Rules and Regulations

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Board is amending its rules of practice and procedure to rescind its rule requiring dismissal of an agency's petition for review of an administrative judge's initial decision where the agency inadvertently exceeds the requirements of the judge's interim relief order. The Board will no longer dismiss the agency's petition in such a circumstance where its action was taken in good faith. The Board announced the rescission of this rule in *Silvana H. Moscato* v. *Department of Education,* issued November 12, 1996, and suspended the application of the rule effective from that date.

EFFECTIVE DATE: August 15, 1997.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, 202–653–7200.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 7701(b)(2), an appellant who prevails in an appeal to the Board is entitled to the relief provided in the administrative judge's initial decision pending the outcome of any petition for review by the Board. This interim relief is to be provided effective from the date of the initial decision. Interim relief is not provided if the judge determines that it is not appropriate or if the initial decision requires the appellant's return to or presence at the workplace and the agency determines that such return or presence would be unduly disruptive. This interim relief provision was added to Title 5 of the United States Code by the Whistleblower Protection Act of 1989 (Pub. L. 101–12).

Some Federal agencies attempting to comply with an initial decision providing interim relief have cancelled the personnel action that the appellant appealed and have furnished evidence of that cancellation when filing a petition for review. From the time the interim relief provision took effect in July 1989 until November 1996, the Board consistently held that, where an agency exceeds the order for interim relief by cancelling the appealed action and thus providing final relief, the matter is effectively removed from controversy, and the agency's petition for review is rendered moot. *See, e.g., Edney* v. *Department of the Treasury,* 56 M.S.P.R. 248, 249–50 (1993). On June 16, 1994, the Board amended its rules of practice and procedure at 5 CFR 1201.115(b)(1) to incorporate this holding in its procedural regulations. *59 FR 30863.*

In November 1996, the Board considered this issue further in its adjudication of *Silvana H. Moscato* v. *Department of Education,* 72 M.S.P.R. 266 (1996). In its decision in that case, the Board cited a number of appellate court decisions that declined to dismiss a case as moot even where one of the parties apparently provided relief or complied with a judgment, if the party did not intend to forego further legal proceedings. *Id.* at 6–8. In announcing its decision that it will no longer automatically dismiss an agency's petition for review as moot where the agency has inadvertently and in good faith exceeded an interim relief order, the Board stated: ''We find that the Board and prudent policy are ill-served by such an automatic dismissal, where the agency attempted to comply with an order of interim relief, mistakenly exceeded the Board's requirements, did not abandon its intent to go forward, and then took steps to correct its mistake in a timely manner.'' *Id.* at 6.

In its decision in *Moscato,* the Board announced that it was suspending the application of the last sentence of 5 CFR 1201.115(b)(1), which required automatic dismissal of an agency's petition for review where it exceeded the requirements of an interim relief order. *Id.* at 9. The Board further stated that it would apply the new rule announced in its decision, i.e., that it would no longer dismiss an agency's petition as moot under these circumstances, in all cases relating to the regulation at 5 CFR 1201.115(b)(1) and that it would amend its regulations to reflect the new rule. *Id.* The notice the Board publishes today makes that amendment.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

§ 1201.115 [Amended]

2. Section 1201.115 is amended at paragraph (b)(1) by removing the last sentence.

Dated: August 11, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97–21647 Filed 8–14–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 95–038DF]

RIN 0583–AB97

Use of Glycerine as a Humectant in Shelf Stable Meat Snacks

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) will permit the use of glycerine as a humectant in shelf stable meat snacks at a level not to exceed 2 percent of the formulation weight of the product. This action is being taken in response to a petition from the American Association of Meat Processors requesting use of glycerine to promote moisture retention and distribution and improved texture of shelf stable meat snacks.

DATES: This rule will be effective on October 14, 1997 unless adverse or

critical comments within the scope of the rulemaking or notice of intent to submit adverse comments within the scope of the rulemaking are received on or before September 15, 1997. If the effective date is delayed, a timely document will be published in the **Federal Register**.

ADDRESSES: Send an original and two copies of adverse written comments within the scope of the rulemaking to: FSIS Docket Clerk, DOCKET #95–038DF, Room 102, Cotton Annex, 300 12th Street, SW., Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700. Data submitted by the petitioner and all comments received will be available for public inspection from 8:30 a.m. to 4:30 p.m., Monday through Friday, in the FSIS Docket Room.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Director, Facilities, Equipment, Labeling, and Compounds Review Division, (202) 418–8900.

