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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 1 and 1b

Departmental Proceedings, Judicial Proceedings, and NEPA Policy

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Administrative Regulations—Departmental Proceedings, the Administrative Regulations—Judicial Proceedings, and the National Environmental Policy Act regulations as part of the United States Department of Agriculture's (USDA) regulatory reinvention initiative to improve its regulations. This final rule updates and corrects references to statutes, regulations, USDA agencies, and USDA officials; removes gender specific references; removes unnecessary regulations; and makes minor nonsubstantive changes for clarity.

EFFECTIVE DATE: This final rule is effective January 22, 1996.

FOR FURTHER INFORMATION CONTACT: William Jenson, Senior Counsel, Regulatory Division, Office of the General Counsel, USDA, room 2422, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, (202) 720-2453.

SUPPLEMENTARY INFORMATION:

Background

The President directed the heads of all departments and agencies to review all regulations and eliminate or revise those that are outdated or otherwise in need of reform. The Department completed its review and submitted a report on the review to the Office of Management and Budget on June 1, 1995. The review included USDA's Administrative Regulations—

Departmental Proceedings (7 CFR, part 1, subpart B); Administrative Regulations—Judicial Proceedings (7 CFR, part 1, subpart C); and National Environmental Policy Act regulations (7 CFR, part 1b). The Department found that these regulations contain outdated and incorrect references to statutes, regulations, USDA agencies, and USDA officials; unnecessary provisions; gender specific references; and provisions that could be clarified by making minor nonsubstantive changes. This final rule updates and corrects references to statutes, regulations, USDA agencies, and USDA officials; removes gender specific references; removes unnecessary regulations; and makes minor nonsubstantive changes for clarity.

7 CFR, Part 1, Subpart B

This final rule amends 7 CFR, part 1, subpart B, by adding a citation to the statutory authority for the subpart. This final rule also amends §§ 1.26, 1.27, 1.28, and 1.29 in 7 CFR, part 1, subpart B.

Section 1.26(c) provides that “[c]hapter 11 of title 18, United States Code prohibits employees and former employees from representing others under certain circumstances. See § 0.735-41 of this subtitle for illustrations.” Section 1.26(c) is unnecessary and has no effect and is therefore removed. In addition, this final rule makes minor nonsubstantive amendments to 7 CFR 1.26 (a), (b)(2), and (b)(3) for clarity and to remove gender specific references.

Section 1.27 sets forth the Department policy with respect to the availability of written submissions in response to certain notices published by the Department. Sections 1.27 (a) through (d) appear by their terms to apply only to written submissions in response to notices of proposed rulemaking published by the Department. However, § 1.27(e) provides that, despite the limiting language in § 1.27 (a) through (d), the policy announced in § 1.27 applies to written submissions in response to any published notice which solicits, or affords interested members of the public an opportunity to submit, written views with respect to any proposed action relating to any program administered by the Department regardless of the fact that the issuance of a rule may not be contemplated.

Further, this final rule amends the provisions regarding the confidentiality of written submissions. Sections 1.27 (c) and (d) provide for confidentiality if making the submission public would have an adverse effect on the submitter by reason of: (1) Disclosing trade secrets, processes, operations, style of work or apparatus; (2) disclosing the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures; or (3) exposing the submitter to substantial disadvantage in business or employment. This confidentiality provision was written before the enactment of the Freedom of Information Act. The confidentiality provision in § 1.27 (c) and (d) includes agency records that the Department may not be able to withhold under the Freedom of Information Act. Therefore, § 1.27 is amended to provide that confidentiality may be given to written submissions only if they may be withheld under the Freedom of Information Act.

Further still, this final rule amends § 1.27 by setting forth the scope of the Department policy at the beginning of § 1.27, eliminating the inaccurate limiting language currently found in § 1.27 (a) through (d), and making other minor nonsubstantive changes for clarity.

Section 1.28 contains an inaccurate reference to a provision of the Administrative Procedure Act. This final rule amends § 1.28 to correct that inaccurate reference.

Section 1.29(a) provides that the “Administrator, Agricultural Marketing Service may delegate the authority to issue subpoenas in connection with investigations being conducted under the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181-229), to the Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service.” Since § 1.29(a) was issued, the Department has been reorganized and the references to Department officials in § 1.29(a) are no longer accurate. This final rule amends this provision within § 1.29(a) to correct the references to Department officials.

In addition, this final rule amends other provisions in § 1.29(a), and §§ 1.29(b)(1)(iii), (b)(2), and (b)(3) for clarity and to remove gender-specific references and surplusage.

