pursuant to paragraph (c)(1)(ii) of this section.

(ii) The person on whom the demand for destruction is served may either comply with the demand or, within 10 working days from the date of its promulgation, appeal the demand for destruction to the Director of the Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The demand for destruction may also be appealed within the same period of 10 working days by any other person having a pecuniary interest in such turtles or turtle eggs. In the event of such an appeal, the Center Director shall provide an opportunity for hearing by written notice to the appellant(s) specifying a time and place for the hearing, to be held within 14 days from the date of the notice but not within less than 7 days unless by agreement with the appellant(s).

(iii) Appearance by any appellant at the hearing may be by mail or in person, with or without counsel. The hearing shall be conducted by the Center Director or his designee, and a written summary of the proceedings shall be prepared by the person presiding. Any appellant shall have the right to hear and to question the evidence on which the demand for destruction is based, including the right to cross-examine witnesses, and he may present oral or written evidence in response to the demand.

(iv) If, based on the evidence presented at the hearing, the Center Director finds that the turtles or turtle

eggs were held for sale or offered for any other type of commercial or public distribution in violation of this section, he shall affirm the demand that they be destroyed under the supervision of an officer or employee of the Food and Drug Administration; otherwise, the Center Director shall issue a written notice that the prior demand by the District Office is withdrawn. If the Center Director affirms the demand for destruction he shall order that the destruction be accomplished in a humane manner within 10 working days from the date of the promulgation of his decision. The Center Director's decision shall be accompanied by a statement of the reasons for the decision. The decision of the Center Director shall constitute final agency action, reviewable in the courts.

(v) If there is no appeal to the Director of the Center for Food Safety and Applied Nutrition from the demand by the Food and Drug Administration District Office and the person in possession of the turtles or turtle eggs fails to destroy them within 10 working days, or if the demand is affirmed by the Director of the Center for Food Safety and Applied Nutrition after an appeal and the person in possession of the turtles or turtle eggs fails to destroy them within 10 working days, the District Office shall designate an officer or employee to destroy the turtles or turtle eggs. It shall be unlawful to prevent or to attempt to prevent such destruction of turtles or turtle eggs by the officer or employee designated by the District Office. Such destruction will be stayed if so ordered by a court pursuant to an action for review in the courts as provided in paragraph (c)(1)(iv) of this section.

(2) Any person who violates any provision of this section, including but not limited to any person who sells, offers for sale, or offers for any other type of commercial or public distribution viable turtle eggs or live turtles with a carapace length of less than 4 inches, or who refuses to comply with a valid final demand for destruction of turtles or turtle eggs (either an unappealed demand by an FDA District Office or a demand which has been affirmed by the Director of the Center for Food Safety and Applied Nutrition pursuant to ap-

peal), or who fails to comply with the requirement in such a demand that the manner of destruction be humane, shall be subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both, for each violation, in accordance with section 368 of the Public Health Service Act (42 U.S.C. 271).

(d) *Exceptions.* The provisions of this section are not applicable to:

(1) The sale, holding for sale, and distribution of live turtles and viable turtle eggs for bona fide scientific, educational, or exhibitional purposes, other than use as pets.

(2) The sale, holding for sale, and distribution of live turtles and viable turtle eggs not in connection with a business.

(3) The sale, holding for sale, and distribution of live turtles and viable turtle eggs intended for export only, provided that the outside of the shipping package is conspicuously labeled "For Export Only."

(4) Marine turtles excluded from this regulation under the provisions of paragraph (a) of this section and eggs of such turtles.

(e) *Petitions.* The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may publish a proposal to amend this regulation. Any such petition shall include an adequate factual basis to support the petition, and will be published for comment if it contains reasonable grounds for the proposed regulation. A petition requesting such a regulation, which would amend this regulation, shall be submitted to the Dockets Management Branch, Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

[40 FR 22545, May 23, 1975, as amended at 46 FR 8461, Jan. 27, 1981; 48 FR 11431, Mar. 18, 1983; 54 FR 24900, June 12, 1989; 59 FR 14366, Mar. 28, 1994]

#### § 1240.65 Psittacine birds.

(a) The term psittacine birds shall include all birds commonly known as parrots, Amazons, Mexican double heads, African grays, cocatoos, macaws, parakeets, love birds, lorries, lorikeets, and all other birds of the psittacine family.