SUPPLEMENTARY INFORMATION: FSIS was petitioned by the American Association of Meat Processors to approve the use of glycerine at a level of 3 percent in shelf stable meat snacks, i.e. products such as meat sticks that can be stored at room temperature, to promote moisture retention and distribution and improve product texture. Although 3 percent was requested, data submitted by the petitioner showed that the necessary effect could be achieved at a 2 percent level. Data reviewed showed that products containing glycerine at a level of 2 percent consistently had a lower water activity, thus inhibiting microbiological activity. These products also had improved texture.

After reviewing the petitioner's data, FSIS determined that the tables of approved substances in the Federal meat inspection regulations should be amended to allow the use of glycerine as a humectant in shelf stable meat snacks at a level not to exceed 2 percent of the formulation weight of the product. The use of glycerine under the proposed conditions will not render the product adulterated or mislead the consumer. This is because the appearance and quality of the product will be unaffected, and the ingredient will be listed in the ingredient statement on the product label. The technical data demonstrate the efficacy of glycerine for this use. Because glycerine is generally recognized as safe (21 CFR 182.1320) when used in accordance with good manufacturing practices, the wholesomeness of the product will not be affected. Therefore, FSIS is amending the tables of approved substances in 9 CFR 318.7(c)(4) to allow the use of glycerine as a humectant in shelf stable meat snacks at a level not to exceed 2 percent of the formulation weight of the product.

FSIS expects no adverse public reaction resulting from this change in regulatory language. Therefore, unless the Agency receives adverse or critical comments within the scope of the rulemaking or a notice of intent to submit adverse comments within 30 days, the action will become final 60 days after publication in the **Federal Register**. If such adverse comments are received, the final rulemaking document will be withdrawn and a proposed rulemaking notice will be published. The proposed rulemaking notice will establish a comment period.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In this direct final rule: (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget.

The Administrator has made a determination that this direct final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This direct final rule will impose no new requirements on small entities. The direct final rule will permit the use of glycerine as a humectant in shelf stable meat snacks at a level not to exceed 2 percent of the formulation weight of the product. Use of the glycerine is voluntary. Decisions by individual manufacturers on whether to use glycerine will be based on their conclusions that the benefits outweigh the implementation costs. Implementation costs would include revision of product labels.

Paperwork Requirements

The associated paperwork and recordkeeping burden hours are approved under OMB control number 0583–0092.

List of Subjects in 9 CFR Part 318

Food additives, Food packaging, Laboratories, Meat inspection, Reporting and recordkeeping requirements, Signs and symbols.

Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR part 318 as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 is revised to read as follows:

Authority: 7 U.S.C. 38f, 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. In the chart in § 318.7(c)(4), under the Class of substance ''Miscellaneous,'' a new entry for the substance ''Glycerine'' is added at the end to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Miscellaneous				
*	*	*	*	*
	Glycerine	Humectant ..	Shelf stable (Can Be stored at room temperature) meat snacks.	Not to exceed 2 percent of the formulation weight of the product in accordance with 21 CFR 182.1320
*	*	*	*	*

Done at Washington, DC, on: August 4, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–21672 Filed 8–14–97; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Part 650

RIN 3052–AB72

Federal Agricultural Mortgage Corporation; Receivers and Conservators

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issues a final rule amending its regulations that apply to the Federal Agricultural Mortgage Corporation (Farmer Mac or Corporation) by adding a subpart to govern a receivership or conservatorship. The final rule implements the receivership/conservatorship authorities granted to the FCA by the Farm Credit System Reform Act of 1996 (1996 Reform Act), Pub. L. 104–105 (Feb. 10, 1996) and by previous law.

DATES: This regulation shall become effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Larry W. Edwards, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4051, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The FCA proposed amendments to its regulations governing Farmer Mac on February 24, 1997 (62 FR 8190). The 1996 Reform Act added section 8.41 to the Farm Credit Act of 1971, as amended (Act), which grants the FCA the authority to place the Corporation into receivership and expands the FCA's existing authority to place the Corporation into conservatorship. This final rule implements these statutory provisions.

Public Comments Received

The 30-day comment period expired on March 26, 1997. The FCA received three comments, one from the Corporation, one from the Farm Credit Council (FCC) on behalf of its member Farm Credit System (FCS) institutions, and one from the United States Department of the Treasury (Treasury). The following is a discussion of the comments and FCA's responses.

A. Comments of the Farm Credit Council

Several of the FCC's comments were related to the slightly different language used in the proposed regulation compared to FCA's receivership and conservatorship regulations in part 627 of this chapter, which was the model for the proposed rule. The FCC indicated that for the most part, the differences were called to FCA's attention to make sure that they were intentional. Proposed § 650.56(b)(1) provides that a receiver of Farmer Mac may exercise all powers as are conferred upon the officers and directors of the Corporation under law and the articles and bylaws of the Corporation, while § 627.2725(b)(1) refers to powers as conferred under law and the ''charter,'' articles, and bylaws of the institution. Although the FCA may cancel the charter of the Corporation upon the appointment of a receiver, it may also leave the charter in existence until the conclusion of the receivership. In light of this, the FCA has included the word ''charter'' in the final regulation. Another difference between proposed part 650 and existing part 627 of this chapter noted by the FCC is that proposed § 650.59(b) begins with a reference to the ''stock and other equities of the Corporation'' and concludes with a reference to payment of a liquidating dividend to Farmer Mac's ''stockholders.'' Section 627.2735(b)(2) begins with a similar reference to ''the stock and other equities'' of a liquidating institution, but concludes with a reference to payment of a liquidating dividend to the ''owners of such equities.'' The FCC believes that the reference to owners of equities is broader than the simple reference to stockholders in proposed § 650.59(b). The FCA agrees, but notes that, with respect to the Corporation, all equity owners are stockholders. Therefore, the FCA makes no change to § 650.59.

The FCC also indicated that the phrase ''or applied against any indebtedness of the owners of such equities,'' which appears in the first sentence of paragraph (b) of proposed § 650.58, is not found in paragraph (a) of that section although the same phrase appears in both paragraphs (a) and (b) of § 627.2730. The phrase was intentionally omitted from proposed § 650.58(a) because, unlike the equity holders of Farm Credit institutions who in most cases are also borrowers of the institutions, the equity holders of the Corporation will most likely not be indebted to the Corporation. Also, the restriction against retirement of equities in § 650.58(b) is broad enough to include applying stock against the indebtedness of the owner of the stock should any stockholders be indebted to the Corporation. As a result, the FCA omitted the phrase ''or applied against any indebtedness of the owners of such equities'' from § 650.58(b) of the final regulation. The final comparison to part 627 of this chapter that the FCC pointed out is that proposed § 650.65(d), like its counterpart § 627.2775(c), provides that, upon the issuance of an order placing the Corporation in conservatorship, all rights, privileges, and powers of the ''members,'' board of directors, officers, and employees of the Corporation are vested exclusively in the conservator, and questioned whether the reference to ''members'' is appropriate and relevant in the case of the Corporation. The FCA agrees that the term ''members'' is not appropriate with reference to the Corporation and removed that term in the final regulation.

The FCC commented that the word ''reasonable'' should be inserted in proposed § 650.56(b)(15) immediately before the phrase ''expenses of the receivership.'' The FCC noted in this regard that proposed § 650.61(b), concerning priority of claims, expressly limits the administrative expenses of the Corporation that may be afforded a second priority to ''reasonable'' expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or ''reasonable'' expenses incurred by employees that were authorized and reimbursable under a preexisting expense reimbursement policy. In response, the FCA notes that the expenses covered by § 650.61(b) are expenses of the Corporation incurred prior to the appointment of a receiver. All such expenses may not necessarily be paid, as payment is limited to the receiver's judgment that the services underlying the claims are of benefit to the receivership. In contrast, §§ 650.56(b)(15) and 650.61(a) relate only to the authority of the receiver to pay the administrative expenses of the receivership and all costs associated with carrying out the powers and duties of a receiver. Furthermore, pursuant to § 650.56(a)(3), the receiver serves as the trustee of the receivership estate and is required to conduct all of its operations, whether incurring and paying administrative expenses or exercising any other power conferred by the regulations, for the benefit of the creditors and stockholders of the Corporation. Therefore, the FCA