

## DEPARTMENT OF AGRICULTURE (USDA)

### Statement of Regulatory Priorities

USDA's regulatory efforts in 2010 will continue to focus on implementing the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246), known as the "2008 Farm Bill," which covers major farm, trade, conservation, rural development, energy, nutrition assistance and other programs. In addition, USDA will implement regulations that will improve program outcomes by achieving the Department's high priority goals as well as reducing burden on stakeholders, program participants, and small businesses. Important areas of activity include the following:

#### *Nutrition Assistance*

- As changes are made for the nutrition assistance programs, USDA will work to foster actions that will help improve diets, and particularly to prevent and reduce overweight and obesity. In 2010, FNS will continue to promote nutritional knowledge and education while minimizing participant and vendor fraud.

#### *Food Safety*

- In the area of food safety, USDA will continue to develop science-based regulations that improve the safety of meat, poultry, egg, and farm-raised catfish products in the least burdensome and most cost-effective manner. Regulations will be revised to address emerging food safety challenges, streamlined to remove excessively prescriptive regulations, and updated to be made consistent with hazard analysis and critical control point principles. To assist small entities to comply with food safety requirements, the Food Safety and Inspection Service will continue to collaborate with other USDA agencies and State partners in the enhanced small business outreach program.

#### *Conservation*

- USDA will continue to focus on implementing the conservation programs authorized in the 2008 Farm Bill. Over the past year, the Natural Resources Conservation Service (NRCS) has promulgated 11 interim and proposed rules and has received public comment on them. In 2010, NRCS will finalize these rules which include the Conservation Stewardship Program and the Environmental Quality Incentives Program.

#### *Promoting Rural Development and Renewable Energy*

- USDA priority regulatory actions for the Rural Development mission primarily relate to promulgating relations for programs authorized by the 2008 Farm Bill, including the Title 9 Energy programs and the Rural Micro-Entrepreneurship Program. USDA has utilized Notices of Funding Availability to implement many of these programs in Fiscal Year 2009. Regulations are needed to maintain them. In addition, USDA needs to finalize the reform of its on-going broadband access program through an interim rule that will combine provisions of a proposed rule published in 2007 and changes in the program that were authorized in the 2008 Farm Bill.
- USDA will continue to promote sustainable economic opportunities to revitalize rural communities through the purchase and use of renewable, environmentally friendly biobased products through its BioPreferred Program (formerly the Federal Biobased Product Preferred Procurement Program). USDA will continue to designate groups of biobased products to receive procurement preference from Federal agencies and contractors. In addition, USDA will finalize a rule establishing the Voluntary Labeling Program for biobased products.

#### *Trade Promotion, Market Development, Farm Loans, and Disaster Assistance*

- USDA will work to ensure a strong U.S. agricultural system through trade promotion, market development, farm income support, disaster assistance, and farm loan programs. In addition to the regulations already implemented, including those pertaining to the eligibility for farm program payments, the Farm Service Agency will issue new regulations implementing disaster assistance programs to compensate agricultural producers for production losses due to natural disasters. Regulations will also be developed to implement conservation loan programs intended to help producers finance the construction of conservation measures.

#### *Other Regulatory Activities*

- USDA will work to facilitate a fair, competitive marketplace, support the organic sector, and continue regulatory work to protect the health and value of U.S. agricultural and natural resources. USDA will

promulgate regulations to enhance enforcement of the Packers and Stockyards Act. USDA will also finalize a rule specifying access to pasture standards for organically raised ruminants. In addition, USDA will amend regulations related to the importation of nursery products and animals and animal products. Further, USDA will propose specific standards for the humane handling, care, treatment, and transportation of birds under the Animal Welfare Act.

#### **Reducing Paperwork Burden on Customers**

USDA has made substantial progress in implementing the goal of the Paperwork Reduction Act of 1995 to reduce the burden of information collection on the public. To meet the requirements of the Government Paperwork Elimination Act (GPEA) and the E-Government Act, agencies across USDA are providing electronic alternatives to their traditionally paper-based customer transactions. As a result, producers increasingly have the option to electronically file forms and all other documentation online. To facilitate the expansion of electronic government, USDA implemented an electronic authentication capability that allows customers to "sign-on" once and conduct business with all USDA agencies. Supporting these efforts are ongoing analyses to identify and eliminate redundant data collections and streamline collection instructions. The end result of implementing these initiatives is better service to our customers enabling them to choose when and where to conduct business with USDA.

#### **Major Regulatory Priorities**

This document represents summary information on prospective significant regulations as called for in Executive Order 12866. The following agencies are represented in this regulatory plan, along with a summary of their mission and key regulatory priorities for 2010:

##### *Food and Nutrition Service*

*Mission:* FNS increases food security and reduces hunger in partnership with cooperating organizations by providing children and low-income people access to food, a healthful diet, and nutrition education in a manner that supports American agriculture and inspires public confidence.

*Priorities:* In addition to responding to provisions of legislation authorizing and modifying Federal nutrition assistance programs, FNS's 2010 regulatory plan supports the goal to ensure that all of

America's children have access to safe, nutritious and balanced meals and its three related objectives:

- *Improve Access to Nutritious Food.* This objective represents FNS's efforts to improve nutrition by providing access to program benefits (food consumed at home, school meals, commodities) and distributing State administrative funds to support program operations. To advance this objective, FNS plans to finalize rules implementing provisions of the Farm Security and Rural Investment Act of 2002 to simplify program administration, support work, and improve access to benefits in the Supplemental Nutrition Assistance Program (SNAP) formerly the Food Stamp Program. FNS will continue to improve SNAP administration by developing a rule to implement provisions of the Food, Conservation, and Energy Act of 2008 that address eligibility, certification, employment, and training issues. An interim rule implementing provisions of the Child Nutrition and WIC Reauthorization Act of 2004 to establish automatic eligibility for homeless children for school meals further supports this objective.
- *Promote Healthier Eating Habits and Lifestyles.* This objective represents FNS's efforts to improve the diets of its clients through nutrition education, and to ensure that program benefits meet appropriate standards to effectively improve nutrition for program participants. In support of this objective, FNS plans to propose rules updating the nutrition standards in the school meals programs; implement the SNAP nutrition education provisions of the Food, Conservation, and Energy Act of 2008; and establish permanent rules for the Fresh Fruit and Vegetable Program which currently operates in a select number of schools in each State, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.
- *Improve Nutrition Assistance Program Management and Customer Service.* This objective represents FNS's ongoing commitment to maximize the accuracy of benefits issued, maximize the efficiency and effectiveness of program operations, and minimize participant and vendor fraud. In support of this objective, FNS plans to finalize rules in the Child and Adult Care Food Program (CACFP) and the Special Supplemental Nutrition Program for Women, Infants and Children Program (WIC) to improve program management and prevent

vendor fraud. FNS will also finalize a rule to improve the SNAP quality control process and propose a rule to improve the SNAP retailer sanction process.

#### *Food Safety and Inspection Service*

*Mission:* The Food Safety and Inspection Service (FSIS) is responsible for ensuring that meat, poultry, egg, and catfish products in interstate and foreign commerce are wholesome, not adulterated, and properly marked, labeled, and packaged.

*Priorities:* FSIS is committed to developing and issuing science-based regulations intended to ensure that meat, poultry, egg, and catfish products are wholesome and not adulterated or misbranded. FSIS continues to review its existing authorities and regulations to streamline excessively prescriptive regulations, to revise or remove regulations that are inconsistent with the Agency's hazard analysis and critical control point (HACCP) regulations, and to ensure that it can address emerging food safety challenges. FSIS is also working with the Food and Drug Administration (FDA) to better delineate the two agencies' jurisdictions over various food products. Following are some of the Agency's recent and planned initiatives:

*Non-ambulatory Disabled Cattle.* In March 2009, FSIS published a final rule requiring that all cattle that become non-ambulatory disabled at any time before slaughter, including those that become non-ambulatory disabled after passing ante-mortem inspection, must be condemned and properly disposed of. Under the previous regulations, FSIS inspection personnel determined, on case by-case basis, the disposition of cattle that became non-ambulatory disabled after they had passed ante-mortem inspection. The final rule removed the provision for case-by-case determination by FSIS inspection personnel.

*Country of Origin Labeling.* In March 2009, FSIS affirmed its August 2008 interim final rule requiring country-of-origin labeling (COOL) of any meat or poultry product that is a "covered commodity" as defined by the Agricultural Marketing Service (AMS) in the regulations set out in AMS's January 2009 final rule on mandatory country-of-origin labeling (COOL).

*2008 Farm Bill-related Rulemakings.* The 2008 Farm Bill, made several amendments to statutes administered by FSIS and gave the Agency other instructions. As a result, FSIS is developing new regulations to

implement: mandatory inspection for catfish; a program for interstate shipment of State-inspected meat and poultry products; and recall procedure and process control reassessment requirements for inspected establishments.

- *Catfish Inspection.* FSIS is developing regulations to implement 2008 Farm Bill amendments of the FMIA (in Pub. L. 110-246, Sec. 11016) to make catfish amenable to the FMIA. The regulations will define "catfish" and the scope of coverage of the regulations to apply to establishments that process catfish and catfish products. The regulations will take into account the conditions under which the catfish are raised and transported to a processing establishment.
- *Interstate shipment of State-inspected meat and poultry products.* FSIS is proposing regulations to implement a new voluntary Federal-State cooperative inspection program under which State-inspected establishments with 25 or fewer employees would be eligible to ship meat and poultry products in interstate commerce. State-inspected establishments selected to participate in this program would be required to comply with all Federal standards under the FMIA and the PPIA. These establishments would receive inspection services from State inspection personnel that have been trained and certified to assist with enforcement of the FMIA and PPIA. Meat and poultry products produced under the program that have been inspected and passed by selected State inspection personnel would bear a Federal mark of inspection. Section 11015 of the 2008 Farm Bill provides for the interstate shipment of State-inspected meat and poultry products from selected establishments and requires that FSIS promulgate implementing regulations no later than 18 months from the date of its enactment.
- *Notification, Documentation, and Recordkeeping Requirements for Inspected Establishments.* FSIS is proposing regulations that will implement Sec. 11017 of the 2008 Farm Bill on notification, documentation, and recordkeeping requirements for inspected establishments. This section amends the FMIA and PPIA to require establishments that are subject to inspection under these Acts to promptly notify the Agency when an adulterated or misbranded product received by or originating from the

establishment has entered into commerce. Section 11017 also requires establishments subject to inspection under the FMIA and PPIA to prepare and maintain current procedures for the recall of all products produced and shipped by the establishment and document each reassessment of the establishment's process control plans.

- *Revision of Egg Products Inspection Regulations.* FSIS is planning to propose requirements for federally inspected egg product plants to develop and implement HACCP systems and sanitation standard operating procedures. The Agency will be proposing pathogen reduction performance standards for egg products. Further, the Agency will be proposing to remove requirements for FSIS approval of egg-product plant drawings, specifications, and equipment before their use, and to end the system for pre-marketing approval of labeling for egg products.
- *Rulemakings in Support of the FSIS Public Health Information System.* To support its food safety inspection activities, FSIS is developing the Public Health Information System (PHIS). PHIS, which is user-friendly and Web-based, will replace many of the Agency's current systems and automate many business processes. Among the many other services it will provide, PHIS will automate and streamline the export and import application and certification processes. To facilitate the implementation of these PHIS applications, FSIS will propose to amend the meat, poultry products, and egg products inspection regulations to provide for electronic export and import application and certification processes as alternatives to the current paper-based systems for these certifications. The new electronic system will enable the Agency to process an establishment's application for export certification, verify that the establishment and product meet the application and certification requirements, approve the application, and process the export certificate. The Agency is proposing the export application and certification service as a reimbursable service under Agricultural Marketing Act authority.
- *Rulemaking to support control of Escherichia coli O157:H7.* FSIS will propose to require that any business that grinds or chops raw beef products, including products that are ground or chopped at the request of

an individual consumer, keep records that will fully and correctly disclose all transactions involved in the business that are subject to the FMIA. These records, such as grinding logs, provide critical information about how, when, and where ground product was prepared, shipped, received, stored, and handled, and are essential to illness outbreak investigations, recalls, and other public health activities that FSIS conducts. Businesses that will be required to comply with this proposed rule will be FSIS-inspected establishments and retail facilities that grind or chop raw beef products, including beef manufacturing trimmings derived from cattle not slaughtered on site at the official establishment or retail store. An FSIS-inspected establishment that grinds or chops raw beef products derived from cattle slaughtered at that same establishment will be exempt from the requirements of the proposed rule.

#### *Other Planned Initiatives:*

*Performance Standards for Ready-to-Eat Products.* FSIS plans to finalize a February 2001 proposed rule to establish food safety performance standards for all processed ready-to-eat (RTE) meat and poultry products and for partially heat-treated meat and poultry products that are not ready-to-eat. The proposal also contained provisions addressing post-lethality contamination of RTE products with *Listeria monocytogenes*. In June 2003, FSIS published an interim final rule requiring establishments to prevent *L. monocytogenes* contamination of RTE products. The Agency is evaluating the effectiveness of this interim final rule, which in 2004 was the subject of a regulatory reform nomination to OMB. FSIS has carefully reviewed its economic analysis of the interim final rule in response to this recommendation and is planning to adjust provisions of the rule to reduce the information collection burden on small businesses. FSIS is also planning further action with respect to other elements of its 2001 proposal on performance standards for processed meat and poultry products, based on quantitative risk assessments of target pathogens in processed products.

FSIS plans to propose to amend the poultry products inspection regulations to put in place a system in which the establishment sorts the carcasses for defects, and the Agency verifies that the system is under control and producing safe and wholesome product. The Agency would propose to adopt

performance standards, designed to ensure that the establishments are carrying out slaughter, dressing, and chilling operations in a manner that ensures no significant growth of pathogens.

The chilling performance standard would replace the requirement for ready-to-cook poultry products to be chilled to 40 °F or below within certain time limits according to the weight of the dressed carcasses. Poultry establishments would have to carry out slaughtering, dressing, and chilling operations in a manner that ensures no significant growth of pathogens.

FSIS is collaborating with the Food and Drug Administration in an effort to rationalize the division of food protection responsibilities between the two agencies and eliminate confusion over which agency has jurisdiction over which kinds of products. The agencies are taking an approach that involves considering how the meat or poultry ingredients contribute to the characteristics and basic identity of food products. Thus, FSIS plans to propose amending its regulations to exclude from its jurisdiction cheese and cheese products prepared with less than 50 percent meat or poultry; breads, rolls, and buns prepared with less than 50 percent meat or poultry; dried poultry soup mixes; flavor bases and reaction/process flavors; pizza with meat or poultry; and salad dressings prepared with less than 50 percent meat or poultry. FSIS also plans to clarify that bagel dogs, natural casings, and closed-face meat or poultry sandwiches are subject to the Agency's jurisdiction.

#### *FSIS Small Business Implications:*

The great majority of businesses regulated by FSIS are small businesses. Some of the regulations listed above substantially affect small businesses. Some rulemakings can benefit small businesses. For example, the rule on interstate shipment of State-inspected products will open interstate markets to some small State-inspected establishments that previously could only sell their products within State boundaries.

FSIS conducts a small business outreach program that provides critical training, access to food safety experts, and information resources (such as compliance guidance and questions and answers on various topics) in forms that are uniform, easily comprehended, and consistent. The Agency collaborates in this effort with other USDA agencies and cooperating State partners. For example, FSIS makes plant owners and

operators aware of loan programs, available through USDA's Rural Business and Cooperative programs, to help them in upgrading their facilities. FSIS employees meet proactively with small and very small plant operators to learn more about their specific needs and provide joint training sessions for small and very small plants and FSIS employees.

#### *Agricultural Marketing Service*

**Mission:** The Agricultural Marketing Service (AMS) provides marketing services to producers, manufacturers, distributors, importers, exporters, and consumers of food products. The AMS also manages the government's food purchases, supervises food quality grading, maintains food quality standards, and supervises the Federal research and promotion programs.

**Priorities:** AMS priority items for the next year include a rulemaking required as a result of passage of the 2008 Farm Bill and a final rule for the National Organic Program.

**Dairy Promotion and Research Program (Dairy Import Assessments).** The Dairy Production Stabilization Act of 1983 (Dairy Act) authorized USDA to create a national producer program for dairy product promotion, research, and nutrition education as part of a comprehensive strategy to increase human consumption of milk and dairy products. Dairy farmers fund this self-help program through a mandatory assessment on all milk produced in the contiguous 48 States and marketed commercially. Dairy farmers administer the national program through the National Dairy Promotion and Research Board (Dairy Board).

The 2008 Farm Bill extended the program to include producers in Alaska, Hawaii, and Puerto Rico who will pay an assessment of \$0.15 per hundredweight of milk production. Imported dairy products will be assessed at \$0.075 per hundredweight of fluid milk equivalent. AMS published proposed regulations establishing the program in the May 19, 2009, Federal Register. The proposal had a 30-day comment period. Comments received for this rule are currently under review. AMS expects to publish a final rule early next year.

