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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directed the heads of all departments and agencies to review all regulations and eliminate or revise those that are outdated or otherwise in need of reform.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 The Department found that these regulations contain outdated and incorrect references to statutes, regulations, USDA agencies, and USDA officials; unnecessary provisions; gender specific references; and provisions that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.