

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 1

[Docket No. AMS-LPS-16-0051]

RIN-0581-AD58

#### Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the scope and applicability of the U.S. Department of Agriculture's (USDA) uniform rules of practice governing adjudicatory proceedings to include actions initiated under subtitles B and D of the Agricultural Marketing Act of 1946, as amended (1946 Act).

**DATES:** *Effective* August 9, 2017.

**FOR FURTHER INFORMATION CONTACT:** Michael Lynch, Director; Livestock, Poultry, and Grain Market News Division; Livestock, Poultry, and Seed Program; AMS, USDA, Room 2619-S, STOP 0252; 1400 Independence Avenue SW., Washington, DC 20250-0251; telephone (202) 720-4868; fax (202) 690-3732; or email *Michael.Lynch@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** USDA's uniform rules of practice (7 CFR part 1, subpart H), which govern the conduct of adjudicatory proceedings under numerous statutes, have been in effect since February 1, 1977. Under this final rule, subtitles B (Livestock Mandatory Reporting) and D (Country of Origin Labeling) of the 1946 Act (7 U.S.C. 1621 *et seq.*) are governed by these uniform procedures to ensure consistency and uniformity in the conduct of USDA's administrative activities.

Subtitle B (7 U.S.C. 1635-1636i) of the 1946 Act authorizes the Secretary, having given notice and an opportunity for hearing, to assess civil penalties (fines) against any packer (as defined

therein) or other person that violates Livestock Mandatory Reporting regulations (7 U.S.C. 1636b). Each civil penalty assessed by the Secretary may be no more than \$10,000 for each violation, as adjusted by 7 CFR 3.91.

Subtitle D (7 U.S.C. 1638-1638d) of the 1946 Act authorizes the Secretary to take enforcement actions, including civil penalties (fines), against a retailer (as defined by the Perishable Agricultural Commodities Act (7 U.S.C. 499a(b)(11)) or any person engaged in the business of supplying a covered commodity to a retailer, that is determined, after providing notice and an opportunity for a hearing before the Secretary with respect to the violation, not to have made good faith effort to comply with Country of Origin Labeling regulations and has continued to willfully violate these regulations.

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals this action would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule regarding agency procedure or practice, and it may be made effective less than 30 days after publication in the **Federal Register**.

In addition, under 5 U.S.C. 804, this action is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121).

Finally, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and is thus exempt from the provisions of that Act.

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Antitrust, Claims, Cooperatives, Courts, Equal access to justice, Fraud, Freedom of information, Government employees, Indemnity payments, Lawyers, Motion pictures, Penalties, Privacy.

For the reasons set forth in the preamble, 7 CFR part 1 is 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.

■ 2. The authority citation for subpart H is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C 61, 87e, 228, 268, 499o, 608c(14), 1592, 1624(b), 1636b, 1638b, 2151, 2279e, 2621, 2714, 2908, 3812, 4610, 4815, 4910, 6009, 6107, 6207, 6307, 6411, 6519, 6520, 6808, 7107, 7734, 8313; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 30 U.S.C. 185(o)(1); 43 U.S.C. 1740; 7 CFR 2.27, 2.35.

■ 3. Amend § 1.131 in paragraph (a) by adding in alphabetical order an entry for "Agricultural Marketing Act of 1946" to read as follows:

#### § 1.131 Scope and applicability of this subpart.

(a) \* \* \*

Agricultural Marketing Act of 1946, as amended, section 253 (7 U.S.C. 1636b) and section 283 (7 U.S.C. 1638b).

\* \* \* \* \*

Dated: August 4, 2017.

**Sonny Perdue,**

*Secretary.*

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