**Access to Pasture.** Since implementation of the NOP, some members of the public have advocated for a more explicit regulatory standard on the relationship between livestock, particularly dairy animals, and grazing land. They have asserted the current regulatory language on access to pasture

for ruminants and temporary confinement based on an animal's stage of production, when applied together, do not provide a uniform requirement for the pasturing of ruminant animals that meet the principles underlying an organic management system for livestock and livestock products that consumers expect. AMS published a proposed rule with a request for comment on October 24, 2008. The comment period ended December 23, 2008. AMS received over 80,000 comments. Due to the high volume of comments received, final action on this rule is not expected before December 2009.

#### *Animal and Plant Health Inspection Service*

**Mission:** A major part of the mission of the Animal and Plant Health Inspection Service (APHIS) is to protect the health and value of American agricultural and natural resources. APHIS conducts programs to prevent the introduction of exotic pests and diseases into the United States and conducts surveillance, monitoring, control, and eradication programs for pests and diseases in this country. These activities enhance agricultural productivity and competitiveness and contribute to the national economy and the public health. APHIS also conducts programs to ensure the humane handling, care, treatment, and transportation of animals under the Animal Welfare Act.

**Priorities:** With respect to animal health, APHIS is continuing work to revise its regulations concerning bovine spongiform encephalopathy (BSE) to provide a more comprehensive and universally applicable framework for the importation of certain animals and products. In the area of plant health, APHIS is in the midst of a revision to its regulations for importing nursery stock (plants for planting) to better address plant health risks associated with propagative material. APHIS also plans to propose standards for the humane handling, care, treatment, and transportation of birds covered under the Animal Welfare Act.

#### *Grain, Inspection, Packers and Stockyards Administration*

**Mission:** The Grain Inspection, Packers and Stockyards Administration facilitates the marketing of livestock, poultry, meat, cereals, oilseeds, and related agricultural products and promotes fair and competitive trading practices for the overall benefit of consumers and American agriculture.

**Priorities:** GIPSA is continuing work that will finalize its August, 2007 proposed rule regarding the records that live poultry dealers must furnish poultry growers, including requirements for the timing and contents of poultry growing arrangements. The requirements contained in the final rule are intended to help both poultry growers and live poultry dealers by providing the growers with more information about the poultry growing arrangement at an earlier stage.

In addition, GIPSA intends to propose a rule that will define practices or conduct that are unfair, unjustly discriminatory, or deceptive, and/or that represent the making or giving of an undue or unreasonable preference or advantage, and ensure that producers and growers can fully participate in any arbitration process that may arise related to livestock or poultry contracts. This regulation is being proposed in accordance with the authority granted to the Secretary by the Packers and Stockyards Act of 1921 and with the requirements of Sections 11005 and 11006 of the 2008 Farm Bill.

#### *Farm Service Agency*

**Mission:** The Farm Service Agency's (FSA) mission is to stabilize farm income; to assist owners and operators of farms and ranches to conserve and enhance soil, water, and related natural resources; to provide credit to new or existing farmers and ranchers who are temporarily unable to obtain credit from commercial sources; and to help farm operations recover from the effects of disaster, as prescribed by various statutes.

**Priorities:** FSA's priority for 2009 will be to continue implementing the 2008 Farm Bill. The 2008 Farm Bill, which was enacted on June 18, 2008, governs Federal farm programs through the 2012. New regulatory actions include:

- **Disaster Assistance.** The 2008 Farm Bill provides a set of standing disaster assistance programs, including a new revenue based program for supplemental agricultural disaster assistance. These programs require completely new regulations and revision of existing program regulations.
- **Biomass Crop Assistance Program.** In addition, the 2008 Farm Bill adds a new biomass crop assistance program that supports the Administration's energy initiative to accelerate the investment in and production of biofuels. The program will provide financial assistance to agricultural and forest land owners and operators

to establish and produce eligible crops, including woody biomass, for conversion to bioenergy, and the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

- *Farm Loan Programs.* The 2008 Farm Bill also requires changes to farm operating loans, down payment loans, and emergency loans, including expanding to include socially disadvantaged farmers, increasing loan limits, loan size, funding targets, interest rates, and graduating borrowers to commercial credit. In addition, it establishes a new direct and guaranteed loan program to assist farmers in implementing conservation practices. FSA will develop and issue the regulations and make program funds available to eligible clientele in as timely a manner as possible.

#### *Natural Resources Conservation Service*

*Mission:* The Natural Resources Conservation Service (NRCS) mission is to provide leadership in a partnership effort to help America's private land owners and managers conserve their soil, water, and other natural resources.

*Priorities:* NRCS regulatory priorities for FY 2010 will be to finalize the rules promulgated pursuant to the 2008 Farm Bill. The 2008 Farm Bill, which was enacted on June 18, 2008, governs USDA conservation programs through 2012. NRCS promulgated 11 interim and proposed rulemakings pursuant to the 2008 Farm Bill, and received public comment for each of the regulations. In order to provide certainty and clarity for NRCS program participants, NRCS will address the public comments in final rulemaking and make any necessary clarifications or adjustments in response to those comments.

Among the programs authorized by the 2008 Farm Bill, the Conservation Stewardship Program and Environmental Quality Incentives Program represent a significant public investment in environmental improvement and stewardship. The 2008 Farm Bill also re-authorized and expanded several other financial assistance and conservation easement programs, including the Agricultural Management Assistance program, the Farm and Ranch Lands Protection Program, the Grasslands Reserve Program, the Healthy Forests Reserve Program, the Regional Equity provisions, the State Technical Committee, the Technical Service Provider Assistance Initiative, the Wetlands Reserve Program, and the Wildlife Habitat Incentives Program.

During FY 2009, NRCS promulgated an interim final rule to identify Categorical Exclusions under the National Environmental Policy Act of 1970 to streamline delivery of projects funded by the American Recovery and Reinvestment Act of 2009. NRCS plans to finalize the Categorical Exclusion rule in response to public comments. Finally, NRCS intends to promulgate a program for its ACES program to provide consistency with how ACES is used by other agencies.

#### *Rural Business-Cooperative Service*

*Mission:* Promoting a dynamic business environment in rural America is the goal of the Rural Business-Cooperative Service (RBS). Business Programs works in partnership with the private sector and the community-based organizations to provide financial assistance and business planning, and helps fund projects that create or preserve quality jobs and/or promote a clean rural environment. The financial resources are often leveraged with those of other public and private credit source lenders to meet business and credit needs in under-served areas. Recipients of these programs may include individuals, corporations, partnerships, cooperatives, public bodies, nonprofit corporations, Indian tribes, and private companies. The mission of Cooperative Program of RBS is to promote understanding and use of the cooperative form of business as a viable organizational option for marketing and distributing agricultural products.

*Priorities:* RBS's priority for 2009 will be to fully implement the 2008 Farm Bill. This includes promulgating regulations for Section 9003 (Biorefinery Assistance Program), Section 9004 (Repowering Assistance Program) Section 9005 (Bioenergy program for Advanced Biofuels) and Section 6022 (Rural Microentrepreneur Assistance Program). The Agency has been administering Sections 9003 and 9004 through the use of various Notices (Notices of Funds Availability and Contract Proposal), rather than regulation. Revisions to Section 9007 (Rural Energy for America Program) will be made to incorporate Energy Audits and Renewable Energy Development Assistance and Feasibility Studies for Rural Energy Systems as eligible grant purposes, as well as other Farm Bill changes to the Section 9007 program. In addition, regulations for the Business and Industry Guaranteed Loan Program will be revised to reflect Farm Bill provisions relating to locally or regionally produced agricultural food products. These rules will be developed

to minimize program complexity and burden on the public while enhancing program delivery and Agency oversight.

#### *Rural Utilities Service*

*Mission:* To improve the quality of life in rural America by providing investment capital for the deployment of critical rural utilities telecommunications, electric and water and waste disposal infrastructure. Financial assistance is provided to rural utilities; municipalities; commercial corporations; limited liability companies; public utility districts; Indian tribes; and cooperative, nonprofit, limited-dividend, or mutual associations. The public-private partnership which is forged between RUS and these industries results in billions of dollars in rural infrastructure development and creates thousands of jobs for the American economy.

*Priorities:* RUS' priority in 2010 is fulfilling the President's goal of bringing affordable broadband to all rural Americans by continuing to develop a final rule for the Broadband Loan Program, which was authorized by the Farm Security and Rural Investment Act of 2002, P.L. 107-171, (2002 Farm Bill) and subsequently amended by the 2008 Farm Bill. In May 2007, RUS published a proposed rule to improve the focus and strengthen the financial stability of the program that was being administered under regulations developed for the 2002 Farm Bill. Before this proposed rule could be finalized the 2008 Farm Bill became law, significantly changing the statutory requirements of the Broadband Loan Program. Consequently, RUS now plans to publish an interim rule that will combine the provisions of the proposed rule with the changes made by the 2008 Farm Bill.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) into law. The Recovery Act expanded RUS's existing authority to make loans and provides new authority to make grants to facilitate broadband deployment in rural areas. RUS has been tasked with the time sensitive priority of developing the regulation for this new authority. The Agency will, however, also continue to develop a final rule for the Broadband Program based upon change include in the 2008 Farm Bill.

#### *Departmental Administration*

*Mission:* Departmental Administration's mission is to provide management leadership to ensure that

USDA administrative programs, policies, advice and counsel meet the needs of USDA program organizations, consistent with laws and mandates; and provide safe and efficient facilities and services to customers.

**Priorities:** In July 2009, USDA's Departmental Administration published the proposed rule to establish a program to label eligible products made from biobased feedstocks. As part of this rulemaking, USDA will be accepting public comments through September 2009 on how to implement a program that promotes the purchase of products made from agricultural and forestry feedstocks. Once the public comment period is closed, USDA will finalize the labeling regulation to allow manufacturers and vendors of biobased products to display the label on their packaging and marketing materials. Once completed, this regulation will implement a section of the 2008 Farm Bill and will promote alternative uses of agriculture and forest materials.

#### *Aggregate Costs and Benefits*

USDA will ensure that its regulations provide benefits that exceed costs, but are unable to provide an estimate of the aggregated impacts of its regulations. Problems with aggregation arise due to differing baselines, data gaps, and inconsistencies in methodology and the type of regulatory costs and benefits considered. In addition, aggregation omits benefits and costs that cannot be reliably quantified, such as improved health resulting from increased access to more nutritious foods; higher levels of food safety; and increased quality of life derived from investments in rural infrastructure. Some benefits and costs associated with rules listed in the Regulatory Plan cannot currently be quantified as the rules are still being formulated. For 2010, the Department's focus on Farm Bill and other regulations will be to implement the changes in such a way as to provide benefits while minimizing program complexity and regulatory burden for program participants.

#### **USDA—Agricultural Marketing Service (AMS)**

### **FINAL RULE STAGE**

#### **1. NATIONAL ORGANIC PROGRAM: ACCESS TO PASTURE**

##### **Priority:**

Other Significant

##### **Legal Authority:**

7 USC 6501 et seq

##### **CFR Citation:**

7 CFR 205

##### **Legal Deadline:**

None

##### **Abstract:**

The National Organic Program (NOP) is administered by the Agricultural Marketing Service (AMS). Under the NOP, AMS established national standards for the production and handling of organically produced agricultural products. Since implementation of the NOP, some members of the public have advocated for a more explicit regulatory standard on the relationship between livestock, particularly dairy animals, and grazing land. They have asserted the current regulatory language on access to pasture for ruminants and temporary confinement based on an animal's stage of production, when applied together, do not provide a uniform requirement for the pasturing of ruminant animals that meet the principles underlying an organic management system for livestock and livestock products that consumers expect. Comments received as a result of the proposed rule will assist in determining the Agency's next steps in rulemaking on this issue.

##### **Statement of Need:**

AMS has determined that current regulations regarding access to pasture and the contribution of grazing to the diet of organically raised livestock lack sufficient specificity and clarity to enable AMS to efficiently administer the Program. Organic System Plans (OSPs) dealing with livestock management reflect different application of existing regulations and interpretations of requirements across Accredited Certifying Agents (ACAs). AMS has received 11 complaints requesting enforcement actions for alleged violations of the pasture provisions of the NOP livestock standards.

Furthermore, over the period 1994 to 2005, the National Organic Standards Board (NOSB) made six recommendations regarding access to the outdoors for livestock, pasture, and conditions for temporary confinement of animals. The NOSB process for the development of recommendations consists of: (1) identification of a need by members of the public, the NOSB, or the NOP; (2) development of a draft NOSB recommendation; (3) public

meeting notice published by the NOP on its website and in the Federal Register; (4) solicitation of public comments on the recommendation through regulations.gov and at the NOSB's public meetings; (5) finalization of the recommendation; (6) NOSB approval of the recommendation; and (7) NOSB referral to the Secretary for the Secretary's consideration and any appropriate action (e.g., rulemaking, policy development, guidance).

In response, on April 13, 2006, NOP published an Advanced Notice of Proposed Rulemaking (ANPRM) (71 FR 19131) seeking input on the role of pasture in the NOP regulations and what parts of the NOP regulations should be amended to address the role of pasture in organic livestock management.

More than 80,500 comments were received on the ANPRM. Support for strict standards and greater detail on the role of pasture in organic livestock production was nearly unanimous with just 28 of the comments opposing changes to the pasture requirements. Organic consumers have clearly stated in comments that they expect organic ruminants to graze pasture and receive not less than 30 percent of their Dry Matter Intake (DMI) needs from grazing. Nearly all of the over 80,500 comments were received from consumers requesting regulations that would clearly establish grazing as a primary source of nourishment. Approximately 80,250 of these comments were in a modified form letter. Many of these consumers requested that grazing account for at least 30 percent of the ruminant's DMI needs.

AMS published a proposed rule with a request for comment on October 24, 2008. The comment period ended December 23, 2008. AMS received more than 80,000 comments. Due to the high volume of comments received, final action on this rule is not expected before December 2009.

##### **Summary of Legal Basis:**

The NOP is authorized by the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. section 6501 et. seq.). The AMS administers the NOP. Under the NOP, AMS oversees national standards for the production and handling of organically produced agricultural products. This action is being taken by AMS to ensure that NOP livestock production regulations have sufficient specificity and clarity to enable AMS and accredited certifying agents to efficiently administer the NOP

and to facilitate and improve compliance and enforcement. This action is also intended to satisfy consumer expectations that ruminant livestock animals graze pastures during the growing season.

#### Alternatives:

Alternatives to this proposed rulemaking are to: (1) Make no changes to the existing regulations; (2) adopt a reduced pasturing period, such as the 120-day minimum period recommended by the NOSB and some commenters; or (3) adopt a three ruminants per acre stocking rate measure as suggested by some commenters.

#### Anticipated Cost and Benefits:

##### Costs:

This action will increase the cost of production for producers who currently do not pasture their animals and those producers who do not manage their pastures at a sufficient level to provide at least 30 percent DMI. For organic slaughter stock producers, an increase in costs might result in a greater volume of slaughter animals, at least in the short term, entering the market driving down prices. Longer term these increased costs could result in increased consumer prices unless the increased costs are off set by reductions in other costs of production. Other costs of production that could be expected to go down are costs associated with producer harvest and purchase of feed and the cost of herd health.

##### Benefits:

This final rule brings uniformity in application to the livestock regulations; especially as they relate to the pasturing of ruminants. This uniformity will create equitable, consistent, performance standards for all ruminant livestock producers. Producers who currently operate based on grazing will perceive a benefit because these producers claim an economic disadvantage in competing with livestock operations that do not provide pasture. This proposed rule would also bring uniformity in application to the livestock regulations. This uniformity in application will allow the ACAs and AMS to administer the livestock regulations in a way that reflects consumer preferences regarding the production of organic livestock and their products. Commenters have clearly stated that they expect organic ruminants to graze pasture and receive not less than 30 percent of their dry matter needs from grazing. Because of

this, it is crucial that consumer expectations are met. This proposed rulemaking is intended to reflect consumer expectations and producer perspectives. This action makes clear what access to pasture means under the NOP.

#### Risks:

None.

#### Timetable:

Action	Date	FR Cite
ANPRM	04/13/06	71 FR 19131
ANPRM Comment Period End	06/12/06	
NPRM	10/24/08	73 FR 63583
NPRM Comment Period End	12/23/08	
Final Action	12/00/09	

#### Regulatory Flexibility Analysis Required:

Yes

#### Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

#### Government Levels Affected:

Federal, Local, State

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RIN: 0581-AC57

#### USDA—AMS

### 2. NATIONAL DAIRY PROMOTION AND RESEARCH PROGRAM; FINAL RULE ON AMENDMENTS TO THE ORDER

#### Priority:

Other Significant

#### Legal Authority:

7 USC 4501 to 4514; 7 USC 7401

#### CFR Citation:

7 CFR 1150

#### Legal Deadline:

Final, Statutory, September 19, 2008, Assessments on imported dairy products must be implemented by deadline.

