

**PART 335—RULES OF PRACTICE
GOVERNING PROCEEDINGS
UNDER THE FEDERAL MEAT IN-
SPECTION ACT**

Subpart A—Criminal Violations

AUTHORITY: Sec. 406, Pub. L. 99-641, 100 Stat. 3571; 21 U.S.C. 606 note.

[42 FR 10960, Feb. 25, 1977. Redesignated at 64 FR 66545, Nov. 29, 1999]

EFFECTIVE DATE NOTE: At 64 FR 66545, Nov. 29, 1999, Subpart E was redesignated as Subpart A, effective Jan. 25, 2000.

Subpart A—Criminal Violations (eff. 1-25-00)

Sec.

335.40 Opportunity for presentation of views before report of criminal violations.

§ 335.40 Opportunity for presentation of views before report of criminal violations.

Subpart A—General

335.1 Scope and applicability of rules of practice.

(a) Except as provided in paragraphs (a)(1) through (5) of this section, before any violation of the Federal Meat Inspection Act is reported to the Department of Justice by the Secretary for criminal prosecution the Secretary must give reasonable notice to the suspected violator that the Secretary intends to report the violation for prosecution and give the suspected violator an opportunity to present the violator's views to the Secretary with respect to such proceeding.

Subpart B—Supplemental Rules of Practice

335.10 Refusal or withdrawal of inspection service under section 401 of the Act.

335.11 Withdrawal of inspection service for failure of an establishment to destroy any condemned carcass or part thereof or any condemned meat or meat food product.

335.12 Withholding use of marking, labeling, or containers from use under section 7 of the Federal Meat Inspection Act.

335.13 Refusal or withdrawal of inspection service under the Federal Meat Inspection Act for failure to maintain sanitary conditions.

(1) Notice and opportunity need not be provided if the Secretary has any reason to believe that providing such notice and opportunity could result in the alteration or destruction of evidence, or where disclosure could result in injury to persons or property.

Subpart C—Rules Applicable to Suspension of Assignment of Inspectors for Threats to Forcibly Assault or Forcible Assault, Intimidation or Interference With Any Inspection Service Employee

335.20 Notification to operator of establishment of incident.

335.21 Procedure upon failure of operator of establishment to take action required by § 305.5(b) of the regulations.

(2) Notice and opportunity need not be provided if the Secretary has any reason to believe that providing such notice and opportunity could result in flight of a suspected violator to avoid prosecution.

Subpart D—Rules Applicable to Suspension of Assignment of Inspectors Under Section 3(b) of the Federal Meat Inspection Act

335.30 Suspension of the assignment of inspectors under section 3(b) of the Act.

335.31 Written notification to operator of establishment of incident.

335.32 Procedure upon receipt of the establishment answer.

(3) Notice and opportunity need not be provided if the Secretary has any reason to believe that providing such notice and opportunity could result in compromising special investigative techniques, such as undercover or other covert operations.

(4) Notice and opportunity need not be provided when the impending criminal referral involves suspicion of bribery and related offenses, or clandestine slaughtering and/or processing operations.

AUTHORITY: 21 U.S.C. 601-695; 7 CFR 2.17, 2.55.

SOURCE: 42 FR 10960, Feb. 25, 1977, unless otherwise noted.

(5) Notice and opportunity need not be provided when the impending referral is part of an investigation involving non-Act violations, and the Act and non-Act violations are jointly referred for prosecution.

(b) A notice of opportunity to present views will be sent by registered or certified mail, summarize the violations that constitute the basis of the contemplated prosecution, and describe the procedures for presentation of views. Any information given by a respondent, orally or in writing, shall become part of the Department's official record concerning the matter. The Department is under no obligation to disclose evidence to the suspected violator.

[52 FR 13828, Apr. 27, 1987]

Subpart A—General

EFFECTIVE DATE NOTE: At 64 FR 66545, Nov. 29, 1999, Subpart A, consisting of § 335.1 was removed, effective Jan. 25, 2000.

§ 335.1 Scope and applicability of rules of practice.

(a) The Uniform Rules of Practice for the Department of Agriculture promulgated in subpart H of part 1, subtitle A, title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicatory, administrative proceedings under sections 4, 6, 7(e), 8, and 401 of the Federal Meat Inspection Act (21 U.S.C. 604, 606, 607(e), 608 and 671). In addition, the Supplemental Rules of Practice set forth in subpart B of this part shall be applicable to such proceedings.

(b) The rules of practice set forth in subpart C of this part shall be applicable to the suspension of assignment of inspectors for threats to forcibly assault or forcible assault, intimidation or interference with any inspection service employee pursuant to § 305.5(b) of the regulations (9 CFR 305.5(b)) under the Federal Meat Inspection Act. In addition, the definitions applicable to proceedings under the Uniform Rules of Practice (7 CFR 1.132) shall apply with equal force and effect to proceedings under subpart C.

(c) The rules of practice set forth in subpart D of this part shall be applicable to the suspension of assignment of inspectors under section 3(b) of the Act (21 U.S.C. 603(b)). In addition, the definitions applicable to proceedings under the Uniform Rules of Practice (7 CFR

1.132) shall apply with equal force and effect to proceedings under part 313.

[42 FR 10960, Feb. 25, 1977, as amended at 44 FR 68817, Nov. 30, 1979]

Subpart B—Supplemental Rules of Practice

EFFECTIVE DATE NOTE: At 64 FR 66545, Nov. 29, 1999, Subpart B, consisting of §§ 335.10–335.13, was removed effective Jan. 25, 2000.

§ 335.10 Refusal or withdrawal of inspection service under section 401 of the Act.

If the Administrator has reason to believe that the applicant for or recipient of service under Title I of the Act is unfit to engage in any business requiring such inspection because of any of the reasons specified in section 401 of the Act, he may institute a proceeding by filing a complaint with the Hearing Clerk, who shall promptly serve a true copy thereof upon each respondent, as provided in § 1.147(b) of the Uniform Rules of Practice (9 CFR 1.147(b)).

§ 335.11 Withdrawal of inspection service for failure of an establishment to destroy any condemned carcass or part thereof or any condemned meat or meat food product.

(a) In any situation in which the Administrator has reason to believe that an establishment which receives inspection service under Title I of the Federal Meat Inspection Act has failed to destroy any condemned carcass or part thereof or any condemned meat or meat food product, as required under sections 4 and 6 of the Federal Meat Inspection Act (21 U.S.C. 604 and 606) and the regulations in this subchapter, he may notify the operator of the establishment, orally or in writing, of the Administrator's intent to withdraw (for such period or indefinitely as the Administrator deems necessary to effectuate the purposes of the Act) inspection service from the establishment, pursuant to sections 4, 6, and 401 of the Act (21 U.S.C. 604, 606, and 671) and § 305.5(a) of the regulations (9 CFR 305.5(a)), if the establishment fails to destroy the condemned articles involved, as specified in the notification, within three days of the receipt of the