7 CFR, Part 1, Subpart C

This final rule amends 7 CFR, part 1, subpart C, by adding a citation to the statutory authority for the subpart. This final rule also amends § 1.41 in 7 CFR, part 1, subpart C, to remove a gender-specific reference and to remove a provision that requires service of process to be made upon the General Counsel to enforce child support or alimony payments owed by employees of the Department. This provision is removed because the regulations related to service of legal process for the enforcement of child support and alimony owed by Department employees are set forth in 5 CFR, part 581.

7 CFR, Part 1b

This final rule amends the authority citation for 7 CFR, part 1b, to remove inaccurate references to the Federal Register.

Section 1b.1 contains inaccurate references to regulations and an inaccurate reference to the Council on Environmental Quality. This final rule corrects those inaccuracies.

Section 1b.2(a) describes the purposes of some of the Department's programs and the methods by which some of these programs are conducted. Section 1b.2(a) is unnecessary and has no effect and is therefore removed. In addition, this final rule makes minor nonsubstantive amendments to 7 CFR 1b.2 paragraphs (c), (d), and (e) for clarity; to remove inaccurate references to regulations, the Under Secretary, Natural Resources and Environment, and the Agricultural Council on Environmental Quality; and to remove surplusage.

Section 1b.3(c) is amended to correct a cross reference.

Section 1b.4 lists agencies that are excluded from the requirement to prepare procedures to implement the National Environmental Policy Act and categorically excluded from the preparation of environmental assessments and environmental impact statements unless the agency head determines that an action may have a significant environmental effect. Since § 1b.4 was published, the Department has been reorganized and some of the listed agencies no longer exist. This final rule corrects the list of Department agencies in § 1b.4 and makes minor nonsubstantive changes for clarity.

Notice and Comment

This rule makes only minor nonsubstantive amendments to the regulations in order to update and correct incorrect references, remove

gender-specific references, remove unnecessary provisions, and clarify existing regulations. The rule will not have any effect on the public and no public participation is expected. Therefore, notice and public procedure with respect to this rule are unnecessary, and there is good cause under 5 U.S.C. 553 to make this rule effective without opportunity for public participation.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule updates and corrects references to statutes, regulations, USDA agencies, and USDA officials; removes gender-specific references; removes unnecessary provisions; and makes minor nonsubstantive changes for clarity. This final rule will not have any economic impact.

Under these circumstances, the Secretary has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all state and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects**7 CFR Part 1**

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

7 CFR Part 1b

Environmental policy statements.

Accordingly, 7 CFR parts 1 and 1b are amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 301, unless otherwise noted.

§ 1.26 [Amended]

2–3. Section 1.26 is amended as follows:

a. In paragraph (a), by removing the words “The provisions of this section apply” and by adding the words “This section applies” in their place; and by removing the words “such provisions, or any part thereof” and by adding the words “this section, or any part of this section” in their place.

b. In paragraph (b)(2), by removing the word “he” and adding the words “the Secretary” in its place each time it appears; and by removing the word “him” and adding the words “the person” in its place.

c. In paragraph (b)(3), by removing the words “his employment he” and adding the words “employment with the Department the employee or former employee” in their place; and by removing the word “him” and adding the words “the employee or former employee” in its place.

d. By removing paragraph (c).

§ 1.27 [Amended]

4. Section 1.27 is revised to read as follows:

§ 1.27 Rulemaking and other notice procedures.

- (a) This section shall apply to:
 - (1) Notices of proposed rulemaking;
 - (2) Interim final rules;
 - (3) Advance notices of proposed rulemaking; and

(4) Any other published notice that solicits, or affords interested members of the public an opportunity to submit, written views with respect to any proposed action relating to any program administered in the Department regardless of the fact that the issuance of a rule may not be contemplated.

(b) Each notice identified in paragraph (a) of this section shall indicate the procedure to be followed with respect to the notice, unless the procedure is prescribed by statute or by published rule of the Department. Each notice shall contain a statement that advises the public of the policy regarding the availability of written submissions by indicating whether paragraph (c), (d), or (e) of this section is applicable to written submissions made pursuant to the notice.

(c) All written submissions made pursuant to the notice shall be made

available for public inspection at times and places and in a manner convenient to the public business.

(d)(1) Any written submission, pursuant to a notice, may be held confidential if the person making the submission requests that the submission be held confidential, the person making the submission has shown that the written submission may be withheld under the Freedom of Information Act, and the Department official authorized to issue the notice determines that the submission may be withheld under the Freedom of Information Act.

(2) If a request is made in accordance with paragraph (d)(1) of this section for confidential treatment of a written submission, the person making the request shall be informed promptly in the event the request is denied and afforded an opportunity to withdraw the submission.

(3) If a determination is made to grant a request for confidential treatment under paragraph (d)(1) of this section, a statement of the specific basis for the determination that will not be susceptible of identifying the person making the request will be made available for public inspection.