With the passage of Section 1507 in the 2008 Farm Bill, the Dairy Act was

amended to apply certain assessments to Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico. The 2008 Farm Bill authorized the Secretary to issue regulations to implement the mandatory dairy import assessment without providing a notice and comment period. However, due to the interest of affected parties a notice and comment period was provided.

#### Abstract:

The Dairy Act authorizes the Order for dairy product promotion, research, and nutrition education as part of a comprehensive strategy to increase human consumption of milk and dairy products and to reduce milk surpluses. The program functions to strengthen the dairy industry's position in the marketplace by maintaining and expanding domestic and foreign consumption of fluid milk and dairy products. Amendments to the Order are pursuant to the 2002 and 2008 Farm Bills. The 2002 Farm Bill mandates that the Order be amended to implement an assessment on imported dairy products to fund promotion and research. The 2008 Farm Bill specifies a mandatory assessment rate of 7.5-cent per hundredweight of milk, or equivalent thereof, on dairy products imported into the United States. Additionally, in accordance with the 2008 Farm Bill, the term "United States" is the Dairy Act is amended to mean all States, the District of Columbia, and the Commonwealth of Puerto Rico. Producers in these areas will be assessed 15 cents per hundredweight for all milk produced and marketed.

#### Statement of Need:

In response to the May 19, 2009 (74 FR 23359) proposed rule (National Dairy Promotion and Research Program; Proposed Rule on Amendments to the Order), AMS received 189 timely comments from consumers, dairy producers, foreign governments, importers, exporters, manufacturers, members of Congress, trade associations, and other interested parties.

The comments covered a wide range of topics, including 39 in opposition to the proposal and 150 in support of the proposal. Opponents of the proposal expressed concern over the lack of a referendum requirement among those affected; default assessment rates; lack of ability to no longer promote State-branded dairy products; lack of importer organizations eligible to become a Qualified Program; disputed the cost-benefit analysis for



importers and producers; and cited unreasonable importer paperwork and record keeping burdens.

Proponents of the proposal expressed support for an expedited implementation of the dairy import assessment; cited the enhanced benefits both domestic producers and importers will receive as a result of implementation; recommended new Harmonized Tariff Schedule codes; use of a default assessment rate; recommended regular reporting of the products and assessments on imports; and all thresholds for compliance with U.S. trade obligations have been met.

AMS plans to issue a final rule implementing the dairy import assessment in the near future. In response to the comments received and after consultation with USTR, AMS is addressing, in the final rule, referenda, alternative assessment rates, and compliance and enforcement activity. All remaining changes are miscellaneous and minor in nature in order to clarify regulatory text.

**Summary of Legal Basis:**

The National Dairy Promotion and Research Program (National Program) is authorized under the authorized under the provisions of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501-4514), and the Dairy Promotion and Research Order (7 CFR Part 1150). The Dairy Programs unit of USDA's Agricultural Marketing Service has day-to-day oversight responsibilities for the National Program.

**Alternatives:**

There are no alternatives, as this rulemaking is a matter of law based on the 2002 and 2008 Farm Bills.

**Anticipated Cost and Benefits:**

Assessments to dairy producers under the Order are relatively small compared to producer revenue. If dairy producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico had paid assessments of \$0.15 per hundredweight of milk marketed in 2007, it is estimated that \$1.1 million would have been paid. This is about 0.6 percent of the \$192 million total value of milk produced and marketed in these areas.

Benefits to producers in these areas are assumed to be similar to those benefits received by producers of other U.S. geographical regions. Cornell University has conducted an independent economic analysis of the Program that is included in the annual report to Congress. Cornell determined that from

1998 through 2007, each dollar invested in generic dairy marketing by dairy farmers during the period would return between \$5.52 and \$5.94, on average, in net revenue to farmers.

Assessments collected from importers under the National Program will be relatively small compared to the value of dairy imports. If importers had been assessed \$0.075 per hundredweight, or equivalent thereof, for imported dairy products in 2007 as specified in this rule, it is estimated that less than \$6.1 million would have been paid. This is about 0.3 percent of the \$2.4 billion value of the dairy products imported in 2007.

**Risks:**

If the amendments are not implemented, USDA would be in violation of the 2002 and 2008 Farm Bills.

**Timetable:**

Action	Date	FR Cite
NPRM	05/19/09	74 FR 23359
NPRM Comment Period End	06/18/09	
Final Action	02/00/10	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Organizations

**Government Levels Affected:**

None

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**RIN:** 0581-AC87

**USDA—Animal and Plant Health Inspection Service (APHIS)**

**PROPOSED RULE STAGE**

**3. ANIMAL WELFARE; REGULATIONS AND STANDARDS FOR BIRDS**

**Priority:**

Other Significant

**Legal Authority:**

7 USC 2131 to 2159

**CFR Citation:**

9 CFR 1 to 3

**Legal Deadline:**

None

**Abstract:**

APHIS intends to establish standards for the humane handling, care, treatment, and transportation of birds other than birds bred for use in research.

**Statement of Need:**

The Farm Security and Rural Investment Act of 2002 amended the definition of animal in the Animal Welfare Act (AWA) by specifically excluding birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research. While the definition of animal in the regulations contained in 9 CFR part 1 has excluded rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, that definition has also excluded all birds (i.e., not just those birds bred for use in research). In line with this change to the definition of animal in the AWA, APHIS intends to establish standards in 9 CFR part 3 for the humane handling, care, treatment, and transportation of birds other than those birds bred for use in research.

**Summary of Legal Basis:**

The Animal Welfare Act (AWA) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and immediate handlers. Animals covered by the AWA include birds that are not bred for use in research.

**Alternatives:**

To be identified.

**Anticipated Cost and Benefits:**

To be determined.

**Risks:**

Not applicable.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/10	
NPRM Comment Period End	04/00/10	

**Regulatory Flexibility Analysis Required:**

Yes



**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Undetermined

**Additional Information:**

Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

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**RIN:** 0579-AC02

**USDA—APHIS****4. BOVINE SPONGIFORM ENCEPHALOPATHY; IMPORTATION OF BOVINES AND BOVINE PRODUCTS****Priority:**

Other Significant

**Legal Authority:**

7 USC 450; 7 USC 1622; 7 USC 7701 to 7772; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

**CFR Citation:**

9 CFR 92 to 96; 9 CFR 98

**Legal Deadline:**

None

**Abstract:**

This rulemaking would amend the regulations regarding the importation of bovines and bovine products. Under this rulemaking, countries would be classified as either negligible risk, controlled risk, or undetermined risk for bovine spongiform encephalopathy (BSE). Some commodities would be allowed importation into the United States regardless of the BSE classification of the country of export. Other commodities would be subject to importation restrictions or prohibitions based on the type of commodity and the BSE classification of the country. The criteria for country classification and commodity import would be closely aligned with those of the World Organization for Animal Health.

**Statement of Need:**

We are proposing to amend the regulations after conducting a thorough

review of relevant scientific literature and a comprehensive evaluation of the issues and concluding that the proposed changes would continue to guard against the introduction of BSE into the United States, while allowing the importation of additional animals and animal products into this country.

**Summary of Legal Basis:**

Under the Animal Health Protection Act of 2002 (7 U.S.C. 8301 et seq.), the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction into the United States or dissemination of any pest or disease of livestock.

**Alternatives:**

We could leave the current bovine regulations unchanged, but maintaining the status quo would not provide an opportunity to apply the latest scientific evidence to our BSE-related import conditions. Another alternative—modifying the BSE regulations related to the importation of bovines and bovine-derived products to precisely match the OIE guidelines without allowing for modification deemed necessary by APHIS—would not allow APHIS to independently interpret the scientific literature or reflect current USDA regulations and policies. Making no changes to the current regulations that govern the importation of cervids and camelids would perpetuate an unnecessary constraint on trade in those commodities, because cervids and camelids pose an extremely low BSE risk.

**Anticipated Cost and Benefits:**

Undetermined.

**Risks:**

APHIS has concluded that the proposed changes would continue to guard against the introduction of BSE into the United States.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/09	
NPRM Comment Period End	02/00/10	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

**International Impacts:**

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

**Additional Information:**

Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

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**RIN:** 0579-AC68

**USDA—APHIS****FINAL RULE STAGE****5. IMPORTATION OF PLANTS FOR PLANTING; ESTABLISHING A NEW CATEGORY OF PLANTS FOR PLANTING NOT AUTHORIZED FOR IMPORTATION PENDING RISK ASSESSMENT (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)****Priority:**

Other Significant

**Legal Authority:**

7 USC 450; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 21 USC 136 and 136a

**CFR Citation:**

7 CFR 319

**Legal Deadline:**

None

**Abstract:**

This action would establish a new category in the regulations governing the importation of nursery stock, also known as plants for planting. This category would list taxa of plants for planting whose importation is not authorized pending risk assessment. We would allow foreign governments to request that a pest risk assessment be conducted for a taxon whose importation is not authorized pending risk evaluation. After the pest risk assessment was completed, we would conduct rulemaking to remove the

taxon from the proposed category if determined appropriate by the risk assessment. We are also proposing to expand the scope of the plants regulated in the plants for planting regulations to include non-vascular plants. These changes would allow us to react more quickly to evidence that a taxon of plants for planting may pose a pest risk while ensuring that our actions are based on scientific evidence.

#### Statement of Need:

APHIS typically relies on inspection at a Federal plant inspection station or port of entry to mitigate the risks of pest introduction associated with the importation of plants for planting. Importation of plants for planting is further restricted or prohibited only if there is specific evidence that such importation could introduce a quarantine pest into the United States. Most of the taxa of plants for planting currently being imported have not been thoroughly studied to determine whether their importation presents a risk of introducing a quarantine pest into the United States. The volume and the number of types of plants for planting have increased dramatically in recent years, and there are several problems associated with gathering data on what plants for planting are being imported and on the risks such importation presents. In addition, quarantine pests that enter the United States via the importation of plants for planting pose a particularly high risk of becoming established within the United States. The current regulations need to be amended to better address these risks.

#### Summary of Legal Basis:

The Secretary of Agriculture may prohibit or restrict the importation or entry of any plant if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States of a plant pest or noxious weed (7 U.S.C. 7712).

#### Alternatives:

APHIS has identified one alternative to the approach we are considering. We could prohibit the importation of all nursery stock pending risk evaluation, approval, and notice-and-comment rulemaking, similar to APHIS's approach to regulating imported fruits and vegetables. This approach would lead to a major interruption in international trade and would have significant economic effects on both

U.S. importers and U.S. consumers of plants for planting.

#### Anticipated Cost and Benefits:

Undetermined.

#### Risks:

In the absence of some action to revise the nursery stock regulations to allow us to better address pest risks, increased introductions of plant pests via imported nursery stock are likely, causing extensive damage to both agricultural and natural plant resources.

#### Timetable:

Action	Date	FR Cite
NPRM	07/23/09	74 FR 36403
NPRM Comment Period End	10/21/09	
Final Rule	07/00/10	

#### Regulatory Flexibility Analysis Required:

Yes

#### Small Entities Affected:

Businesses

#### Government Levels Affected:

None

#### International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

#### Additional Information:

Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

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RIN: 0579-AC03

#### USDA—Grain Inspection, Packers and Stockyards Administration (GIPSA)

### PROPOSED RULE STAGE

#### 6. ENFORCEMENT OF THE PACKERS AND STOCKYARDS ACT

##### Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

#### Legal Authority:

7 USC 181

#### CFR Citation:

9 CFR 201

#### Legal Deadline:

Final, Statutory, June 18, 2010.

#### Abstract:

GIPSA is proposing regulations under the Packers & Stockyards Act, 1921, that clarify when certain conduct in the livestock and poultry industries represents the making or giving of an undue or unreasonable preference or advantage or subjects a person or locality to an undue or unreasonable prejudice or disadvantage. These proposed regulations also establish criteria GIPSA will consider in determining whether a live poultry dealer has provided reasonable notice to poultry growers of any suspension of the delivery of birds under a poultry growing arrangement; when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and whether a live poultry dealer or swine contractor has provided a reasonable period of time for a poultry grower or a swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract. The Farm Bill also instructed the Secretary to promulgate regulations to ensure that producers and growers are afforded the opportunity to fully participate in the arbitration process if they so choose.

#### Statement of Need:

In enacting Title XI of the Food, Conservation and Energy Act of 2008 (Farm Bill) (P.L. 110-246), Congress recognized the nature of problems encountered in the livestock and poultry industries and amended the Packers and Stockyards Act (P&S Act). These amendments established new requirements for participants in the livestock and poultry industries and required the Secretary of Agriculture (Secretary) to establish criteria to consider when determining that certain other conduct is in violation of the P&S Act.

The Grain Inspection, Packers and Stockyards Administration's (GIPSA) attempts to enforce the broad prohibitions of the P&S Act have been frustrated, in part because it has not previously defined what conduct

constitutes an unfair practice or the giving of an undue preference or advantage. The new regulations that GIPSA is proposing describe and clarify conduct that violates the P&S Act and allow for more effective and efficient enforcement by GIPSA. They will clarify conditions for industry compliance with the P&S Act and provide for a fairer market place.

In accordance with the Farm Bill, GIPSA is proposing regulations under the P&S Act that would clarify when certain conduct in the livestock and poultry industries represents the making or giving of an undue or unreasonable preference or advantage or subjects a person or locality to an undue or unreasonable prejudice or disadvantage. These proposed regulations also establish criteria that GIPSA will consider in determining whether a live poultry dealer has provided reasonable notice to poultry growers of a suspension of the delivery of birds under a poultry growing arrangement; when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and whether a packer, swine contractor or live poultry dealer has provided a reasonable period of time for a grower or a swine producer to remedy a breach of contract that could lead to termination of the growing arrangement or production contract.

The Farm Bill also instructed the Secretary to promulgate regulations to ensure that poultry growers, swine production contract growers and livestock producers are afforded the opportunity to fully participate in the arbitration process, if they so choose. We are proposing a required format for providing poultry growers, swine production contract growers and livestock producers the opportunity to decline the use of arbitration in contracts requiring arbitration. We are also proposing criteria that we will consider in finding that poultry growers, swine production contract growers and livestock producers have a meaningful opportunity to participate fully in the arbitration process if they voluntarily agree to do so. We will use these criteria to assess the overall fairness of the arbitration process.

In addition to proposing regulations in accordance with the Farm Bill, GIPSA is proposing regulations that would prohibit certain conduct because it is unfair, unjustly discriminatory or deceptive, in violation of the P&S Act. These additional proposed regulations

are promulgated under the authority of § 407 of the P&S Act, and complement those required by the Farm Bill to help ensure fair trade and competition in the livestock and poultry industries.

These regulations are intended to address the increased use of contracting in the marketing and production of livestock and poultry by entities under the jurisdiction of the P&S Act, and practices that result from the use of market power and alterations in private property rights, which violate the spirit and letter of the P&S Act. The effect increased contracting has had, and continues to have, on individual agricultural producers has significantly changed the industry and the rural economy as a whole, making these proposed regulations necessary.

#### Summary of Legal Basis:

Section 407 of the P&S Act (7 U.S.C. 228) provides that the Secretary “may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act.” Sections 11005 and 11006 of the Farm Bill became effective June 18, 2008, and instruct the Secretary to promulgate additional regulations as described in this notice of proposed rulemaking.

#### Alternatives:

The Farm Bill explicitly directs the Secretary to promulgate certain regulations. GIPSA determined that additional regulations are necessary to provide notice to all regulated entities of types of practices and conduct that GIPSA considers “unfair” so that regulated entities are fully informed of actions or practices that are considered “unfair” and therefore, prohibited. Within both the mandatory and discretionary regulatory provisions we considered alternative options.

For example, GIPSA considered shorter notice periods in situations when a live poultry dealer suspends delivery of birds to a poultry grower. These alternatives would not have provided adequate trust and integrity in the livestock and poultry markets. Other alternatives may have been more restrictive. We considered prohibiting the use of arbitration to resolve disputes; however, that option goes against a popular method of dispute resolution in other industries and is not in line with the spirit of the 2008 Farm Bill. GIPSA believes that this proposed rule represents the best option to level the playing field between packers, swine contractors, live poultry dealers, and the nation’s poultry growers, swine production contract growers, or

livestock producers for the benefit of more efficient marketing and public good.

#### Anticipated Cost and Benefits:

##### Costs:

Costs are aggregated into three major types: 1) administrative costs, which include items such as office work, postage, filing, and copying; 2) costs of analysis, such as a business conducting a profit-loss analysis; and 3) adjustment costs, such as costs related to changing business behavior to achieve compliance with the proposed regulation.

##### Benefits:

Benefits are also aggregated into three major groups: 1) increased pricing efficiency; 2) allocation efficiency; and 3) competitive efficiency.

#### Risks:

None.

#### Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

#### Regulatory Flexibility Analysis Required:

No

#### Small Entities Affected:

No

#### Government Levels Affected:

None

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RIN: 0580-AB07

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#### USDA—GIPSA

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#### FINAL RULE STAGE

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#### 7. POULTRY CONTRACTS; INITIATION, PERFORMANCE, AND TERMINATION

##### Priority:

Other Significant

##### Legal Authority:

7 USC 221

**CFR Citation:**

9 CFR 201

**Legal Deadline:**

None

**Abstract:**

GIPSA is amending the regulations issued under the Packers and Stockyards Act, 1921, regarding the records that live poultry dealers must furnish poultry growers, including requirements for the timing and contents of poultry growing arrangements. The amendments to the regulations will require that live poultry dealers timely deliver a copy of an offered poultry growing arrangement to growers; include information about any Performance Improvement Plan in poultry growing arrangements; include provisions for written termination notices in poultry growing arrangements; and notwithstanding a confidentiality provision, allow growers to discuss the terms of poultry growing arrangements with designated individuals.

**Statement of Need:**

The Grain Inspection Packers and Stockyards Administration (GIPSA) believes that the failure to disclose certain terms in a poultry growing arrangement constitutes an unfair, discriminatory, or deceptive practice in violation of section 202 (7 U.S.C. 192) of the Packers and Stockyards Act (P&S Act).

Because of vertical integration and high concentration within the poultry industry, poultry growers do not realistically have the option of negotiating more favorable poultry growing arrangement terms with competing live poultry dealers because there may be no other live poultry dealers in the poultry grower's immediate geographic area or there may be significant differences in equipment requirements among live poultry dealers. There is considerable asymmetry of information and an imbalance in market power. This final rule will level the playing field by requiring that all live poultry dealers adopt fair and transparent practices when dealing with poultry growers.

**Summary of Legal Basis:**

One of GIPSA's primary functions is the enforcement of the P&S Act, (7 U.S.C. 181 et seq.) (P&S Act). Under authority granted to us by the Secretary of Agriculture, GIPSA is authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the P&S Act.

**Alternatives:**

GIPSA collected input on several alternatives like issuing policy guidance to GIPSA employees, providing public notice that failure to provide growers with additional contract information was an unfair practice in violation of § 202 of the P&S Act, or recommending that growers seek redress of grievances through civil court action or arbitration. GIPSA determined that none of these alternatives will meet the needs of poultry growers. We believe, however, that this final rule will provide the best means of achieving statutory intent at the lowest cost to poultry growers and live poultry dealers.

**Anticipated Cost and Benefits:****Costs:**

The costs to both poultry growers and live poultry dealers are negligible, as the rule does not impose significant additional requirements that increase actions that the poultry grower and the live poultry dealer must enact; they merely affect the timeliness of those actions. In some cases, the final rule requires that the poultry grower and the live poultry dealer commit to writing terms and conditions that are already in effect, but do not mandate what those terms and conditions must be. Thus, the only additional cost is the cost of producing and transmitting the printed document.

**Benefits:**

Collectively, the regulatory provisions in the final rule mitigate potential asymmetries of information between poultry growers and the live poultry dealers, which will lead to better decisions on the terms of compensation and reduce the potential for the expression of anti-competitive market power. The provisions achieve this primarily by improving the quality and timeliness of information to growers, and to some extent to live poultry dealers as well. Benefits should accrue to poultry growers from an enhanced basis for making the decision as to whether to enter into a growout contract, and from additional time available to make plans for any necessary adjustments in those instances when the poultry grower is subject to a contract termination. Net social welfare will benefit from improved accuracy in the value (pricing) decisions involved in transactions between poultry growers and live poultry dealers as they negotiate contract terms.

**Risks:**

None.

**Timetable:**

Action	Date	FR Cite
NPRM	08/01/07	72 FR 41952
NPRM Comment Period End	10/30/07	
Final Action	12/00/09	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 0580-AA98**USDA—Food and Nutrition Service (FNS)****PROPOSED RULE STAGE****8. ELIGIBILITY, CERTIFICATION, AND EMPLOYMENT AND TRAINING PROVISIONS OF THE FOOD, CONSERVATION AND ENERGY ACT OF 2008****Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

PL 110-246; PL 104-121

**CFR Citation:**

7 CFR Part 273

**Legal Deadline:**

None

**Abstract:**

This proposed rule would amend the regulations governing the Supplemental Nutrition Assistance Program (SNAP) to implement provisions from the Food, Conservation and Energy Act of 2008 (Public Law 110-246) (FCEA) concerning the eligibility and

certification of SNAP applicants and participants and SNAP employment and training. In addition, this proposed rule would revise the SNAP regulations throughout 7 CFR Part 273 to change the program name from the Food Stamp Program to SNAP and to make other nomenclature changes as mandated by the FCEA. The statutory effective date of these provisions was October 1, 2008. Food and Nutrition Service (FNS) is also proposing two discretionary revisions to SNAP regulations to provide State agencies options that are currently available only through waivers. These provisions would allow State agencies to average student work hours and to provide telephone interviews in lieu of face-to-face interviews. FNS anticipates that this rule would impact the associated paperwork burdens. (08-006)

#### Statement of Need:

This proposed rule would amend the regulations governing the Supplemental Nutrition Assistance Program (SNAP) to implement provisions from the Food, Conservation and Energy Act of 2008 (Public Law 110-246) (FCEA) concerning the eligibility and certification of SNAP applicants and participants and SNAP employment and training. In addition, this proposed rule would revise the SNAP regulations throughout 7 CFR Part 273 to change the program name from the Food Stamp Program to SNAP and to make other nomenclature changes as mandated by the FCEA. The statutory effective date of these provisions was October 1, 2008. Food and Nutrition Service (FNS) is also proposing 2 discretionary revisions to SNAP regulations to provide State agencies options that are currently available only through waivers. These provisions would allow State agencies to average student work hours and to provide telephone interviews in lieu of face-to-face interviews. FNS anticipates that this rule would impact the associated paperwork burdens.

#### Summary of Legal Basis:

Food, Conservation, and Energy Act of 2008 (Public Law 110-246) and 7 CFR Part 273.

#### Alternatives:

Not applicable.

#### Anticipated Cost and Benefits:

Anticipated costs have not been determined; however, it is anticipated that this rule would impact the associated paperwork burdens.

#### Risks:

Not applicable.

#### Timetable:

Action	Date	FR Cite
NPRM	05/00/10	

#### Regulatory Flexibility Analysis Required:

No

#### Government Levels Affected:

Local, State

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RIN: 0584-AD87

#### USDA—FNS

### 9. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: FARM BILL OF 2008 RETAILER SANCTIONS

#### Priority:

Economically Significant. Major under 5 USC 801.

#### Unfunded Mandates:

Undetermined

#### Legal Authority:

PL 110-246

#### CFR Citation:

7 CFR 276

#### Legal Deadline:

None

#### Abstract:

This proposed rule would implement provisions under Section 4132 of the Food, Conservation and Energy Act of 2008, also referred to as the Farm Bill of 2008. Under Section 4132, the Department of Agriculture's Food and Nutrition Service (FNS) is provided with greater authority and flexibility when sanctioning retail or wholesale food stores that violate Supplemental Nutrition Assistance Program (SNAP) rules. Specifically, the Department is authorized to assess a civil penalty and to disqualify a retail or wholesale food store authorized to participate in SNAP. Previously, the Department could assess a civil penalty or disqualification, but not both. Section

4132 also eliminates the minimum disqualification period which was previously set at six months.

In addition to implementing statutory provisions, this rule proposes to provide a clear administrative penalty when an authorized retailer or wholesale food store redeems a SNAP participant's Program benefits without the knowledge of the participant. All Program benefits are issued through the Electronic Benefits Transfer (EBT) system. The EBT system establishes data that may be used to identify fraud committed by retail food stores. While stealing Program benefits could be prosecuted under current statute, Program regulations do not provide a clear penalty for these thefts. The proposed rule would establish an administrative penalty for such thefts equivalent to the penalty for trafficking in Program benefits, which is the permanent disqualification of a retailer or wholesale food store from SNAP participation.

Finally, the Department proposes to identify additional administrative retail violations and the associated sanction that would be imposed against the retail food store for committing the violation. For instance, to maintain integrity, FNS requires retail and wholesale food stores to key enter EBT card data in the presence of the actual EBT card. The proposed rule would codify this requirement and identify the specific sanction that would be imposed if retail food stores are found to be in violation. (08-007)

#### Statement of Need:

This proposed rule would implement provisions under Section 4132 of the Food, Conservation and Energy Act of 2008, also referred to as the Farm Bill of 2008. Under Section 4132, the Department of Agriculture's Food and Nutrition Service (FNS) is provided with greater authority and flexibility when sanctioning retail or wholesale food stores that violate Supplemental Nutrition Assistance Program (SNAP) rules. Specifically, the Department is authorized to assess a civil penalty and to disqualify a retail or wholesale food store authorized to participate in SNAP. Previously, the Department could assess a civil penalty or disqualification, but not both. Section 4132 also eliminates the minimum disqualification period which was previously set at six months. In addition to implementing statutory provisions, this rule proposes to provide a clear administrative penalty when an authorized retailer or

wholesale food store redeems a SNAP participant's Program benefits without the knowledge of the participant. All Program benefits are issued through the Electronic Benefits Transfer (EBT) system. The EBT system establishes data that may be used to identify fraud committed by retail food stores. While stealing Program benefits could be prosecuted under current statute, Program regulations do not provide a clear penalty for these thefts. The proposed rule would establish an administrative penalty for such thefts equivalent to the penalty for trafficking in Program benefits, which is the permanent disqualification of a retailer or wholesale food store from SNAP participation. Finally, the Department proposes to identify additional administrative retail violations and the associated sanction that would be imposed against the retail food store for committing the violation. For instance, to maintain integrity, FNS requires retail and wholesale food stores to key enter EBT card data in the presence of the actual EBT card. The proposed rule would codify this requirement and identify the specific sanction that would be imposed if retail food stores are found to be in violation.

**Summary of Legal Basis:**

Section 4132, Food, Conservation, and Energy Act of 2008 (Public Law 110-246).

**Alternatives:**

Not applicable.

**Anticipated Cost and Benefits:**

Anticipated costs are undetermined at this time until more research is conducted.

**Risks:**

Not applicable.

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Additional Information:**

Note: This RIN replaces the previously issued RIN 0584-AD78.

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**RIN:** 0584-AD88

**USDA—FNS**

**10. • FRESH FRUIT AND VEGETABLE PROGRAM**

**Priority:**

Other Significant

**Legal Authority:**

Food, Conservation, and Energy Act of 2008; National School Lunch Act (NSLA); 42 U.S.C. 1769(a)

**CFR Citation:**

7 CFR Part 211

**Legal Deadline:**

None

**Abstract:**

The Food, Conservation, and Energy Act of 2008 amended the National School Lunch Act (NSLA) to add section 19, the Fresh Fruit and Vegetable Program (FFVP). Section 19 establishes the FFVP as a permanent national program in a select number of schools in each State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Schools in all States must apply annually for FFVP funding. This proposed rule would implement statutory requirements currently established through program policy and guidance for operators at the State and local level. The proposed rule would set forth requirements detailed in the statute for school selection and participation, State agency outreach to needy schools, the yearly application process, and the funding and allocation processes for schools and States. The proposed rule would also include the statutory per student funding range and the requirement for a program evaluation.

In addition, the proposed rule would establish oversight activity and reporting and record keeping requirements that are not included in FFVP statutory requirements. Implementation of this rule is not expected to result in expenses for program operators because they receive

funding to cover food purchases and administrative costs. (09-007)

**Statement of Need:**

The Food, Conservation, and Energy Act of 2008 amended the National School Lunch Act (NSLA) to add section 19, the Fresh Fruit and Vegetable Program (FFVP). Section 19 establishes the FFVP as a permanent national program in a select number of schools in each State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Schools in all States must apply annually for FFVP funding. This proposed rule would implement statutory requirements currently established through program policy and guidance for operators at the State and local level. The proposed rule would set forth requirements detailed in the statute for school selection and participation, State agency outreach to needy schools, the yearly application process, and the funding and allocation processes for schools and States. The proposed rule would also include the statutory per student funding range and the requirement for a program evaluation.

**Summary of Legal Basis:**

Section 19, Food, Conservation, and Energy Act of 2008. National School Lunch Act (NSLA). 42 U.S.C. 1769(a).

**Alternatives:**

Because this proposed rule would implement statutory requirements set forth by the Food, Conservation, and Energy Act of 2008 by adding section 19, the Fresh Fruit and Vegetable Program (FFVP), to the National School Lunch Act, alternatives to this process are not known or being pursued at this time.

**Anticipated Cost and Benefits:**

Implementation of this rule is not expected to result in expenses for program operators because they receive funding to cover food purchases and administrative costs.

**Risks:**

No risks by implementing this proposed rule have been identified at this time.

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/10	
Final Action	12/00/10	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Local, State

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RIN: 0584-AD96

**USDA—FNS****FINAL RULE STAGE**
**11. CHILD AND ADULT CARE FOOD PROGRAM: IMPROVING MANAGEMENT AND PROGRAM INTEGRITY**
**Priority:**

Other Significant

**Legal Authority:**

42 USC 1766; PL 103-448; PL 104-193; PL 105-336

**CFR Citation:**

7 CFR Part 226

**Legal Deadline:**

None

**Abstract:**

This rule amends the Child and Adult Care Food Program (CACFP) regulations. The changes in this rule result from the findings of State and Federal program reviews and from audits and investigations conducted by the Office of Inspector General. This rule revises: State agency criteria for approving and renewing institution applications; program training and other operating requirements for child care institutions and facilities; and State and institution-level monitoring requirements. This rule also includes changes that are required by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448), the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (Pub. L. 104-193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336).

The changes are designed to improve program operations and monitoring at the State and institution levels and,

where possible, to streamline and simplify program requirements for State agencies and institutions. (95-024)

**Statement of Need:**

In recent years, State and Federal program reviews have found numerous cases of mismanagement, abuse, and in some instances, fraud, by child care institutions and facilities in the CACFP. These reviews revealed weaknesses in management controls over program operations and examples of regulatory noncompliance by institutions, including failure to pay facilities or failure to pay them in a timely manner; improper use of program funds for non-program expenditures; and improper meal reimbursements due to incorrect meal counts or to mis-categorized or incomplete income eligibility statements. In addition, audits and investigations conducted by the Office of Inspector General (OIG) have raised serious concerns regarding the adequacy of financial and administrative controls in CACFP. Based on its findings, OIG recommended changes to CACFP review requirements and management controls.

**Summary of Legal Basis:**

Some of the changes proposed in the rule are discretionary changes being made in response to deficiencies found in program reviews and OIG audits. Other changes codify statutory changes made by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448), the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (Pub. L. 104-193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336).

**Alternatives:**

In developing the proposal, the Agency considered various alternatives to minimize burden on State agencies and institutions while ensuring effective program operation. Key areas in which alternatives were considered include State agency reviews of institutions and sponsoring organization oversight of day care homes.

**Anticipated Cost and Benefits:**

This rule contains changes designed to improve management and financial integrity in the CACFP. When implemented, these changes would affect all entities in CACFP, from USDA to participating children and children's households. These changes will primarily affect the procedures used by State agencies in reviewing applications

submitted by, and monitoring the performance of, institutions which are participating or wish to participate in the CACFP. Those changes which would affect institutions and facilities will not, in the aggregate, have a significant economic impact.

Data on CACFP integrity is limited, despite numerous OIG reports on individual institutions and facilities that have been deficient in CACFP management. While program reviews and OIG reports clearly illustrate that there are weaknesses in parts of the program regulations and that there have been weaknesses in oversight, neither program reviews, OIG reports, nor any other data sources illustrate the prevalence and magnitude of CACFP fraud and abuse. This lack of information precludes USDA from estimating the amount of money lost due to fraud and abuse or the reduction in fraud and abuse the changes in this rule will realize.

**Risks:**

Operating under interim rules puts State agencies and institutions at risk of implementing Program provisions subject to change in a final rule.

**Timetable:**

Action	Date	FR Cite
NPRM	09/12/00	65 FR 55103
NPRM Comment Period End	12/11/00	
Interim Final Rule Effective	06/27/02	67 FR 43448
Interim Final Rule Comment Period End	07/29/02	
Interim Final Rule Comment Period End	12/24/02	
Interim Final Rule Effective	09/01/04	69 FR 53502
Interim Final Rule Comment Period End	10/01/04	
Interim Final Rule Comment Period End	09/01/05	
Final Action	03/00/10	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Local, State

**Federalism:**

This action may have federalism implications as defined in EO 13132.



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**Related RIN:** Merged with 0584-AC94

**RIN:** 0584-AC24

**USDA—FNS**

**12. SNAP: ELIGIBILITY AND CERTIFICATION PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

PL 107-171, sections 4101 to 4109, 4114, 4115, and 4401

**CFR Citation:**

7 CFR Part 273

**Legal Deadline:**

None

**Abstract:**

This rulemaking will amend the regulations of the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program, to implement 11 provisions of the Farm Security and Rural Investment Act of 2002 that establish new eligibility and certification requirements for the receipt of food stamps. (02-007)

**Statement of Need:**

The rule is needed to implement the food stamp certification and eligibility provisions of Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

**Summary of Legal Basis:**

The legal basis for this rule is Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

**Alternatives:**

This final rule deals with changes required by Public Law 107-171, the Farm Security and Rural Investment Act of 2002. The Department has limited discretion in implementing provisions of that law. Most of the provisions in this rule were effective October 1, 2002, and were implemented

by State agencies prior to publication of this rule.

**Anticipated Cost and Benefits:**

The provisions of this rule simplify State administration of SNAP, increase eligibility for the program among certain groups, increase access to the program among low-income families and individuals, and increase benefit levels. The provisions of Public Law 107-171 implemented by this rule have a 5-year cost of approximately \$1.9 billion.

**Risks:**

SNAP provides nutrition assistance to millions of Americans nationwide—working families, eligible non-citizens, and elderly and disabled individuals. Many low-income families don't earn enough money and many elderly and disabled individuals don't receive enough in retirement or disability benefits to meet all of their expenses and purchase healthy and nutritious meals. SNAP serves a vital role in helping these families and individuals achieve and maintain self-sufficiency and purchase a nutritious diet. This rule implements the certification and eligibility provisions of Public Law 107-171, the Farm Security and Rural Investment Act of 2002. It simplifies State administration of SNAP, increases eligibility for the program among certain groups, increases access to the program among low-income families and individuals, and increases benefit levels. The provisions of this rule increase benefits by approximately \$1.95 billion over 5 years.

**Timetable:**

Action	Date	FR Cite
NPRM	04/16/04	69 FR 20724
NPRM Comment Period End	06/15/04	
Final Action	12/00/09	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Local, State

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**RIN:** 0584-AD30

**USDA—FNS**

**13. QUALITY CONTROL PROVISIONS**

**Priority:**

Other Significant

**Legal Authority:**

7 USC 2011 to 2032; PL 107-171

**CFR Citation:**

7 CFR 273; 7 CFR 275

**Legal Deadline:**

None

**Abstract:**

This rule finalizes the interim rule “Non-Discretionary Quality Control Provisions of Title IV of Public Law 107-171” (published October 16, 2003 at 68 FR 59519) and the proposed rule “Discretionary Quality Control Provisions of Title IV of Public Law 107-171” (published September 23, 2005 at 70 FR 55776).

The following quality control (QC) provisions required by sections 4118 and 4119 of the Farm Security and Rural Investment Act of 2002 (title IV of Pub. L. 107-171) and contained in the interim rule are implemented by this final rule:

- 1) Timeframes for completing quality control reviews;
- 2) Timeframes for completing the arbitration process;
- 3) Timeframes for determining final error rates;
- 4) The threshold for potential sanctions and time period for sanctions;
- 5) The calculation of State error rates;
- 6) The formula for determining States' liability amounts;
- 7) Sanction notification and method of payment; and
- 8) Corrective action plans.

The following provisions required by sections 4118 and 4119 and additional policy and technical changes, and contained in the proposed rule, are implemented by this final rule.

Legislative changes based on or required by sections 4118 and 4119:

- 1) Eliminate enhanced funding;
- 2) Establish timeframes for completing individual quality control reviews; and
- 3) Establish procedures for adjusting liability determinations following appeal decisions.

Policy and technical changes:

- 1) Require State agency QC reviewers to attempt to complete review when a household refuses to cooperate;
- 2) Mandate FNS validation of negative sample for purposes of high performance bonuses;
- 3) Revise procedures for conducting negative case reviews;
- 4) Revise timeframes for household penalties for refusal to cooperate with State and Federal QC reviews;
- 5) Revise procedures for QC reviews of demonstration and SSA processed cases;
- 6) Eliminate requirement to report differences resulting from Federal information exchange systems (FIX) errors;
- 7) Eliminate references to integrated QC; and
- 8) Update definitions section to remove out-dated definitions. (02-014)

#### Statement of Need:

The rule is needed to implement the food stamp quality control provisions of Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

#### Summary of Legal Basis:

The legal basis for this rule is Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

#### Alternatives:

This rule deals with changes required by Public Law 107-171, the Farm Security and Rural Investment Act of 2002. The Department has no discretion in implementing the time frames for completing quality control reviews, the arbitration process, and determining the final error rates; the threshold for potential sanctions and the time period for the sanctions; the calculation for State error rates; the formula for determining liability amounts; the sanction notification; method of payment for liabilities; corrective action planning, and the elimination of enhanced funding. These provisions were effective for the fiscal year 2003 quality control review period and must

have been implemented by FNS and State agencies during fiscal year 2003. This rule also deals in part with discretionary changes to the quality control system resulting from Public Law 107-171. The provision addressing results of appeals is required to be regulated by Public Law 107-171. The remaining changes amend existing regulations and are required to make technical changes resulting from these changes or to update policy consistent with current requirements.

#### Anticipated Cost and Benefits:

The provisions of this rule are not anticipated to have any impact on benefit levels or administrative costs.

#### Risks:

The FSP provides nutrition assistance to millions of Americans nationwide. The quality control system measures the accuracy of States providing food stamp benefits to the program recipients. This rule is intended to implement the quality control provisions of Public Law 107-701, the Farm Security and Rural Investment Act of 2002. It will significantly revise the system for determining State agency liabilities and sanctions for high payment error rates.

#### Timetable:

Action	Date	FR Cite
Interim Final Rule	10/16/03	68 FR 59519
Interim Final Rule Effective	12/15/03	
Interim Final Rule Comment Period End	01/14/04	
NPRM	09/23/05	70 FR 55776
NPRM Comment Period End	12/22/05	
Final Action	03/00/10	

#### Regulatory Flexibility Analysis Required:

No

#### Government Levels Affected:

Federal, Local, State

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**Related RIN:** Merged with 0584-AD37

**RIN:** 0584-AD31

#### USDA—FNS

#### 14. DIRECT CERTIFICATION OF CHILDREN IN FOOD STAMP HOUSEHOLDS AND CERTIFICATION OF HOMELESS, MIGRANT, AND RUNAWAY CHILDREN FOR FREE MEALS IN THE NSLP, SBP, AND SMP

#### Priority:

Other Significant

#### Legal Authority:

PL 108-265, sec 104

#### CFR Citation:

7 CFR 210; 7 CFR 215; 7 CFR 220; 7 CFR 245

#### Legal Deadline:

None

#### Abstract:

In response to Public Law 108-265, which amended the Richard B. Russell National School Lunch Act, 7 CFR 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, will be amended to establish categorical (automatic) eligibility for free meals and free milk upon documentation that a child is (1) homeless as defined by the McKinney-Vento Homeless Assistance Act; (2) a runaway served by grant programs under the Runaway and Homeless Youth Act; or (3) migratory as defined in section 1309(2) of the Elementary and Secondary Education Act. The rule also requires phase-in of mandatory direct certification for children who are members of households receiving food stamps and continues discretionary direct certification for other categorically eligible children. (04-018)

#### Statement of Need:

The changes made to the Richard B. Russell National School Lunch Act concerning direct certification are intended to improve program access, reduce paperwork, and improve the accuracy of the delivery of free meal benefits. This regulation will implement the statutory changes and provide State agencies and local educational agencies with the policies and procedures to conduct mandatory and discretionary direct certification.

#### Summary of Legal Basis:

These changes are being made in response to provisions in Public Law 108-265.

#### Alternatives:

FNS will be working closely with State agencies to implement the changes made by this regulation and will be

developing extensive guidance materials in conjunction with our cooperators.

**Anticipated Cost and Benefits:**

This regulation will reduce paperwork, target benefits more precisely, and will improve program access of eligible school children.

**Risks:**

This regulation may require adjustments to existing computer systems to more readily share information between schools, food stamp offices, and other agencies.

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	02/00/10	
Interim Final Rule Comment Period End	05/00/10	
Final Action	05/00/11	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Local, State

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**Related RIN:** Merged with 0584-AD62

**RIN:** 0584-AD60

**USDA—Food Safety and Inspection Service (FSIS)**

**PROPOSED RULE STAGE**

**15. EGG PRODUCTS INSPECTION REGULATIONS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

21 USC 1031 to 1056

**CFR Citation:**

9 CFR 590.570; 9 CFR 590.575; 9 CFR 590.146; 9 CFR 590.10; 9 CFR 590.411; 9 CFR 590.502; 9 CFR 590.504; 9 CFR 590.580; 9 CFR 591; ...

**Legal Deadline:**

None

**Abstract:**

The Food Safety and Inspection Service (FSIS) is proposing to require egg products plants and establishments that pasteurize shell eggs to develop and implement Hazard Analysis and Critical Control Points (HACCP) systems and Sanitation Standard Operating Procedures (SOPs). FSIS also is proposing pathogen reduction performance standards that would be applicable to egg products and pasteurized shell eggs. FSIS is proposing to amend the Federal egg products inspection regulations by removing current requirements for prior approval by FSIS of egg products plant drawings, specifications, and equipment prior to their use in official plants. The Agency also plans to eliminate the prior label approval system for egg products. This proposal will not encompass shell egg packers. In the near future, FSIS will initiate non-regulatory outreach efforts for shell egg packers that will provide information intended to help them to safely process shell eggs intended for human consumption or further processing.

**Statement of Need:**

The actions being proposed are part of FSIS' regulatory reform effort to improve FSIS' shell egg and egg products food safety regulations, better define the roles of Government and the regulated industry, encourage innovations that will improve food safety, remove unnecessary regulatory burdens on inspected egg products plants, and make the egg products regulations as consistent as possible with the Agency's meat and poultry products regulations. FSIS also is taking these actions in light of changing inspection priorities and recent findings of Salmonella in pasteurized egg products.

This proposal is directly related to FSIS' PR/HACCP initiative.

**Summary of Legal Basis:**

This proposed rule is authorized under the Egg Products Inspection Act (21 U.S.C. 1031 to 1056). It is not the result of any specific mandate by the Congress or a Federal court.

**Alternatives:**

A team of FSIS economists and food technologists is conducting a cost-benefit analysis to evaluate the potential economic impacts of several alternatives on the public, egg products industry, and FSIS. These alternatives include: (1) Taking no regulatory action; (2) requiring all inspected egg products plants to develop, adopt, and implement written sanitation SOPs and HACCP plans; and (3) converting to a lethality-based pathogen reduction performance standard many of the current highly prescriptive egg products processing requirements. The team will consider the effects of a uniform, across-the-board standard for all egg products; a performance standard based on the relative risk of different classes of egg products; and a performance standard based on the relative risks to public health of different production processes.

**Anticipated Cost and Benefits:**

FSIS is analyzing the potential costs of this proposed rulemaking to industry, FSIS and other Federal agencies, State and local governments, small entities, and foreign countries. The expected costs to industry will depend on a number of factors. These costs include the required lethality, or level of pathogen reduction, and the cost of HACCP plan and sanitation SOP development, implementation, and associated employee training. The pathogen reduction costs will depend on the amount of reduction sought and on the classes of product, product formulations, or processes.

Relative enforcement costs to FSIS and Food and Drug Administration may change because the two agencies share responsibility for inspection and oversight of the egg industry and a common farm-to-table approach for shell egg and egg products food safety. Other Federal agencies and local governments are not likely to be affected.

Egg and egg product inspection systems of foreign countries wishing to export eggs and egg products to the U.S. must be equivalent to the U.S. system. FSIS will consult with these countries, as needed, if and when this proposal becomes effective.

This proposal is not likely to have a significant impact on small entities. The entities that would be directly affected by this proposal would be the approximately 80 federally inspected egg products plants, most of which are small businesses, according to Small Business Administration criteria. If

necessary, FSIS will develop compliance guides to assist these small firms in implementing the proposed requirements.

Potential benefits associated with this rulemaking include: Improvements in human health due to pathogen reduction; improved utilization of FSIS inspection program resources; and cost savings resulting from the flexibility of egg products plants in achieving a lethality-based pathogen reduction performance standard. Once specific alternatives are identified, economic analysis will identify the quantitative and qualitative benefits associated with each alternative.

Human health benefits from this rulemaking are likely to be small because of the low level of (chiefly post-processing) contamination of pasteurized egg products. In light of recent scientific studies that raise questions about the efficacy of current regulations, however, it is likely that measurable reductions will be achieved in the risk of foodborne illness.

The preliminary anticipated annualized costs of the proposed action are approximately \$7.0 million. The preliminary anticipated benefits of the proposed action are approximately \$90.0 million per year.

#### Risks:

FSIS believes that this regulatory action may result in a further reduction in the risks associated with egg products. The development of a lethality-based pathogen reduction performance standard for egg products, replacing command-and-control regulations, will remove unnecessary regulatory obstacles to, and provide incentives for, innovation to improve the safety of egg products.

To assess the potential risk-reduction impacts of this rulemaking on the public, an intra-Agency group of scientific and technical experts is conducting a risk management analysis. The group has been charged with identifying the lethality requirement sufficient to ensure the safety of egg products and the alternative methods for implementing the requirement. FSIS has developed new risk assessments for SE in eggs and for *Salmonella* spp. in liquid egg products to evaluate the risk associated with the regulatory alternatives.

#### Timetable:

Action	Date	FR Cite
NPRM	06/00/10	

#### Regulatory Flexibility Analysis Required:

No

#### Small Entities Affected:

Businesses, Governmental Jurisdictions

#### Government Levels Affected:

Federal, State

#### Federalism:

Undetermined

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#### USDA—FSIS

#### 16. PRIOR LABELING APPROVAL SYSTEM: GENERIC LABEL APPROVAL

#### Priority:

Other Significant

#### Legal Authority:

21 USC 451 to 470; 21 USC 601 to 695

#### CFR Citation:

9 CFR 317; 9 CFR 327; 9 CFR 381; 9 CFR 412

#### Legal Deadline:

None

#### Abstract:

This rulemaking will continue an effort initiated several years ago by amending FSIS' regulations to expand the types of labeling that are generically approved. FSIS plans to propose that the submission of labeling for approval prior to use be limited to certain types of labeling, as specified in the regulations. In addition, FSIS plans to reorganize and amend the regulations by consolidating the nutrition labeling rules that currently are stated separately for meat and poultry products (in part 317, subpart B, and part 381, subpart Y, respectively) and by amending their provisions to set out clearly various circumstances under which these products are misbranded.

#### Statement of Need:

Expanding the types of labeling that are generically approved would permit Agency personnel to focus their resources on evaluating only those claims or special statements that have health and safety or economic implications. This would essentially eliminate the time needed for FSIS personnel to evaluate labeling features and allocate more time for staff to work on other duties and responsibilities. A major advantage of this proposal is that it is consistent with FSIS' current regulatory approach, which separates industry and Agency responsibilities.

#### Summary of Legal Basis:

This action is authorized under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (21 U.S.C. 451 et seq.).

#### Alternatives:

FSIS considered several options. The first was to expand the types of labeling that would be generically approved and consolidate into one part, all of the labeling regulations applicable to products regulated under the FMIA and PPIA and the policies currently contained in FSIS Directive 7220.1, Revision 3. The second option FSIS considered was to consolidate only the meat and poultry regulations that are similar and to expand the types of generically approved labeling that can be applied by Federal and certified foreign establishments. The third option and the one favored by FSIS was to amend the prior labeling approval system in an incremental three-phase approach.

#### Anticipated Cost and Benefits:

The proposed rule would permit the Agency to realize an estimated cost savings of \$670,000 over 10 years. The proposed rule would be beneficial because it would streamline the generic labeling process, while imposing no additional cost burden on establishments. Consumers would benefit because industry would have the ability to introduce products into the marketplace more quickly.

#### Risks:

None

#### Timetable:

Action	Date	FR Cite
NPRM	08/00/10	

#### Regulatory Flexibility Analysis Required:

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Undetermined

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**RIN:** 0583-AC59**USDA—FSIS****17. CHANGES TO REGULATORY JURISDICTION OVER CERTAIN FOOD PRODUCTS CONTAINING MEAT AND POULTRY****Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:**

21 USC 601(j); 21 USC 454(f)

**CFR Citation:**

9 CFR 303.1; 9 CFR 381.15

**Legal Deadline:**

None

**Abstract:**

The Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) have concluded that a clearer approach to determining jurisdiction over meat and poultry products is possible. This approach involves considering the contribution of the meat or poultry ingredients to the identity of the food. FSIS is proposing to amend the Federal meat and poultry products inspection regulations to provide consistency and predictability in the regulatory jurisdiction over nine products or product categories. Historically there has been confusion about whether these products fall within the jurisdiction of FSIS or FDA. These proposed changes would exempt cheese and cheese products prepared with less than 50 percent meat or poultry; breads, rolls and buns prepared with less than 50 percent meat or poultry; dried poultry soup mixes; flavor bases and flavors; pizza with meat or poultry; and salad dressings prepared with less than 50 percent meat or poultry from the requirements of the Federal Meat

Inspection Act and the Poultry Product Inspection Act and would clarify that bagel dogs, natural casings, and close faced-sandwiches are subject to the requirements of the Federal Meat Inspection Act and the Poultry Products Inspection Act.