(e) If the subject of the notice is such that meaningful submissions cannot be expected unless they disclose information that may be withheld under the Freedom of Information Act, the notice shall so indicate and contain a statement that written submissions pursuant to the notice will be treated as confidential and withheld under the Freedom of Information Act. *Provided*, That the policy regarding availability of written submissions set forth in this paragraph may only be used with the prior approval of the Secretary, or the Under Secretary or Assistant Secretary that administers the program that is the subject of the notice.

§ 1.28 [Amended]

5. Section 1.28 is amended by removing the phrase "the provisions of section 4(d) of the Administrative Procedure Act (60 Stat. 239; 5 U.S.C. 1003(d))" and adding the reference "5 U.S.C. 553(e)" in its place.

§ 1.29 [Amended]

6. Section 1.29 is amended as follows:

- By revising paragraph (a) to read as set forth below.

b. In paragraph (b)(1)(iii), by adding the word ", her," immediately after the word "his".

c. In paragraph (b)(2), by adding the words "or she" immediately after the word "he"; and by removing the word "therein" and adding the words "in the subpoena" in its place.

d. In paragraph (b)(3), by removing the reference "(5 U.S.C. 301)".

§ 1.29 Subpoenas relating to investigations under statutes administered by the Secretary of Agriculture.

(a) *Issuance of subpoena.* (1) When the Secretary is authorized by statute to issue a subpoena in connection with an investigation being conducted by the Department, the attendance of a witness and the production of evidence relating to the investigation may be required by subpoena at any designated place, including the witness' place of business. Upon request of any representative of the Secretary involved in connection with the investigation, the subpoena may be issued by the Secretary, the Inspector General, or any Department official authorized pursuant to part 2 of this title to administer the program to which the subpoena relates, if the official who is to issue the subpoena is satisfied as to the reasonableness of the grounds, necessity, and scope of the subpoena. Except as provided in paragraph (a)(2) of this section, the authority to issue subpoenas may not be delegated or redelegated by the head of an agency.

(2) The Administrator, Grain Inspection, Packers and Stockyards Administration, may delegate the authority to issue subpoenas in connection with investigations being conducted under the Packers and Stockyards Act (7 U.S.C. 181–229), to the Deputy Administrator, Packers and Stockyards Programs.

* * * * *

§ 1.41 [Amended]

7–8. Section 1.41 is amended as follows:

a. In the third sentence, by removing the word "he" and adding the words "the officer" in its place.

b. By removing the last sentence.

PART 1b—NATIONAL ENVIRONMENTAL POLICY ACT

9. The authority citation for part 1b is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 4321 et seq.; E.O. 11514, 3 CFR, 1966–1970 Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1978 Comp., p. 123; E.O. 12114, 3 CFR, 1980 Comp., p. 356; 40 CFR 1507.3.

§ 1b.1 [Amended]

10. Section 1b.1 is amended as follows:

a. In paragraph (a), by removing the words "This subpart" and adding the words "This part" in their place; by removing the words "Council of" and adding the words "Council on" in their place; and by removing the words "The

subpart" and adding the words "This part" in their place.

b. In paragraph (b), by removing the word "subpart" and adding the word "part" in its place.

§ 1b.2 [Amended]

11. Section 1b.2 is amended as follows:

a. By removing paragraph (a).

b. In paragraph (c), by removing the words "the provisions of this subpart" and adding the words "this part" in their place; and by removing the words "the provisions of NEPA" and adding the word "NEPA" in their place.

c. In paragraph (d), the first sentence, by removing the word "Assistant" and adding the word "Under" in its place; and by removing the reference "(7 CFR 2.19(b))".

d. In paragraph (d), the second sentence, by removing the words "Assistant Secretary, through the USDA Natural Resources and Environment Committee" and adding the words "Under Secretary, NR&E, through the Agricultural Council on Environmental Quality" in their place.

e. In paragraph (e), the first sentence, by removing the word "subpart" and adding the word "part" in its place.

f. In paragraph (e), the third sentence, by removing the word "Assistant" and adding the word "Under" in its place.

g. By redesignating paragraphs (b), (c), (d), and (e) as paragraphs (a), (b), (c), and (d), respectively.

§ 1b.3 [Amended]

12. In § 1b.3, paragraph (c) is amended by removing the words "above and in" and adding the words "in paragraphs (a) of this section and" in their place.

13. Section 1b.4 is revised to read as follows:

§ 1b.4 Exclusion of agencies.

(a) The USDA agencies and agency units listed in paragraph (b) of this section conduct programs and activities that have been found to have no individual or cumulative effect on the human environment. The USDA agencies and agency units listed in paragraph (b) of this section are excluded from the requirements of preparing procedures to implement NEPA. Actions of USDA agencies and agency units listed in paragraph (b) of this section are categorically excluded from the preparation of an EA or EIS unless the agency head determines that an action may have a significant environmental effect.