**Statement of Need:**

Over the years, FSIS has made decisions about the jurisdiction under which food products containing meat or poultry ingredients are produced based on the amount of meat or poultry in the product; whether the product is represented as a meat or poultry product (that is, whether a term that refers to meat or poultry is used on labeling); whether the product is perceived by consumers as a product of the meat or poultry industries; and whether the product contains poultry or meat from an accepted source. With regard to the consumer perception factor, FSIS made decisions on a case-by-case basis, mostly in response to situations involving determinations for compliance and enforcement. Although this case-by-case approach resulted in decisions that made sense at the time that they were made, a review in 2004 to 2005 by a working group of FSIS and FDA representatives showed that some of the decisions do not appear to be fully consistent with other product decisions and that the reasoning behind various determinations was not fully articulated or supported.

**Summary of Legal Basis:**

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 to 695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 to 470), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1032), and the regulations that implement these Acts, FSIS has authority over all meat food and poultry products and processed egg products. Under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the regulations that implement it, FDA has authority over all foods not under FSIS' jurisdiction, including dairy, bread and other grain products, vegetables and other produce, and other products, such as seafood.

According to the provisions of the FMIA and PPIA, the Secretary has the authority to exempt certain human food products from the definition of a meat food product (21 U.S.C. 601(j)) or a poultry product (20 U.S.C. 454(f)) based on either of two factors: (1) The product contains only a relatively small proportion of livestock ingredients or poultry ingredients, or (2) the product

historically has not been considered by consumers as a product of the meat food or poultry industry, and under such conditions as he or she may prescribe to ensure that the livestock or poultry ingredients are not adulterated and that the products are not represented as meat food or poultry products.

**Alternatives:**

FSIS has considered over the years a number of variations to clarify the confusion regarding jurisdiction for these various products.

Alternative 1: Maintain the status quo. Although FSIS has considered taking no action at this time, the Agency does not recommend this option because of the continued confusion that exists among industry and consumers as to jurisdictional coverage for nine categories of products.

Alternative 2: Reassess the statutory factors for making jurisdiction decision and recommend an amendment. The amendment of the statute would be from the historical perception factor because that is the factor, of the two statutory factors, that the working group identified as leading to the state of confusion about the jurisdiction of certain products containing meat or poultry.

Alternative 3: Adopt some of the FDA/FSIS working group's suggested approach to making clear and transparent jurisdiction decisions by proposing changes to regulations to codify the current policies on exempted products.

**Anticipated Cost and Benefits:**

FSIS estimates that the initial and recurring costs of the rule to industry would be approximately \$5 million and \$7 million, respectively. These costs would be attributable to new Sanitation SOP and HACCP plan development, as well as to labeling changes and training. FSIS would incur \$7 million in annual recurring costs (salaries and benefits). Establishments coming under FSIS jurisdiction also would incur costs for recordkeeping, monitoring, testing, and annual HACCP plan reassessment.

Benefits to industry would accrue from reduced confusion over Agency jurisdiction, which may affect labeling and recordkeeping costs. There may be spill-over benefits accruing from changes in consumer behavior. Also, there would be improvement in efficiency in use of FDA and FSIS resources.

**Risks:**

None

**Timetable:**

Action	Date	FR Cite
NPRM	03/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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RIN: 0583-AD28

**USDA—FSIS****18. NEW POULTRY SLAUGHTER INSPECTION****Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

21 USC 451 et seq

**CFR Citation:**

9 CFR 381.66; 9 CFR 381.67; 9 CFR 381.76; 9 CFR 381.83; 9 CFR 381.91; 9 CFR 381.94

**Legal Deadline:**

None

**Abstract:**

FSIS is proposing a new inspection system for young poultry slaughter establishments that would facilitate public health-based inspection. This new system would be available initially only to young chicken slaughter establishments. Establishments that slaughter broilers, fryers, roasters, and Cornish game hens (as defined in 9 CFR 381.170) would be considered as "young chicken establishments." FSIS is also proposing to revoke the provisions that allow young chicken slaughter establishments to operate under the current Streamlined Inspection System (SIS) or the New Line Speed (NELS) Inspection System.

The proposed rule would establish new performance standards to reduce pathogens. FSIS anticipates that this proposed rule would provide the framework for action to provide public health-based inspection in all establishments that slaughter amenable poultry species.

Under the proposed new system, young chicken slaughter establishments would be required to sort chicken carcasses and to conduct other activities to ensure that carcasses are not adulterated before they enter the chilling tank.

**Statement of Need:**

Because of the risk to the public health associated with pathogens on young chicken carcasses, FSIS is proposing a new inspection system that would allow for more effective inspection of young chicken carcasses, would allow the Agency to more effectively allocate its resources, would encourage industry to more readily use new technology, and would include new performance standards to reduce pathogens.

This proposed rule is an example of regulatory reform because it would facilitate technological innovation in young chicken slaughter establishments. It would likely result in more cost-effective dressing of young chickens that are ready to cook or ready for further processing. Similarly, it would likely result in more efficient and effective use of Agency resources.

**Summary of Legal Basis:**

The Secretary of Agriculture is charged by the Poultry Products Inspection Act (PPIA—21 U.S.C. 451 et seq.) with carrying out a mandatory poultry products inspection program. The Act requires post-mortem inspection of all carcasses of slaughtered poultry subject to the Act and such reinspection as deemed necessary (21 U.S.C. 455(b)). The Secretary is authorized to promulgate such rules and regulations as are necessary to carry out the provisions of the Act (21 U.S.C. 463(b)). The Agency has tentatively determined that this rule would facilitate FSIS post-mortem inspection of young chicken carcasses. The proposed new system would likely result in more efficient and effective use of Agency resources and in industry innovations.

**Alternatives:**

FSIS considered the following options in developing this proposal:

- 1) No action.
- 2) Propose to implement HACCP-Based Inspection Models Pilot in regulations.

3) Propose to establish a mandatory, rather than a voluntary, new inspection system for young chicken slaughter establishments.

4) Propose standards of identity regulations for young chickens that include trim and processing defect criteria and that take into account the intended use of the product.

5) Propose a voluntary new inspection system for young chicken slaughter establishments and propose standards of identity for whole chickens, regardless of the products' intended use.

**Anticipated Cost and Benefits:**

The proposed performance standards and the implementation of public health-based inspection would likely improve the public health. FSIS is conducting a risk assessment for this proposed rule to assess the likely public health benefits that the implementation of this rule may achieve.

Establishments that volunteer for this proposed new inspection system alternative would likely need to make capital investments in facilities and equipment. They may also need to add labor (trained employees). However, one of the beneficial effects of these investments would likely be the lowering of the average cost per pound to dress poultry properly. Cost savings would likely result because of increased line speeds, increased productivity, and increased flexibility to industry. The expected lower average unit cost for dressing poultry would likely give a marketing advantage to establishments under the new system. Consumers would likely benefit from lower retail prices for high quality poultry products. The rule would also likely provide opportunities for the industry to innovate because of the increased flexibility it would allow poultry slaughter establishments. In addition, in the public sector, benefits would accrue to FSIS from the more effective deployment of FSIS inspection program personnel to verify process control based on risk factors at each establishment.

**Risks:**

Salmonella and other pathogens are present on a substantial portion of poultry carcasses inspected by FSIS. Foodborne salmonella cause a large number of human illnesses that at times lead to hospitalization and even death. There is an apparent relationship between human illness and prevalence levels for salmonella in young chicken

carcasses. FSIS believes that through better allocation of inspection resources and the use of performance standards, it would be able to reduce the prevalence of salmonella and other pathogens in young chickens.

**Timetable:**

Action	Date	FR Cite
NPRM	09/00/10	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

State

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**RIN:** 0583-AD32

**USDA-FSIS**

**19. NOTIFICATION, DOCUMENTATION, AND RECORDKEEPING REQUIREMENTS FOR INSPECTED ESTABLISHMENTS**

**Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:**

21 USC 612 to 613; 21 USC 459

**CFR Citation:**

9 CFR 417.4; ; 9 CFR 418

**Legal Deadline:**

None

**Abstract:**

The Food Safety and Inspection Service (FSIS) is proposing to require establishments subject to inspection under the Federal Meat Inspection Act and the Poultry Products Inspection Act to promptly notify the Secretary of Agriculture that an adulterated or misbranded product received by or originating from the establishment has entered into commerce, if the establishment believes or has reason to believe that this has happened. FSIS is

also proposing to require these establishments to: (1) prepare and maintain current procedures for the recall of all products produced and shipped by the establishment; and (2) document each reassessment of the process control plans of the establishment.

**Statement of Need:**

The Food, Conservation, and Energy Act of 2008 (Public Law 110-246, Sec. 11017), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) to require establishments subject to inspection under these Acts to promptly notify the Secretary that an adulterated or misbranded product received by or originating from the establishment has entered into commerce, if the establishment believes or has reason to believe that this has happened. Section 11017 also requires establishments subject to inspection under the FMIA and PPIA to: (1) prepare and maintain current procedures for the recall of all products produced and shipped by the establishment; and (2) document each reassessment of the process control plans of the establishment.

**Summary of Legal Basis:**

21 U.S.C. 612 and 613; 21 U.S.C. 459, and Public Law 110-246, Sec. 11017.

**Alternatives:**

The option of no rulemaking is unavailable.

**Anticipated Cost and Benefits:**

Approximate costs: \$5.0 million for labor and costs; \$5.2 million for first year costs; \$0.7 million average costs adjusted with a 3% inflation rate for following years. Total approximate costs: \$10.2 million. The average cost of this proposed rule to small entities is expected to be less than one tenth of one cent of meat and poultry food products per annum. Therefore, FSIS has made an initial determination that this rule will not have a significant economic impact on a substantial number of small entities.

Approximate benefits: benefits have not been monetized because quantified data on benefits attributable to this proposed rule are not available. Non-monetary benefits include improved protection of the public health, improved HACCP plans, and improved recall effectiveness.

**Risks:**

In preparing regulations on the shipment of adulterated meat and

poultry products by meat and poultry establishments, the preparation and maintenance of procedures for recalled products produced and shipped by establishments, and the documentation of each reassessment of the process control plans by the establishment, the Agency will consider any risks to public health or other pertinent risks associated with these actions.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/10	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 0583-AD34

**USDA-FSIS**

**20. MANDATORY INSPECTION OF CATFISH AND CATFISH PRODUCTS**

**Priority:**

Other Significant

**Legal Authority:**

21 USC 601 et seq PL 110-249, sec 11016

**CFR Citation:**

9 CFR ch III, subchapter F (new)

**Legal Deadline:**

Final, Statutory, December 2009, Final regulations NLT 18 months after enactment of PL 110-246.

**Abstract:**

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, sec. 11016), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) to make catfish an amenable species under the FMIA. Amenable species must be inspected, so this rule will define inspection



requirements for catfish. The regulations will define "catfish" and the scope of coverage of the regulations to apply to establishments that process farm-raised species of catfish and to catfish and catfish products. The regulations will take into account the conditions under which the catfish are raised and transported to a processing establishment.

#### Statement of Need:

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, sec. 11016), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) to make catfish an amenable species under the FMIA. The Farm Bill directs the Department to issue final regulations implementing the FMIA amendments not later than 18 months after the enactment date (June 18, 2008) of the legislation.

#### Summary of Legal Basis:

21 U.S.C. 601 to 695 and Public Law 110-246, sec. 11016

#### Alternatives:

The option of no rulemaking is unavailable. The Agency will consider alternative methods of implementation and levels of stringency, and the effects on foreign and domestic commerce and on small business associated with the alternatives.

#### Anticipated Cost and Benefits:

FSIS anticipates benefits from uniform standards and the more extensive and intensive inspection service that FSIS provides (compared with current voluntary inspection programs). FSIS would apply requirements for imported catfish that would be equivalent to those applying to catfish raised and processed in the United States.

#### Risks:

In preparing regulations on catfish and catfish products, the Agency will consider any risks to public health or other pertinent risks associated with the production, processing, and distribution of the products. FSIS will determine, through scientific risk assessment procedures, the magnitude of the risks associated with catfish and how they compare with those associated with other foods in FSIS's jurisdiction.

#### Timetable:

Action	Date	FR Cite
NPRM	02/00/10	

#### Regulatory Flexibility Analysis Required:

Undetermined

#### Small Entities Affected:

Businesses

#### Government Levels Affected:

Federal, State

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RIN: 0583-AD36

#### USDA—FSIS

### 21. • ELECTRONIC FOREIGN IMPORT CERTIFICATES AND SANITATION STANDARD OPERATING PROCEDURES (SOPS) REQUIREMENTS FOR OFFICIAL IMPORT ESTABLISHMENTS

#### Priority:

Other Significant

#### Legal Authority:

Federal Meat Inspection Act (FMIA) (21 U.S.C. 601-695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451-470); Egg Products Inspection Act (EPIA)(21 U.S.C. 1031-1056)

#### CFR Citation:

9 CFR 304.3; 9 CFR 327.2, 327.4, ; 9 CFR 381.196, 391.197, 381.198;; 9 CFR 590.915, 590.920

#### Legal Deadline:

None

#### Abstract:

FSIS is proposing to amend meat, poultry, and egg products regulations to provide for the electronic submission of import product and establishment applications and certificates and delete the "streamlined" inspection procedures for Canadian product. In addition, FSIS is amending its regulations to require Sanitation Standard Operating Procedures (Sanitation SOPs) in official import inspection establishments.

#### Statement of Need:

FSIS is proposing these regulations to provide for the electronic submission of import product and establishment certificates to allow the electronic interchange and transmission of data to Agency's computer-based Public Health

Information System (PHIS), which is currently under development. Providing an electronic format for imported certificates will enable the government-to-government exchange of data between FSIS and foreign customs and inspection authorities. Sanitation SOPs are written procedures that are developed and implemented by establishments to prevent direct contamination or adulteration of meat or poultry products. Sanitation SOPs are required at official (domestic) establishments. Current regulations are ambiguous concerning Sanitation SOP requirements for official import inspection establishments. FSIS is proposing to require that official import inspection establishments comply with the Sanitation SOPs regulations to eliminate that ambiguity and ensure that products do not become contaminated as they enter this country.

#### Summary of Legal Basis:

The authorities for this proposed rule are: the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601-695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451-470), Egg Products Inspection Act (EPIA)(21 U.S.C. 1031-1056) and the regulations that implement these Acts.

#### Alternatives:

The electronic processing of import certifications is voluntary, therefore, importers still have the option of using the current paper-based system. The Agency is proposing to require that official import inspection establishments adopt Sanitation SOPs to prevent direct contamination or adulteration of product. Therefore, no alternatives were considered.

#### Anticipated Cost and Benefits:

The opportunity cost of not amending the regulations would hinder the Agency's implementation of PHIS. The amendments that provide for the electronic interchange of data are voluntary, so establishments will not take them on unless the benefits outweigh the costs. It has been the Agency's expectation that official import establishments will maintain Sanitation SOPs, this proposed rule codifies that expectation. Therefore, the proposed amendment on sanitation requirements will have no costs to the industry. The proposed rule will facilitate FSIS's use of the PHIS system, enabling the electronic transmission, issuance, and authorization of imported product data. The PHIS will enable FSIS import inspection personnel to

verify and authorize shipments using electronic data, reducing inspector workload. The electronic exchange of certificate data will help to reduce the fraudulent alteration or reproduction of certificates. The Agency estimates that the electronic processing of import certificates will reduce the data-entry time for import inspectors, by 50 to 60 percent.

**Risks:**

None

**Timetable:**

Action	Date	FR Cite
NPRM	03/00/10	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**International Impacts:**

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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RIN: 0583-AD39

**USDA—FSIS**

**22. • ELECTRONIC EXPORT APPLICATION AND CERTIFICATION AS A REIMBURSABLE SERVICE AND FLEXIBILITY IN THE REQUIREMENTS FOR OFFICIAL EXPORT INSPECTION MARKS, DEVICES, AND CERTIFICATES**

**Priority:**

Other Significant

**Legal Authority:**

Federal Meat Inspection Act (FMIA) (21 U.S.C. 601-695); Poultry Products Inspection Act (PPIA) (21 U.S.C. 451-470); Egg Products Inspection Act (EPIA) (21 U.S.C. 1031-1056)

**CFR Citation:**

9 CFR 312.8; 9 CFR 322.1, 322.2, ; 9 CFR 381.104, 381.105, 381.106; 9 CFR 590; 9 CFR 350.3

**Legal Deadline:**

None

**Abstract:**

The Food Safety and Inspection Service (FSIS) is proposing to amend the meat, poultry, and egg product inspection regulations to provide an electronic export application and certification process that will be available as an alternative to the paper-based application and certification method currently in use. The electronic export application and certification process will be available as a reimbursable inspection service. FSIS is also proposing to provide establishments that export meat, poultry, and egg products with flexibility in the official export inspection marks, and devices used and how the products are marked for export.

**Statement of Need:**

FSIS is proposing these regulations to implement the Public Health Information System (PHIS), a computer-based inspection information system currently under development. The PHIS will include automation of the export application and certification process. The current export application and certification regulations provide only for a paper-based process, this proposed rule will amend the regulations to provide for the electronic process. Additionally, this rule is needed to provide this automated services as a reimbursable certification service charged to the exporter.

**Summary of Legal Basis:**

The authorities for this proposed rule are: the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601-695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451-470), the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031-1056), and the regulations that implement these Acts. FSIS is proposing the electronic export application and certification process as a reimbursable service under the Agricultural Marketing Act 7 U.S.C. 1622(h), that provides the Secretary of Agriculture with the authority to: "inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of

such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire."

**Alternatives:**

The electronic processing of export applications and certifications is being proposed as a voluntary service, therefore, exporters have the option of continuing to use the current paper-based system. Therefore, no alternatives were considered.

**Anticipated Cost and Benefits:**

FSIS estimates that it will take inspection personnel 1 hour to process an electronic application and issue an electronic certificate. Based on a workload of accessing and processing an estimated 350,000 applications/certificates per year, at a base time rate of \$49.93 per hour, the cost of recouping the inspector's labor costs for 2009 would be \$17.4 million. The amount charged to the exporter depends upon the number of electronic applications submitted. The use of the electronic export application and certificate system is voluntary. Therefore, exporters will not use this service unless the benefits outweigh the cost. The electronic export application and certificate process will reduce and expedite industry workload by eliminating the physical handling and processing of paperwork. The electronic exchange of export information between the U.S. and foreign governments will help reduce the fraudulent alteration or reproduction of certificates. The electronic system will process the applications and certificates will permit exporters to move their products faster, thereby increasing the amount of revenues received at a faster rate. The electronic system will provide a streamlined and integrated method of processing export applications and certificates.

**Risks:**

None

**Timetable:**

Action	Date	FR Cite
NPRM	03/00/10	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**International Impacts:**

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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RIN: 0583-AD41

**USDA—FSIS**


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**FINAL RULE STAGE**


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**23. PERFORMANCE STANDARDS FOR  
THE PRODUCTION OF PROCESSED  
MEAT AND POULTRY PRODUCTS;  
CONTROL OF LISTERIA  
MONOCYTOGENES IN  
READY-TO-EAT MEAT AND  
POULTRY PRODUCTS**
**Priority:**

Economically Significant. Major under  
5 USC 801.

**Legal Authority:**

21 USC 451 et seq; 21 USC 601 et seq

**CFR Citation:**

9 CFR 301; 9 CFR 303; 9 CFR 317; 9  
CFR 318; 9 CFR 319; 9 CFR 320; 9 CFR  
325; 9 CFR 331; 9 CFR 381; 9 CFR 417;  
9 CFR 430; 9 CFR 431

**Legal Deadline:**

None

**Abstract:**

FSIS has proposed to establish pathogen reduction performance standards for all ready-to-eat (RTE) and partially heat-treated meat and poultry products, and measures, including testing, to control *Listeria monocytogenes* in RTE products. The performance standards spell out the objective level of pathogen reduction that establishments must meet during their operations in order to produce safe products but allow the use of customized, plant-specific processing procedures other than those prescribed in the earlier regulations. With HACCP,

food safety performance standards give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls, while providing objective, measurable standards that can be verified by Agency inspectional oversight. This set of performance standards will include and be consistent with standards already in place for certain ready-to-eat meat and poultry products.

**Statement of Need:**

Although FSIS routinely samples and tests some ready-to-eat products for the presence of pathogens prior to distribution, there are no specific regulatory pathogen reduction requirements for most of these products. The proposed performance standards are necessary to help ensure the safety of these products; give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls; and provide objective, measurable standards that can be verified by Agency oversight.

**Summary of Legal Basis:**

Under the Federal Meat Inspection Act (21 U.S.C. 601 to 695) and the Poultry Product Inspection Act (21 U.S.C. 451 to 470), FSIS issues regulations governing the production of meat and poultry products prepared for distribution in commerce. The regulations, along with FSIS inspection programs, are designed to ensure that meat and poultry products are safe, not adulterated, and properly marked, labeled, and packaged.

**Alternatives:**

As an alternative to all of the proposed requirements, FSIS considered taking no action. As alternatives to the proposed performance standard requirements, FSIS considered end-product testing and requiring "use-by" date labeling on ready-to-eat products.

**Anticipated Cost and Benefits:**

Benefits are expected to result from fewer contaminated products entering commercial food distribution channels as a result of improved sanitation and process controls and in-plant verification. FSIS believes that the benefits of the rule would exceed the total costs of implementing its provisions. FSIS currently estimates net benefits from the 2003 interim final rule at \$470 to \$575 million, with annual recurring costs at \$150.4 million, if FSIS discounts the capital cost at 7%. FSIS is continuing to

analyze the potential impact of the other provisions of the proposal.

The other main provisions of the proposed rule are: Lethality performance standards for *Salmonella* and *E. coli* O157:H7 and stabilization performance standards for *C. perfringens* that firms must meet when producing RTE meat and poultry products. Most of the costs of these requirements would be associated with one-time process performance validation in the first year of implementation of the rule and with revision of HACCP plans. Benefits are expected to result from the entry into commercial food distribution channels of product with lower levels of contamination resulting from improved in-plant process verification and sanitation. Consequently, there will be fewer cases of foodborne illness.

**Risks:**

Before FSIS published the proposed rule, FDA and FSIS had estimated that each year *L. monocytogenes* caused 2,540 cases of foodborne illness, including 500 fatalities. The Agencies estimated that about 65.3 percent of these cases, or 1660 cases and 322 deaths per year, were attributable to RTE meat and poultry products. The analysis of the interim final rule on control of *L. monocytogenes* conservatively estimated that implementation of the rule would lead to an annual reduction of 27.3 deaths and 136.7 illnesses at the median. FSIS is continuing to analyze data on production volume and *Listeria* controls in the RTE meat and poultry products industry and is using the FSIS risk assessment model for *L. monocytogenes* to determine the likely risk reduction effects of the rule. Preliminary results indicate that the risk reductions being achieved are substantially greater than those estimated in the analysis of the interim rule.

FSIS is also analyzing the potential risk reductions that might be achieved by implementing the lethality and stabilization performance standards for products that would be subject to the proposed rule. The risk reductions to be achieved by the proposed rule and that are being achieved by the interim rule are intended to contribute to the Agency's public health protection effort.

**Timetable:**

Action	Date	FR Cite
NPRM	02/27/01	66 FR 12590

Action	Date	FR Cite
NPRM Comment Period End	05/29/01	
NPRM Comment Period Extended	07/03/01	66 FR 35112
NPRM Comment Period End	09/10/01	
Interim Final Rule	06/06/03	68 FR 34208
Interim Final Rule Effective	10/06/03	
Interim Final Rule Comment Period End	01/31/05	
NPRM Comment Period Reopened	03/24/05	70 FR 15017
NPRM Comment Period End	05/09/05	
Affirmation of Interim Final Rule	03/00/10	
Final Action	08/00/10	

### Regulatory Flexibility Analysis Required:

Yes

### Small Entities Affected:

Businesses

### Government Levels Affected:

Undetermined

### Agency Contact:

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RIN: 0583-AC46

### USDA—FSIS

### 24. FEDERAL—STATE INTERSTATE SHIPMENT COOPERATIVE INSPECTION PROGRAM

#### Priority:

Other Significant

#### Legal Authority:

PL 110-246 (section 11015)

#### CFR Citation:

Not Yet Determined

#### Legal Deadline:

Final, Statutory, December 18, 2009.

#### Abstract:

FSIS is proposing regulations to implement a new voluntary Federal-State cooperative inspection program under which State-inspected establishments with 25 or fewer

employees would be eligible to ship meat and poultry products in interstate commerce. State-inspected establishments selected to participate in this program would be required to comply with all Federal standards under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). These establishments would receive inspection services from State inspection personnel that have been trained and certified to assist with enforcement of the FMIA and PPIA. Meat and poultry products produced under the program that have been inspected and passed by selected State-inspection personnel would bear a Federal mark of inspection. FSIS is proposing these regulations in response to the Food, Conservation, and Energy Act, enacted on June 18, 2008 (the 2008 Farm Bill). Section 11015 of 2008 Farm Bill provides for the interstate shipment of State-inspected meat and poultry product from selected establishments and requires that FSIS promulgate implementing regulations no later than 18 months from the date of its enactment

#### Statement of Need:

This action is needed to implement a new Federal-State cooperative program that will permit certain State-inspected establishments to ship meat and poultry products in interstate commerce. Inspection services for establishments selected to participate in the program will be provided by state inspection personnel that have been trained and certified in the administration and enforcement of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, et seq.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, et seq.) Meat and poultry products produced by establishments selected to participate in the program will bear a Federal mark of inspection.

#### Summary of Legal Basis:

This action is authorized under section 11015 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) (PL-110-246). Section 11015 amends the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, et seq.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, et seq.) to establish an optional Federal-State cooperative program under which State-inspected establishments would be permitted to ship meat and poultry products in interstate commerce. The law requires that FSIS promulgate implementing regulations no later than 18 months after the date of enactment.

#### Alternatives:

1. No action: FSIS did not consider the alternative of no action because section 11015 of the 2008 Farm Bill requires that it promulgate regulations to implement the new Federal-State cooperative program. The Agency did consider alternatives on how to implement the new program.

2. Limit participation in the program to state-inspected establishments with 25 or fewer employees on average: Under the law, state-inspected establishments that have 25 or fewer employees on average are permitted to participate in the program. The law also provides that FSIS may select establishments that employ more than 25 but fewer than 35 employees on average as of June 18, 2008 (the date of enactment) to participate in the program. Under the law, if these establishments employ more than 25 employees on average 3 years after FSIS promulgates implementing regulations, they are required to transition to a Federal establishment. FSIS rejected the option of limiting the program to establishment that employ 25 or fewer employees on average to give additional small establishments the opportunity to participate in the program and ship their meat of poultry products in interstate commerce.

3. Permit establishments with 25 to 35 employees on average as of June 18, 2008, to participate in the program. FSIS chose the option of permitting these establishments to be selected to participate in the program to give additional small establishments the opportunity to ship their meat and poultry products in interstate commerce. Under this option, FSIS will develop a procedure to transition any establishment that employs more than 25 people on average to a Federal establishment. Establishments that employ 24 to 35 employees on average as of June 18, 2008, would be subject to the transition procedure beginning on the date three years after the Agency promulgates implementing regulations.

#### Anticipated Cost and Benefits:

FSIS is analyzing the costs of this proposed rule to industry, FSIS, State and local governments, small entities, and foreign countries. Participation in the new Federal-State cooperative program will be optional. Thus, the costs and benefits associated with the proposed rule will depend on the number of States and establishments that chose to participate. Very small and certain small establishments State-

inspected establishments that are selected to participate in the program are likely to benefit from the program because they will be permitted sell their products to consumers in other States and foreign countries.

**Risks:**

None.

**Timetable:**

Action	Date	FR Cite
NPRM	09/16/09	74 FR 47648
NPRM Comment Period End	11/16/09	
Final Action	09/00/10	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, State

**Federalism:**

This action may have federalism implications as defined in EO 13132.

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RIN: 0583-AD37

**USDA—Rural Business-Cooperative Service (RBS)****PRERULE STAGE****25. RURAL ENERGY SELF-SUFFICIENCY INITIATIVE—SECTION 9009****Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:**

PL 110-246

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The Secretary shall establish a Rural Energy Self-Sufficiency Initiative (grant program) to provide financial assistance for the purpose of enabling eligible rural communities to substantially increase the energy self-sufficiency of the eligible rural communities.

Business Programs has the primary role in program implementation and will work in consultation with the Forest Service on Community Wood Energy Program. The Forest Service has operated a program in the past to assist rural school systems in the use of alternative fuels for heating physical plants. Their expertise will assist Rural Development in promulgating a valuable program, well suited to the needs of rural communities.

**Statement of Need:**

This is a new grant program authorized by the Farm Bill. The purpose of Section 9009, Rural Energy Self-Sufficiency Initiative, is to provide financial assistance to enable eligible rural communities to substantially increase the energy self-sufficiency.

**Summary of Legal Basis:**

The Rural Energy Self-Sufficiency Initiative was authorized by the Food, Conservation, and Energy Act of 2008, which made available \$5 million annually in discretionary funding through 2012, but no funds have been made available to date.

**Alternatives:**

An alternative would be to publish a proposed rule without an Advance Notice of Proposed Rulemaking. The Farm Bill currently does not clearly define eligible rural communities or what eligible entities can apply on behalf of an eligible community. There are no maximum or minimum grant amounts set in this program. Additionally, the Farm Bill does not include any scoring requirements to determine who would receive a grant under the program. There are other program components not defined in the statute. Because of the limited discretionary funding for this program, scoring requirements would need to be determined based on extremely focused parameters. A determination would need to be made as to the size of the average project, particularly when you are considering a community submitting an application to develop and install an integrated renewable energy system. The program will need to clearly define an eligible rural community and what type of applicants would be eligible.

**Anticipated Cost and Benefits:**

It is anticipated that there will be costs directly attributable to the contractor, which is assisting with drafting the notice. Other costs would be internal costs associated with the promulgation of the rule. The Agency is confident that the regulations will contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be a benefit to the agency as well as potential applicants considering applying for assistance under this program. Benefits accruing to the publishing of an advance notice would enable the Agency to use the public comments to develop a more focused proposed rule.

**Risks:**

The proposed action does not mitigate risk to the public health or safety or to the environment.

**Timetable:**

Action	Date	FR Cite
ANPRM	12/00/09	
NPRM	07/00/10	
NPRM Comment Period End	09/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Local

**Federalism:**

Undetermined

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RIN: 0570-AA77

## USDA—RBS

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**PROPOSED RULE STAGE**


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**26. GRANTS FOR EXPANSION OF  
EMPLOYMENT OPPORTUNITIES FOR  
INDIVIDUALS WITH DISABILITIES IN  
RURAL AREAS—SECTION 6023**
**Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

Not Yet Determined

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

This is a new program created by the Food, Conservation and Energy Act of 2008 (2008 Farm Bill). The purpose of the section is to provide grants to nonprofit organizations to expand and enhance employment opportunities for individuals with disabilities in rural areas.

**Statement of Need:**

There is no existing program regulation. USDA Rural Business-Cooperative Service (RBS) is promulgating regulations to implement section 6023. The regulation will provide assistance, which includes grants to nonprofit organizations or consortium of nonprofit organization that have a significant focus on serving the needs of individuals with disabilities. Assistance will be awarded on a competitive basis. Regulatory implementation may include certain existing requirements identified in 7 CFR for civil rights requirements, grant servicing requirements, and so forth.

**Summary of Legal Basis:**

The Expansion of Employment Opportunities for Individuals with Disabilities in Rural Areas is authorized by the Food, Conservation and Energy Act of 2008. The purpose of the section is to provide grants to nonprofit organizations to expand and enhance employment opportunities for individuals with disabilities in rural areas.

**Alternatives:**

There are no alternatives to issuing a proposed regulation in order to allow the public opportunity to provide comments on the program requirements.

**Anticipated Cost and Benefits:**

The only costs, aside from contractor costs, are internal costs associated with the promulgation of the proposed rule. The Agency is confident that the regulation will contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be a benefit to the Agency as well as organizations who utilize the program.

**Risks:**

None noted.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/10	
NPRM Comment Period End	03/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

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RIN: 0570-AA72

## USDA—RBS

**27. BIOREFINERY ASSISTANCE  
PROGRAM—SECTION 9003**
**Priority:**

Other Significant

**Legal Authority:**

PL 110-246

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The purpose of section 9003 is to assist in the development of new and emerging technologies for the development of advanced biofuels. Advanced biofuels are fuels derived from renewable biomass other than corn kernel starch. The program will increase energy independence, promote resource conservation, diversify markets for agricultural and forestry products, create jobs, and enhance economic development in rural economies. Assistance includes grants and guaranteed loans. Grants will be awarded on a competitive basis. Eligible entities include individuals, entities, Indians tribes, units of State or local governments, farm cooperatives, farmer cooperative organizations, association of agricultural producers, National Laboratories, institutions of higher learning, rural electric cooperatives, public power entities, or a consortium of any of the entities. Regulatory implementation may include certain requirements identified in existing Rural Business-Cooperative Service regulations for the Business and Industry Guaranteed Loan and the Rural Energy for America programs.

**Statement of Need:**

The program will increase energy independence, promote resource conservation, diversify markets for agricultural and forestry products, create jobs, and enhance economic development in rural economies. The program was originally announced in the Federal Register as an Advanced Notice of Proposed Rulemaking on November 20, 2008.

**Summary of Legal Basis:**

The Biorefinery Assistance program was authorized by the Food, Conservation, and Energy Act of 2008, which made available \$75,000,000 in mandatory funding for 2009 and \$245,000,000 in mandatory funding for 2010, till expended. Additionally, the 2008 Farm Bill provided an authorization to appropriate up to \$150,000,000 in discretionary funding for each fiscal year 2009 through 2012. The program provides loan guarantees for the development, construction and retrofitting of commercial-scale biorefineries, and grants to help pay for the development and construction costs of demonstration-scale biorefineries. The purpose is to assist in the development of new and emerging technologies for the development of advanced biofuels.

**Alternatives:**

A Notice of Funding Availability was published in the Federal Register on November 20, 2008, to implement the program for fiscal year 2009. Permanent regulation need to be implemented to provide funding in 2010 and further clarify of the program

**Anticipated Cost and Benefits:**

It is anticipated that there will be costs directly attributable to the contractor, which is assisting with drafting the proposed rule. Other costs would be internal costs associated with the promulgation of the proposed rule. The Agency is confident that the regulations contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be a benefit to the agency as well as potential applicants considering applying for payments under this program. Benefits accruing to the publishing of a proposed rule would clarify the process, payments, eligibility and understanding of any ambiguity conveyed in the initial announcement of the program. Additional benefits stem from the ability of the public and interested parties to comment on program and consider issues concerning the geographic location and demographic composition of locatable projects as well as the ownership criteria.

**Risks:**

The proposed action does not mitigate risk to the public health or safety or to the environment.

**Timetable:**

Action	Date	FR Cite
ANPRM	11/20/08	73 FR 70542
ANPRM Comment Period End	01/20/09	
NPRM	01/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 0570-AA73

**USDA—RBS****28. RURAL BUSINESS RE-POWERING ASSISTANCE—SECTION 9004****Priority:**

Other Significant

**Legal Authority:**

PL 110-246

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The proposed action will encourage biorefineries existing at the time the 2008 Farm Bill became law to replace fossil fuels used to produce heat or power used in their operation by making payments for installation of new systems that use renewable biomass and/or new production of energy from renewable biomass.

Payments may be made under section 9004 to any biorefinery that meets the requirements of this section for a period determined by the Secretary. The Secretary shall determine the amount of payments to be made after considering factors addressing fossil fuel offsets and the cost effectiveness of renewable biomass systems.

**Statement of Need:**

The new regulations for the program will clarify the application process and definitively provide rules and regulation regarding the payment process. These changes are essential to clarify for verification and measurement of the energy produced which is the basis for eighty percent of payments under this program.

**Summary of Legal Basis:**

The Repowering Assistance program was authorized by the Food, Conservation, and Energy Act of 2008, which made available \$35,000,000 in mandatory funding for 2009. A Notice

of Funding Availability (NOFA) was published on June 12, 2009, making \$20 million available and \$35 million will be available in 2010. The 2008 Farm Bill also authorizes \$15,000,000 in discretionary funding to be appropriated for each fiscal year 2009 through 2012. The program provides for the payments to provide incentives to biorefineries to use renewable biomass for heat and or power. The purpose is to reduce the dependence of biofuel producers on fossil fuels and to develop renewable biomass as an alternative energy source. The proposed new regulations are an administrative, rather than legislative, initiative.

**Alternatives:**

Other than issuing a NOFA with the possibility that all funds available for this program would be obligated, there is no alternative to issuing a proposed regulation. The proposed regulation provides an opportunity for public comments on aspects of the program such as level of payments, geographical eligibility, time frame of prospective payments and ownership criteria.

**Anticipated Cost and Benefits:**

The only costs, aside from contractor costs, are internal costs associated with the promulgation of the proposed rule. The Agency is confident that the regulations contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be benefit to the agency as well as potential applicants considering applying for payments under this program. Benefits accruing to the publishing from a proposed rule would be attributable to the opportunity of public comments which are believed to improve program payment target levels and shed light on the associated needs and applicants. Publication and refinement of measurement and verification protocols used in making payments is expected as result of comments and experience gained from initiating the program.

**Risks:**

The proposed action does not mitigate risk to the public health or safety or to the environment.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/09	
NPRM Comment Period End	02/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined



**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 0570-AA74

**USDA—RBS**

**29. RURAL BUSINESS CONTRACTS FOR PAYMENTS FOR THE BIOENERGY PROGRAM FOR ADVANCED BIOFUELS—SECTION 9005**

**Priority:**

Other Significant

**Legal Authority:**

PL 110-234

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The Bioenergy Program for Advanced Biofuels directs the Secretary of Agriculture to make payments to eligible producers to support and ensure an expanding production of advanced biofuels. Advanced biofuels are defined as ‘fuel derived from renewable biomass other than corn kernel starch’ in The Food, Conservation, and Energy Act of 2008. The program will increase energy independence, promote resource conservation, diversify markets for agricultural and forestry products, create jobs, and enhance economic development in rural economies. To receive a payment, an eligible producer shall enter into a contract with the Secretary of Agriculture for production of advanced biofuels. The basis for payments under this program are the quantity and duration of production of biofuel produced by an eligible producer, the net nonrenewable energy content of the advanced biofuel, and other appropriate factors as determined by the Secretary of Agriculture.

**Statement of Need:**

The new regulations for the program known as the Bioenergy Program for Advanced Biofuels will clarify the application process, eligibility, payment formula’s and eligible products and provide substantive rules and regulation regarding the payment process. These regulations are essential to allow for verification and measurement of the advanced biofuel development promoted by this program.

**Summary of Legal Basis:**

The Bioenergy Program for Advanced Biofuels program was authorized by the Food, Conservation, and Energy Act of 2008, which made mandatory funding available of \$55,000,000 in for fiscal year (FY) 2009, \$55,000,000 in FY 2010, \$85,000,000 in FY 2011 and \$105,000,000 in FY 2012. A Notice of Funding Availability (NOFA) was published on June 12, 2009 and that made \$35 million available in 2009. The remaining \$20 million will be available in 2010 in addition to \$55 million for 2010, included in the Farm Bill. An additional \$25,000,000 in discretionary funding is authorized to be appropriated for each fiscal year 2009 through 2012 may be made available. The program provides for the payments to support and ensure expanding the production of advanced biofuels.

**Alternatives:**

A NOFA was published in June 2009 for immediate program implementation. Permanent regulations are required to provide funding for 2010.

**Anticipated Cost and Benefits:**

It is anticipated that there will be costs directly attributable to the contractor, which is assisting with drafting the proposed rule. Other costs would be internal costs associated with the promulgation of the proposed rule. The Agency is confident that the regulations contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be a benefit to the agency as well as potential applicants considering applying for payments under this program. Benefits accruing to the publishing of a proposed rule would clarify the process, payments, eligibility and understanding of any ambiguity conveyed in the initial announcement of the program. Additional benefits stem from the ability of the public and interested parties to comment on program and consider issues concerning the geographic location and demographic

composition of locatable projects as well as the ownership criteria.

**Risks:**

The proposed action does not mitigate risk to the public health or safety or to the environment.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/09	
NPRM Comment Period End	02/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 0570-AA75

**USDA—RBS**

**30. RURAL ENERGY FOR AMERICA PROGRAM—SECTION 9007**

**Priority:**

Other Significant

**Legal Authority:**

PL 110-246

**CFR Citation:**

7 CFR 4280-B; 7 CFR 4280-D

**Legal Deadline:**

None

**Abstract:**

The Renewable Energy and Energy Efficiency Program (section 9006 of the Farm Security and Rural Investment Act of 2002 (FSRIA)) is being replaced with a new program titled the Rural Energy for America Program (REAP), section 9007 of The Food, Conservation, and Energy Act of 2008. The new program will provide grants for energy audits and renewable energy development assistance; and financial assistance for energy efficiency improvements and renewable energy

systems. The program will increase energy independence, promote resource conservation, diversify markets for agricultural and forestry products, create jobs, and enhance economic development in rural economies. Eligible entities based on the sub-program of the sub-section include units of State, tribal, or local government; land grant or other institutions of higher education; rural electric cooperatives or public power entities; agricultural producers; rural small businesses; and any similar entity as determined by the Secretary. The bill directs that at least 20 percent of funds be used for grants of up to \$20,000 each. The bill merges the energy audit program and the Renewable Energy Systems and Energy Efficiency Improvements programs.

The Rural Business-Cooperative Service (RBS) intends to publish a proposed rule to implement changes to RD Instruction 4280-B and the Energy Audit and Renewable Energy Development Assistance grant regulations in RD Instruction 4280-C. The changes will incorporate provisions from the Farm Bill and other initiatives intended to enhance program delivery and Agency oversight.

#### Statement of Need:

Changes are needed to the regulation for the program known as the Rural Energy for America Program (REAP), due to the changes required by the 2008 Farm Bill. The program was previously called the Renewable Energy Systems and Energy Efficiency Improvement program and was created by the 2002 Farm Bill. In addition to the change in the title of the program, several regulatory changes are needed for REAP as outlined above. These changes are required to comply with current statutes. The program was implemented utilizing a notice of funding availability in FY 2009. Permanent regulation is required to implement the program in 2010.

#### Summary of Legal Basis:

The Rural Energy for America program was authorized by the Food, Conservation, and Energy Act of 2008, which made available \$55,000,000 in mandatory funding for 2009, \$60,000,000 mandatory funding for 2010, \$70,000,000 mandatory funding for 2011 and 2012. The Farm Bill authorized to be appropriated \$25,000,000 in discretionary funding for each fiscal year 2009 through 2012. The program provides for grants and guaranteed loan for renewable energy systems and energy efficiency

improvements, and grants for feasibility studies and energy audit and renewable energy development assistance. The purpose of the program is to reduce the energy consumption and increase renewable energy production. The regulations are an administrative and a legislative initiative.

#### Alternatives:

There is no alternative to issuing a proposed regulation, which allows the public an opportunity to provide comments on the program requirements. Permanent regulations are required to provide funding in 2010.

#### Anticipated Cost and Benefits:

The only costs, aside from contractor costs, are internal costs associated with the promulgation of the proposed rule. The Agency is confident that the regulations contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be a benefit to the agency as well as potential applicants considering applying for payments under this program. Benefits accruing to the publishing from a proposed rule would be attributable to the opportunity of public comments which are believed to improve program implementation and impact.

#### Risks:

The proposed action does not mitigate risk to the public health or safety or to the environment.

#### Timetable:

Action	Date	FR Cite
NPRM	03/00/10	
NPRM Comment Period End	05/00/10	

#### Regulatory Flexibility Analysis Required:

Undetermined

#### Small Entities Affected:

Businesses

#### Government Levels Affected:

None

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RIN: 0570-AA76

## USDA—RBS

### FINAL RULE STAGE

#### 31. RURAL MICROENTREPRENEUR ASSISTANCE PROGRAM—SECTION 6022

##### Priority:

Other Significant

##### Legal Authority:

PL 110-246

##### CFR Citation:

None

##### Legal Deadline:

None

##### Abstract:

The Food Conservation, and Energy Act of 2008 (the Act) includes Section 6022 establishing the Rural Microentrepreneur Assistance Program (RMAP). The Act mandates that the Secretary of Agriculture establish a program to make loans and grants to support microentrepreneurs in the development and ongoing success of rural microenterprises. The Act further mandates that entities will use funds borrowed from the Agency to make microloans of not more than \$50,000 to rural microenterprises for eligible purposes; that the Agency will make grants to provide business based training and technical assistance; and that the Agency will provide funding to improve the capacity of rural Microenterprise Development Organizations (MDOs) to provide services to rural microenterprise clients.

Upon enactment of the Act, a committee was formed to discuss policy, implementation, and processes needed to move the program forward. In mid-January, 2009 a listening forum was held at USDA. The object of the listening forum was to allow public comment regarding the statute and to obtain opinions regarding the implementation of the program. The Rural Business-Cooperative Service, Business Programs is currently preparing a proposed rule with an anticipated publication date of late December 2009. The proposed rule is based on verbiage in the statute, comments made at the listening forum, research of similar-but not the same-types of programs within USDA and at other agencies, and the experience of the writers, one of whom worked in or managed Federal

microentrepreneurship programs for 13 years. The goal of the proposed rule is to obtain public comment, revise the rule accordingly, and ensure a sound program. Comments received from the proposed rule will be used as a basis for publication of a final rule which is anticipated for the spring of 2010.

The proposed rule will include instructions for the management of loan and grant programming and for the management of the ultimate recipient microloan portfolio. Any organization receiving a loan under the program will be expected to capitalize a revolving loan fund which will make loans of \$50,000 or less to ultimate recipients. Any organization that receives a loan will also be automatically eligible to receive a grant so that it may provide an integrated program of micro-level lending coupled with business based training and technical assistance for its microborrowers. Grants will also be provided to build the capacity of rural MDOs so that they may improve their operations and services for the end users, or so that they may improve the operational capacity of other MDOs to provide services to end users.

This program will require a complete new set of regulations.

#### Statement of Need:

The new regulation for the program will be user friendly and responsive to industry comments. Publication of the proposed rule is crucial to program implementation. The program will directly create new businesses, assist with the expansion of existing microbusinesses (for purposes of this program, a microenterprise is a rural business that employs 10 or fewer Full Time Employees (FTE)), create jobs, increase the flow of tax dollars to rural communities, and add lasting value in terms of rural community impact.

#### Summary of Legal Basis:

The RMAP was authorized by the Food Conservation and Energy Act of 2008. The Act establishes the Rural Microentrepreneur Assistance Program and mandates that the new program will make loans and grants to support microentrepreneurs in the development and ongoing success of rural microenterprises. It further mandates that entities will use funds borrowed from the Agency to make microloans of not more than \$50,000 to rural microenterprises for eligible purposes; that the Agency will make grants to provide business based training and technical assistance; and that the Agency will provide funding to

improve the capacity of rural MDOs to provide services to rural microenterprise clients.

The purpose of the program is to increase access to capital and business based training in rural areas for rural business owners and potential business owners at the start up and micro levels.

#### Alternatives:

The proposed rule process is our only current route for implementation. Funding for the initial four years (2009-2012) of the program is mandatory and FY2009 funding will be expendable in FY2010. The proposed rule will allow the Agency to use both years' funding in the inaugural year of program implementation.

#### Anticipated Cost and Benefits:

##### Costs:

Initial costs include the cost of the listening conference; staff time; and the cost of the regulation writing contractor that works in close concert with staff.

Ongoing costs include a minimal increase of one FTE, and space for same, at the National Office level. The state offices are not currently under consideration for more FTEs as a result of this program.

Other costs will/do include the cost of automation of distribution of funding, loan servicing, grant servicing, repayment systems, and oversight systems. The assigned office (Specialty Programs Division) has been working with the Information Technology (IT) offices to implement the program through RULSS which is the newer generation of agency automation systems and is the most flexible in terms of meeting the needs of the statute. Finally, Training will be required for field staff.

Cost Mitigation—To mitigate implementation costs the proposed rule has considered existing programs to ensure that implementation will be less process based and more results driven when compared to other programs. Automated processes will help ensure efficiency. Use of existing field staff will keep new FTEs to a minimum.

##### Benefits:

The initial benefits to program implementation include the addition of a small rural business lending program that increases access to Rural Development programming by adding to the starting end of the business financing continuum of services. The program allows Rural Development to open its doors to rural clients at the

very beginning level of the business start-up and initial growth phases, and provide assistance to businesses that are often too small to be considered viable for a bank loan. The long term benefits to program implementation include long term availability of this new pathway to assist rural start-up businesses; increased access to business capital in rural areas, at a grass roots level, and often to pre-bankable ultimate recipients; expansion of business opportunities in rural areas; increased tax flow as businesses become profitable; increased job creation and rural job retention as new and existing microbusinesses sprout and grow; support of micro level entities producing organic food product, locally grown food product, and locally manufactured goods for intra and interstate export; service industry growth; increased opportunity for rural youth; and legal immigrants; and increased exposure of Rural Development funding programs to the target constituency.

Mandatory funding is set at \$4 million for FY2009; \$4 million for FY2010; \$4 million for FY2011; and \$3 million for FY2012. The statute authorizes up to \$40 million per year for each of the years in addition to mandatory funding.

#### Risks:

Program risks include making of loans and grants to multiple types of entities for multiple purposes with a singular goal; ability to select appropriately capable lending and training entities; reliance on selected entities for sound microloan underwriting and appropriate portfolio management; and availability of enough grant funding for ongoing technical assistance in the out years. We anticipate mitigating these risks via sound regulatory guidance, appropriate training, and clear communication of expectations to selected participants. Further, the statute is based in part on a successful non-USDA program of a similar nature with which many of the stakeholders and selected participants will be familiar providing this agency with a level of confidence.

#### Timetable:

Action	Date	FR Cite
NPRM	10/07/09	74 FR 51714
NPRM Comment Period End	11/23/09	
Final Rule	02/00/10	

#### Regulatory Flexibility Analysis Required:

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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