(b)(1) Agricultural Marketing Service

- (2) Economic Research Service
- (3) Extension Service
- (4) Federal Corp Insurance Corporation
- (5) Food and Consumer Service
- (6) Food Safety and Inspection Service
- (7) Foreign Agricultural Service
- (8) Grain Inspection, Packers and Stockyards Administration
- (9) National Agricultural Library
- (10) National Agricultural Statistics Service
- (11) Office of the General Counsel
- (12) Office of the Inspector General

Done in Washington, DC, this 8th day of December, 1995.

Dan Glickman,
Secretary of Agriculture.

FR Doc. 95-30674 Filed 12-21-95; 8:45 am]

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Food Safety and Inspection Service

9 CFR Part 310

[Docket No. 95-048DF]

RIN 0583-AC03

Use of the Fast Antimicrobial Screen Test for Bob Veal Calves

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of the Fast Antimicrobial Screen Test (FAST) in its bob veal calf residue testing program. Under FSIS' residue testing program, carcasses of bob veal calves are subject to specific regulatory requirements for residue testing by FSIS inspectors to assure that adulterated meat does not enter human food channels. Until recently, the Calf Antibiotic and Sulfonamide Test (CAST) was the only official test authorized for use in the bob veal calf residue testing program. FSIS has now developed FAST, which is an enhanced and equally effective version of CAST that provides results after 6 hours of incubation, compared to 18–24 hours of incubation for CAST. This action will permit the use of FAST in lieu of CAST under FSIS' bob veal calf residue testing program.

DATES: This rule will be effective on February 20, 1996, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 22, 1996. If FSIS receives adverse comments or notice of intent to submit adverse comments, FSIS will withdraw this rule and publish a proposed rule for public comment.

ADDRESSES: Send an original and two copies of written comments to: FSIS Docket Clerk, Docket #95-048DF, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Background

In June 1984, as a result of findings of increased levels of sulfonamide and antibiotic residues in young calves, FSIS promulgated an interim rule (49 FR 23602; affirmed 50 FR 32162) that amended the Federal meat inspection regulations (9 CFR parts 309, 310 and 318) by establishing an intensified residue testing program for bob veal calves (calves up to 3 weeks in age or 150 pounds in weight). FSIS was concerned with findings of increased levels of sulfonamide and antibiotic residues in young calves, and undertook an emergency rulemaking to decrease the likelihood that adulterated meat would enter into human food channels. FSIS determined that carcasses and parts thereof from bob veal calves are adulterated under the Federal Meat Inspection Act if they bear or contain sulfonamide or antibiotic residues other than in accordance with tolerances established by the Food and Drug Administration.

In the interim rule, FSIS stated that CAST, a swab bioassay test, would be the official test used to screen carcasses of bob veal calves. In trial testing, FSIS had found CAST to be extremely reliable in detecting violative levels of antibiotics and sulfonamides in animal tissues.

FSIS has recently developed a new test that, like CAST, is designed to detect the presence of sulfonamide and antibiotic residues in animal tissues. FAST is similar to and is performed in a similar manner to CAST. The major advantage of FAST is that test results can be obtained in 6 hours, instead of the 18–24 hour period required for CAST. FSIS' in-plant trial testing of FAST has shown that FAST is equivalent to CAST in detecting sulfonamide and antibiotic residues in animal tissues.¹

Therefore, FSIS is amending § 310.21 to add FAST as an alternative to CAST for use by inspectors in testing carcasses and parts of bob veal calves for sulfonamide and antibiotic residues.

¹ Results of the in-plant trial for FAST are available for review in the Office of the FSIS Docket Clerk, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Effective Date

This rule is being published without a prior proposal because this action is viewed as noncontroversial, and FSIS does not anticipate any adverse public comments will be received. This rule will be effective 60 days after the date of publication in the Federal Register unless FSIS receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the Federal Register.

If FSIS receives adverse comments or notice of intent to submit adverse comments, FSIS will withdraw this rule and publish a proposed rule for public comment.

If no adverse comments are received, FSIS will publish a notice in the Federal Register confirming that the rule is effective on the date indicated.

Executive Order 12866

This rule is considered not significant and therefore has not been reviewed by the Office of Management and Budget.

Effect on Small Entities

The Administrator, FSIS, has determined that this rule will not have a significant impact on a substantial number of small entities. The rule permits the use of an alternate test, which can provide results in less than half the time than the original test. Carcasses that test negative could be released on the day of slaughter, which will modestly benefit the meat industry.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule (1) preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects in 9 CFR part 310

Meat inspection, Residue testing.

For the reasons discussed in the preamble, FSIS is amending part 310 of the Federal meat inspection regulations (9 CFR Part 310) as follows:

PART 310—[AMENDED]

1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. The introductory text and footnote to paragraph (c) of § 310.21 are revised to read as follows: