

PART 752—ADVERSE ACTIONS

7. In § 752.401(c), subparagraphs (9) through (14) are redesignated as subparagraphs (10) through (15) respectively; and a new subparagraph (9) is added to read as follows:

§ 752.401 Coverage.

(c) * * *

(9) Cancellation of a promotion to a position not classified prior to the promotion;

* * *

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

8. The authority citation for Part 950 is revised to read as follows:

Authority: E.O. 12353, 47 FR 12785, March 25, 1982.

(5 U.S.C. 1103)

[FR Doc. 82-35052 Filed 12-27-82; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Office of the Secretary****7 CFR Part 24****Organization and Functions; Rules of Procedure of Board of Contract Appeals, Department of Agriculture**

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the jurisdiction of the Agriculture Board of Contract Appeals by deleting that provision related to referrals to the Board from the Commodity Credit Corporation and by excluding from the jurisdiction of the Board appeals from decisions of Forest Service officers with respect to disputes arising under grazing and special use permits issued by the Forest Service. Rules of Procedure to be followed in proceedings governed by the Contract Disputes Act are added to the presently published rules governing proceedings under the Board's nonstatutory jurisdiction. These changes result from the enactment of the Contract Disputes Act, review of existing procedures, and consideration of USDA and public experience since 1974 with current procedures.

EFFECTIVE DATE: January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Administrative Judge Jewel F. Lewis, Chair, USDA Board of Contract

Appeals, (202) 447-2066 or (202) 447-7023.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on pages 36554-36564 of the Federal Register of August 20, 1982, and invited comments for 60 days ending October 19, 1982. No public comments were received.

Only one change has been made to the proposed rules. An exclusion to the Board's nonstatutory jurisdiction has been reinstated at section 24.4(b)(2) to clarify that management and policy decisions reviewable under Forest Service administrative appeal procedures found at 36 CFR 211.19 (proposed to be revised as 36 CFR 211.18) are not within the Board's jurisdiction. The language used is identical to the exclusion presently found at § 24.4(e)(2) and was reinstated to make clear no change is intended in this regard.

This rule will clarify the Agriculture Board of Contract Appeal's jurisdiction and procedures as well as remove confusion about the jurisdictional responsibility within the U.S. Department of Agriculture for review of disputes on grazing and special use permits by placing under 36 CFR 211.18 all aspects of appeals relating to grazing and special use permits which currently would be brought under § 24.4(e).

Regulatory Impact

This action is a delegation of administrative authority and is, therefore, exempt from the requirements of Executive Order 12291.

Small Entity Impact

This rule will not have a significant economic impact on a substantial number of small entities. Therefore, an analysis of impacts on small entities is not required.

Environmental Impact

This rule relates to delegation of authority and the internal administration of the U.S. Department of Agriculture. Therefore, it does not constitute a major federal action affecting the quality of the human environment.

Paperwork Burden

This rule will impose no additional paperwork requirements on individuals or groups who appeal decisions of the Department of Agriculture to the Board of Contract Appeals, Department of Agriculture.

List of Subjects in 7 CFR Part 24

Administrative practice and procedure, Agriculture, Government

contracts, Organization and functions (Government agencies).

For the reasons set forth above, Part 24, Subpart A—Organization and Functions, and Subpart B—Rules of Procedure, of Subtitle A of Title 7, Code of Federal Regulations is revised to read as follows:

PART 24—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE**Subpart A—Organization and Functions**

Sec.

24.1 General.

24.2 Composition of the Board.

24.3 Presiding Administrative Judge.

24.4 Jurisdiction.

24.5 Time for filing notice of appeal.

24.6 Board location and address.

24.7 Public information.

24.8 Rules of procedure.

24.9 Definitions.

Subpart B—Rules of Procedure

24.21 Rules of Procedure of Agriculture

Board of Contract Appeals—ACBCA.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c) sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b); 30 Stat. 35, as amended (16 U.S.C. 551); 50 Stat. 525, as amended (7 U.S.C. 1011(f)); secs. 9, 10, 62 Stat. 1072, 1073 (15 U.S.C. 714g, 714h); sec. 8, 92 Stat. 2383 (41 U.S.C. 601-613).

Subpart A—Organization and Functions**§ 24.1 General.**

The Board of Contract Appeals, United States Department of Agriculture (referred to as the "Board") is an agency of the Department established by the Secretary of Agriculture in accordance with the requirements of the Contract Disputes Act of 1978 (Pub. L. 95-563, 41 U.S.C. 601-613). The provisions of 5 U.S.C. 551-559 (Administrative Procedure Act, 80 Stat. 378, as amended) are not applicable to proceedings before the Board except for the requirements under 5 U.S.C. 552 (81 Stat. 54) respecting public information, agency rules, opinions, orders, and records.

§ 24.2 Composition of the Board.

The Board consists of a Chair, Vice Chair, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. The Chair shall manage the business and operations of the Board, assign cases to members, and establish panels for cases. Except as provided in Rule 12.2 the Small Claims (Expedited) Procedure, and Rule 12.3 the Accelerated Procedure, § 24.21(b), and in Rule 9, Accelerated Procedure, § 24.21(c), decisions of the Board will be rendered by a panel of three Administrative Judges, and the decision

of the majority of the panel will constitute the decision of the Board. The Vice Chair shall perform the functions of the Chair upon request of the Chair or in the event of absence or inability of the Chair to act. Members are designated Administrative Judges.

§ 24.3 Presiding Administrative Judge.

The Chair acts as Presiding Administrative Judge, or designates a member of the Board to so act, in each proceeding. The Presiding Administrative Judge has power to:

- (a) Rule upon motions and requests;
- (b) Adjourn the hearing from time to time and change the time and place of hearing;
- (c) Administer oaths and affirmations and take affidavits;
- (d) Receive evidence;
- (e) Order the taking of depositions;
- (f) Admit or exclude evidence;
- (g) Hear oral argument on facts or law;

(h) Consolidate appeals filed by two or more appellants; and

(i) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

In cases considered by the Board under § 24.4(b) the Chair is hereby delegated authority to request subpoenas pursuant to 5 U.S.C. 304.

§ 24.4 Jurisdiction.

(a) *Statutory.* Pursuant to the Contract Disputes Act of 1978 (Pub. L. 95-563, 41 U.S.C. 601-613), the Board shall consider and determine appeals from decisions of contracting officers relating to contracts entered into on or after March 1, 1979, and, at the contractor's election, contracts entered into prior to March 1, 1979, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter. For purposes of this paragraph (a) the term "contracts" shall mean express or implied contracts made by the Department of Agriculture, agencies of the Department and the Commodity Credit Corporation, or by any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal, for:

- (1) The procurement of property, other than real property in being;
- (2) The procurement of services;
- (3) The procurement of construction, alteration, repair or maintenance of real property; or

(4) The disposal of personal property.

(b) *Non-statutory.* (1) Pursuant to the Disputes Article of contracts, other than timber sale contracts, entered into prior to March 1, 1979, made by the

Department of Agriculture, agencies of the Department and the Commodity Credit Corporation, the Board shall consider and determine appeals from decisions of contracting officers arising under such contracts, unless election by the contractor brings the appeal under the statutory jurisdiction described in paragraph (a) of this section.

(2) The Board shall have jurisdiction of appeals from decisions of contracting officers of the Forest Service (as defined in § 24.9), in which the issue under appeal arises under the terms or provisions of timber sale contracts, except that:

(i) Appeals subject to Board jurisdiction involving Forest Service decisions under § 24.4(a), (c) or (d) shall be excluded from jurisdiction under this paragraph.

(ii) Appeals subject to administrative review under 36 CFR 211.18 involving management and policy decisions and not involving breach of contract shall be excluded from jurisdiction under this paragraph, and

(iii) No appeal under this paragraph shall lie where the relief sought is reformation of contract, monetary damages or amendment of contract at the discretion of the Forest Service to extend the term of the contract.

(c) *Contract Work Hours Standards Act.* The Board shall have jurisdiction of appeals taken from decisions of contracting officers of the Department of Agriculture under the Contract Work Hours Standards Act (Pub. L. 87-581, August 13, 1962, 76 Stat. 357; 40 U.S.C. 327-332).

(d) *Debarment.* The Board shall have jurisdiction to hear and determine the issue of debarment and the period thereof, if any, on an appeal by a person debarred: (1) By an authorized official of the Commodity Credit Corporation under 7 CFR 1407.6(d), or (2) by an authorized official of the Department of Agriculture, under 41 CFR 4-1.604-1(b), or (3) by an authorized official of the Farmers Home Administration, under Subpart C of Part 1918, Chapter XVIII of this title.

§ 24.5 Time for filing notice of appeal.

A notice of appeal under § 24.4(a) shall be filed within 90 days from the date of receipt of a contracting officer's decision. (41 U.S.C. 606.) a notice of appeal under § 24.4(b)(1) shall be filed within 30 days from the date of receipt of the decision of the contracting officer or within such different time as may be prescribed in the contract or other applicable regulation of the Department. A notice of appeal under § 24.4(b)(2) shall be filed within 30 days from the date of receipt of the decision of the

contracting officer of the Forest Service. The time for filing a notice of appeal shall not be extended by the Board.

§ 24.6 Board location and address.

The Board of Contract Appeals is located in Washington, D.C. All correspondence and all documents to be filed with the Board should be addressed to the Board of Contract Appeals, United States Department of Agriculture, Washington, D.C. 20250. The Board's telephone number is 202-447-7023.

§ 24.7 Public information.

(a) The records of the Board are open to the public for inspection and copying at the office of the Board. Decisions and rulings of the Board shall be published from time to time and copies made available to the public upon request at cost of duplication except that the Board shall, in its discretion, have authority to make copies of decisions and rulings available at no charge in accordance with the Record Copying Policy and Procedures of the Department (39 FR 26050). Hearings before the Board shall be open to the public.

(b) Information which is to be made available for public inspection and copying under provisions of 5 U.S.C. 552(a)(2) and 7 CFR 1.2 may be obtained at the office of the Board. The address of the Board is set forth in § 24.6. Except for such information as is generally available to the public, requests should be in writing and submitted in accordance with 7 CFR 1.3 and paragraphs (c) and (d) of this § 24.7.

(c) Facilities for copying are available at the office of the Board.

(d) Facilities for inspection and copying are available during established office hours for the Board, usually 8:30 a.m. to 5:00 p.m., Monday through Friday. The Department of Agriculture has established a schedule of fees for copies of information. The Board charges for copies of records in accordance with the Department fee schedule.

(e) The Vice Chair is authorized to receive requests for records submitted in accordance with 7 CFR 1.3(a), and to make determinations regarding whether to grant or deny requests for records exempt from mandatory disclosure under the provisions of 5 U.S.C. 552(b). This official is authorized to (1) Extend the ten-day administrative deadline for reply pursuant to 7 CFR 1.8, (2) make discretionary releases pursuant to 7 CFR 1.11(b) of records exempt from mandatory disclosure, and (3) make determinations regarding the charging of fees.

(f) Appeals from denials of requests submitted under paragraph (c) of this section shall be submitted in accordance with 7 CFR 1.3(e) to the Chair, Board of Contract Appeals, Department of Agriculture, 12th Street and Independence Avenue, SW, Washington, D.C. 20250. The Chair shall determine whether to grant or deny the appeal and shall also make all necessary determinations relating to an extension of the twenty-day administrative deadline for reply pursuant to 7 CFR 1.8, discretionary release pursuant to 7 CFR 1.11(b) of records exempt from mandatory disclosure under 5 U.S.C. 552(b), and the charging of appropriate fees.

§ 24.8 Rules of procedure.

The Chair of the Board shall prescribe its Rules of Procedure and publish such Rules in Subpart B of this Part 24 and may prescribe and so publish amendments from time to time. The Rules of Procedure and any amendments thereto shall be consistent with this subpart.

§ 24.9 Definitions.

"Board" means the Board of Contract Appeals established under this Subpart.

"Contract" means any agreement entered into the Department or its agencies or authorized officials with any person having the legal effect of a contract between the Department and such person.

"Contracting officer" means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto and includes the authorized representative of the contracting officer, acting within the limits of his/her authority. For purposes of appeals under § 24.4(b)(2), "contracting officer of the Forest Service" means a Forest Supervisor, Forest and Range Experiment Station Director, Forest Products Laboratory Director, Area Director, Regional Forester, or the Chief, Forest Service, as the case may be, who is the person designated as the contracting officer under the contract, or any officer or employee of the Forest Service who is authorized to act in his/her stead.

"Department" means the United States Department of Agriculture.

"Government attorney" means the attorney of the Department designated to handle a particular appeal on behalf of the contracting officer.

"Person" means any individual, partnership, public or private

corporation, association, agency or other legal entity.

Subpart B—Rules of Procedure

§ 24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.

(a) *Preface to Rules.*—(1) *Time, computation and extensions.* (i) All time limitations specified for various procedural actions are computed as maximums and are not to be fully exhausted if the action described can be accomplished in a lesser period. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time by either party shall be in writing and state good cause for the requested extension. The Board may grant such extensions on good cause shown except that the Board shall not extend the time prescribed under 7 CFR 24.5 for taking an appeal.

(ii) Except as otherwise provided by law, in computing any period of time prescribed by these rules or any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day. If mailing is required, the date of the postmark shall be treated as the date action was taken.

(2) *Ex parte Communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members not to ex parte communication concerning the Board's administrative functions or procedures.

(b) *Rules of Procedure Applicable to Appeals under the Contract Disputes Act of 1978, 41 USC 601 et seq. (7 CFR 24.4(a)).*

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RULES

Preliminary Procedures

Rule 1. Appeals, How and When Taken

(a) *Notice of Appeal—90 days.* Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) *Failure to Issue CO decision—60 days—\$50,000 or less.* Where the contractor has submitted a claim of \$50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure of the contracting officer to issue a decision.

(c) *Failure to Issue CO decision—Reasonable Time—more than \$50,000.* Where the contractor has submitted a claim in excess of \$50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure to issue a decision.

(d) *Stay Pending Final CO Decision.* Upon docketing of appeals filed pursuant to paragraphs (b) or (c) of this Rule 1, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

Rule 2. Notice of Appeal, Contents of

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and agency or bureau involved in the dispute, the decision from which the appeal is taken, and the amount in dispute if known. The notice of appeal should be signed by the appellant (the contractor making the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

Rule 3. Docketing of Appeals

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant, with a copy of these rules, and to the contracting officer.

Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File

(a) *Duties of Contracting Officer.* Within 30 days of receipt of a letter from the Board transmitting the complaint, the contracting officer shall assemble and transmit to the Board through agency channels an appeal file in triplicate consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decisions was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

(b) *Duties of the Appellant.* Within 30 days after receipt from the Board of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board in triplicate any documents not contained therein which the appellant considers relevant to the appeal.

(c) *Organization of Appeal File.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents.* Upon request by either party, the Board may waive the requirement to furnish to the other party through the Board copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to

which such a waiver has been granted such party shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing, or if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence either prior to hearing or prior to closing the record if there is no hearing, in accordance with Rules 13 and 20.

(f) *Dispensing with Appeal File requirements.* Notwithstanding the foregoing, the filing of the Rule 4(a) and (b) documents may be dispensed with by the Board either upon request of the appellant in the notice of appeal or thereafter upon stipulation of the parties.

Rule 5. Dismissal for Lack of Jurisdiction

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

Rule 6. Pleadings

(a) *Appellant—Complaint.* Except as provided in Rule 12.2(b) and Rule 12.3(b), within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a Complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a Complaint, although no particular form is required. Upon receipt of the Complaint, the Board shall serve a copy of it upon the Government. Should the Complaint not be filed within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its Complaint and the Government shall be so notified.

(b) *Government—Answer.* Within 30 days from receipt of the Complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an Answer thereto. The Answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the Answer, the Board shall serve a copy

upon appellant. Should the Answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

Rule 7. Amendments of Pleadings or Record

The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the Complaint or Answer, or to reply to an Answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

Rule 8. Hearing Election

After filing of the Government's Answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

Rule 9. Prehearing Briefs

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

Rule 10. Prehearing or Presubmission Conference

(a) *Conference.* Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on

admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such matters as may aid in the disposition of the appeal.

(b) *Written results of conference.* The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to achieve settlement by agreement of the parties or to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute a part of the record.

Rule 11. Submission Without a Hearing

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

Rule 12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

Notwithstanding any other provisions of these Rules of Procedure, the SMALL CLAIMS (EXPEDITED) and ACCELERATED procedures shall be available solely at the election of the appellant.

Rule 12.1 Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

(a) *SMALL CLAIMS (EXPEDITED)—\$10,000 or less.* In appeals where the amount in dispute is \$10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.2.

(b) *ACCELERATED—\$50,000 or less.* In appeals where the amount in dispute is \$50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.3.

(c) *Time for Election.* The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of

notice of docketing the appeal unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board for good cause.

(d) *Board Determines Amount in Dispute.* In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal, the Board shall determine the amount in dispute.

Rule 12.2 The SMALL CLAIMS (EXPEDITED) Procedure

(a) *Time Periods for Proceedings.* In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply: (1) Within ten days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether the appellant wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal, and (v) establish an expedited schedule for resolution of the appeal.

(b) *Decisions—120 days.* Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) *Form of Decisions.* Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the Judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment

purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) *No Precedent—Not Appealable.* A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

Rule 12.3 The ACCELERATED Procedure

(a) *Time Periods for Proceedings.* In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) *Decisions—180 days.* Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the dates scheduled, or if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record, and the filing of briefs, if any.

(c) *Form of decisions.* Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chair or a Vice Chair or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement.

Alternatively, in cases where the amount in dispute is \$10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

Rule 12.4. Motions for Reconsideration in Rule 12 cases

Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be

decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

Rule 13. Settling the Record

(a) *Components of the Record.* The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogations received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) *Closing Dates for Inclusion of Material.* Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) *Weight Given to Evidence.* The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 14. Discovery—Depositions

(a) *General Policy and Protective Orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given

at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas.* Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

Rule 15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days; (b) a request for the admission of specified facts and the authenticity of any documents, to be answered or objected to within 30 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders and of Rule 33 with respect to sanctions.

Rule 16. Service of Papers other than Subpoenas

Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of Complaints, Answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

Hearings

Rule 17. Where and When Held

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

Rule 18. Notice of Hearings

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay.

Rule 19. Unexcused Absence of a Party

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

Rule 20. Hearings: Nature; Examination of Witnesses

(a) *Nature of Hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding Administrative Judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

Rule 21. Subpoenas

(a) *General.* Upon written request of either party filed with the recorder, or on the initiative of the Administrative Judge to whom a case is assigned, or who is otherwise designated by the Chair, such Administrative Judge may issue a subpoena requiring:

(1) Testimony at a deposition—the deposing of a witness in the city or county where such witness resides or is employed or transacts business in person, or at another location convenient for such witness that is specifically determined by the Board;

(2) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books and papers—in addition to (1) or (2), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas.*

(1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance.*

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in the Judge's discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(f) *Service.*

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place.

A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order

of the Court may be punished by the Court as a contempt thereof.

Rule 22. Copies of Papers

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

Rule 23. Posthearing Briefs

Posthearing Briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Administrative Judge or examiner at the conclusion of the hearing.

Rule 24. Transcript of Proceedings

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts or copies of the proceedings shall be made available by the Board to the Government attorney. Appellant may order transcripts of the proceedings from the contract reporter at the hearing at actual cost of duplication (Pub. L. 92-463, October 6, 1972, 86 Stat. 770, 5 U.S.C. App. I).

Rule 25. Withdrawal of Exhibits

After a decision has become final, the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

Rule 26. The Appellant

An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

Rule 27. The Government

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time. Whenever appellant and the Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal. However, if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

Miscellaneous

Rule 28. Decisions

Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to

both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 13.

Rule 29. Motion for Reconsideration

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Rule 30. Dismissal Without Prejudice

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause for suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

Rule 31. Dismissal or Default for Failure To Prosecute or Defend

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown the Board may take appropriate action.

Rule 32. Remand from Court

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

Rule 33. Sanctions

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Rule 34. Applicability of These Rules

These Rules of Procedure shall apply to contracts made by agencies described in

Section I, Preface to Rules, for: (1) The procurement of property, other than real property in being; (2) the procurement of services; (3) the procurement of construction, alteration, repair or maintenance of real property; or (4) the disposal of personal property. These Rules shall apply (1) mandatorily, to all appeals relating to contracts entered into on or after March 1, relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

Rules of Procedure Applicable to Appeals pursuant to the Disputes Article of Contracts and not under the Contract Disputes Act of 1978 (7 CFR § 24.4(b)).

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Docketing, pleadings, preliminary procedures

Rule 1. Appeals, How Taken.

Notice of an appeal shall be in writing and the original, together with two copies, shall be mailed or otherwise furnished to the contracting officer from whose decision the appeal is taken, addressed to the Secretary of Agriculture, within the time specified in the contract or allowed by applicable provision of regulation or law. (See 7 CFR § 24.5)

Rule 2. Notice of Appeal, Contents of

A notice of appeal shall clearly identify the decision from which the appeal is taken, the date of decision, the contract number, the agency or field office of the Department cognizant of the dispute and shall indicate that an appeal is thereby intended. The notice of appeal need not follow any prescribed form. It may in the form of a letter.

It should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in Rule 4 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint if it otherwise fulfills the requirements of a complaint.

Rule 3. Forwarding of Appeals

When a notice of appeal in any form has been received by the contracting officer, the date of mailing (or date of receipt, if otherwise conveyed) shall be endorsed thereon by the contracting officer. The contracting officer shall forward the original and one copy of the notice of appeal to the Board within 10 days through agency channels. The agency office receiving such notice of appeal shall forward the original and one copy to the Board of Contract Appeals, United States Department of Agriculture, Washington, D.C. 20250, not later than 15 days from the date of receipt from its contracting officer. Following receipt by the Board of such notice of appeal, the Board will notify the appellant (contractor) and the contracting officer of the docketing of the appeal and will furnish a copy of these rules to the appellant.

Rule 4. Complaint

A complaint shall be filed by appellant with the Board not later than the date prescribed by letter from the Board except where the Board treats the notice of appeal as the complaint. The complaint shall contain simple, concise and direct statements of each claim and the dollar amount claimed, alleging the basis for each claim with appropriate reference to contract provisions. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. If a complaint is not timely filed, the Board may treat the notice of appeal as the complaint if it deems the issues to be sufficiently defined. The Board will notify the Government attorney of any such determination.

Rule 5. Appeal File

(a) *Duties of contracting officer.* The contracting officer shall assemble and file with the Board within the time prescribed by letter from the Board, three copies of all documents pertinent to the appeal as an appeal file including as applicable but not necessarily limited to:

- (1) The decision and findings of fact from which appeal is taken;
- (2) The contract including pertinent specifications, amendments, plans and drawings;
- (3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;
- (4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and
- (5) Any additional information considered pertinent.

(b) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order, where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(c) *Board action upon receipt of appeal file.* The Board upon receipt of the appeal file from the contracting officer will send a copy thereof to appellant and to the Government attorney. The appellant and the Government attorney may supplement the appeal file by filing with the Board three copies of any additional documents not contained in the appeal file assembled by the contracting officer which appellant or the Government attorney believes are also pertinent to the appeal. Such filings shall be made with the Board within the time prescribed by the Board. The Board upon receipt of any such additional documents will send a copy thereof to the other party.

(d) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of closing the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence.

(e) *Lengthy documents.* The Board may waive the requirement of including in the copy of the appeal file to be furnished to the other party copies of bulky, lengthy, or out-of-size documents when a party shows to the satisfaction of the Board that providing such documents would impose an undue burden, provided that such documents are available for inspection at the office of the party filing only one copy thereof. Such documents will also be available for inspection at the office of the Board.

Rule 6. Answer.

The Government attorney will be requested by the Board to file an answer on behalf of the contracting officer after the complaint has been filed. The answer shall be filed with the Board within the time prescribed by letter from the Board and shall be in an original and two copies setting forth simple, concise, and direct statements of defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. The Board will send a copy of the answer to appellant. If a counterclaim is filed, an opportunity will be afforded to appellant to file a response. If an answer is not timely filed, the Board may, in its discretion, enter a general denial and so notify the appellant.

Rule 7. Additional Pleadings and Motions

The presiding officer may permit or require such additional pleadings or amendments thereto and motions to be filed as may be desirable in the interests of defining the issues and affording the parties full opportunity to prepare their cases. When issues within the proper scope of the appeal,

but not raised by the pleadings or the appeal file are tried by express or implied consent of the parties, or by permission of the presiding officer, such issues shall be treated in all respects as if raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or appeal file, it may be admitted within the proper scope of the appeal: *Provided, however*, That the objecting party may be granted a continuance if necessary to enable such party to meet such evidence.

Rule 8. Hearing Election.

A hearing before the Board shall be a matter of right which shall be afforded to appellant. The Government attorney may request a hearing in any case. If the parties waive a hearing the case shall be submitted on the record except where the presiding officer requires a hearing. The Board will ascertain from the parties whether a hearing is requested and ordinarily this will be done after the appeal file and pleadings have been received by the Board.

Rule 9. Accelerated Procedure

(a) *Election.* Either party may notify the Board of its election to have the appeal handled under this Rule 9. If both parties agree to handling under accelerated procedure, the presiding officer shall determine whether the appeal falls within the dollar limitation prescribed in paragraph (b) of this Rule 9 and whether the case otherwise is appropriate, taking into consideration the nature of the dispute, for handling under accelerated procedure. The determination of the presiding officer to handle or not handle the appeal under accelerated procedure shall be final.

(b) *Dollar amount limitation.* In order to be eligible for handling under accelerated procedure, the appeal shall involve \$25,000 or less consisting of the claim of appellant together with the amount involved in any counterclaim filed by the Government attorney. If no dollar amount of claim or counterclaim is involved, the presiding officer shall determine whether the appeal can be properly disposed of under this Rule 9.

(c) *Elimination of procedures.* In cases proceeding under this Rule 9, parties are encouraged to the extent possible consistent with adequate presentation of their factual and legal positions to waive pleadings, discovery and briefs.

(d) *Presiding officer as decision maker.* The presiding officer in any appeal handled under accelerated procedure shall issue a short written decision as soon as practicable after closing of the record and such decision shall be the final decision of the Board.

Rule 10. Prehearing or Presubmission Procedures

(a) *Prehearing orders.* The presiding officer may issue an order in cases where a hearing will be held prescribing as to one or more the following that the parties shall:

(1) Exchange a list of witnesses giving titles and a brief description of the subject matter of the testimony;

(2) Exchange proposed exhibits and prepare an additional set thereof for the presiding officer; and

(3) Exchange a list of expert witnesses with a summary of their qualifications and testimony.

(b) *Prehearing orders in complex cases.* The presiding officer may issue a more comprehensive order in cases where a hearing will be held and it appears that the issues are confused, complex, that the hearing will be unduly long, or where quantum is involved. Such order, in addition to covering one or more of the items under (a) of this rule, may prescribe as to one or more of the following that the parties shall:

(1) Submit to the presiding officer a stipulation of all facts not in dispute;

(2) Attempt preparation of an agreed statement of factual and legal issues and, failing therein, submit separate statements; and

(3) Submit to the other party, where the issue of quantum will be heard, a statement of the monetary claim in detail with accounting schedules and explanations and afford the other party the right to an audit with the audit report to be available to both parties.

(c) *Prehearing or presubmission briefs and oral argument.* The presiding officer may require or allow the filing of prehearing or presubmission briefs in such manner as prescribed and may also require or allow oral argument in such manner as prescribed prior to hearing or submission on the record.

(d) *Prehearing or presubmission conference.* The presiding officer may require a prehearing or presubmission conference to consider:

(1) The simplification or clarification of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence if the case is to be heard;

(4) The possibility of agreement disposing of all or any of the issues in dispute;

(5) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the presiding officer and this writing shall constitute part of the record.

Rule 11. Submission Without a Hearing

Either party may elect to waive a hearing and if the other party as well as the Board do not require a hearing, the case shall be submitted upon the record before the Board. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument and briefs.

Rule 12. Discovery procedures

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and such order may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of testimony or any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the presiding officer.

(d) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(e) *Interrogatories to parties.* After an appeal has been docketed, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted.

(f) *Admission of facts.* After an appeal has been docketed, a party may serve on the other party a request for the admission of specified facts. The party served shall answer each requested item or file objections thereto within 30 days after service. The presiding officer will rule on any such objections. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond or object to the request for admission.

(g) *Production, inspection and copying of documents.* After an appeal has been docketed, a party may arrange with the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot agree thereon, the presiding officer shall specify just terms and conditions in making the inspection and making copies and photographs. Expenses of making copies and photographs shall be borne by the party seeking to make or cause to be made copies and photographs.

Rule 13. Sanctions

If any party fails or refuses to obey an order issued by the presiding officer, the presiding officer may make such order in regard to the failure deemed necessary to the just and expeditious conduct of the appeal.

Rule 14. Subpoena Power

The Chairman has authority by delegation from the Secretary to request the appropriate United States Attorney to apply to the appropriate United States District Court for the issuance of subpoenas pursuant to 5 U.S.C. 304.

Hearings**Rule 15. Hearings, Notice of**

The presiding officer shall give notice of the time and place set for hearing which shall be scheduled as may best serve the interests of the parties and the Board. Such notice shall be sent to the parties in writing not less than 30 days in advance of the date for such hearing unless the parties waive notice.

Rule 16. Unexcused Absence of a Party

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

Rule 17. Hearings, Open to Public, Verbatim Transcript

Hearings shall be open to the public. Testimony shall be reported verbatim. Transcripts of the proceedings shall be made available by the Board to the Government attorney. Appellant may order transcripts of the proceedings from the contract reporter at the hearing at actual cost of duplication (Pub. L. 92-463, October 6, 1972, 86 Stat. 770, 5 U.S.C. App. I).

Rule 18. Hearings, Conduct of

(a) *General.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The parties may offer such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding officer. The presiding officer shall receive only evidence which is germane to the issues involved and shall exclude, insofar as practicable, evidence which is immaterial, irrelevant or unduly repetitious or which is not of the sort upon which responsible persons are accustomed to rely. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board members considering the case, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the

parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The presiding officer may in any case require evidence in addition to that offered by the parties.

(b) *Examination of witnesses.* Witnesses will be examined under oath or affirmation subject to cross-examination and questions from the presiding officer and Board members. If the testimony of a witness is not given under oath, the presiding officer may warn the witness that statements made may be subject to provisions of law imposing penalties for knowingly making false representations (18 U.S.C. 287, 1001).

(c) *Burden of proof and order of proceeding.* The burden of proof rests on the appellant asserting the claim or error in the decision except that the burden of proof in case of counter-claims rests on the party asserting them. Unless otherwise permitted by the presiding officer, the appellant shall proceed first at the hearing followed by the presentation of the Government attorney and any rebuttal case permitted by the presiding officer.

(d) *Objections.* If a party objects to the admission or rejection of any evidence or to a limitation of the scope of any examination or cross-examination, such party shall state briefly the grounds of such objection and the presiding officer shall rule thereon or reserve ruling.

(e) *Records and documents.* Upon proof of authenticity, papers, books, records or documents shall be admissible in evidence without the production of the person who made or prepared the same except that the person who prepared documents specially for use at the hearing should be available to explain such documents.

(f) *Exhibits.* All documents offered in evidence at a hearing shall be marked for identification by number or letter as prescribed by the presiding officer. Except where the presiding officer finds that the furnishing of copies is impracticable, a copy of each proposed exhibit shall be made available to the other party when offer is made or prior to the hearing, if possible.

(g) *Offer of proof.* Whenever evidence is excluded from the record the offering party may make an offer of proof briefly stating the evidence proposed to be received into evidence.

(h) *Official notice.* Official notice will be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character. *Provided,* That the parties shall be given adequate notice of matters so noticed and shall be given adequate opportunity to show that such facts are erroneously noticed.

(i) *Depositions.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at

the hearing. In cases submitted on the record, the presiding officer may receive depositions as evidence in supplementation of that record.

Posthearing or postsubmission procedures**Rule 19. Posthearing Briefs**

The presiding officer shall prescribe the manner of filing any posthearing briefs.

Rule 20. Closing the Record

(a) *Contents.* The record consists of the appeal file described in Rule 5 and, to the extent the following have been filed, the pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conference and hearings, hearing exhibits, posthearing briefs and documents which the presiding officer has specifically designated be made part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) *Closing or settling of record.* Except as the presiding officer may otherwise order, no proof shall be received in evidence after completion of a hearing or in cases submitted on the record, after the parties have been notified that the case is ready for decision. The weight to be attached to any evidence of record will rest within the sound discretion of the Board members considering the case. The presiding officer may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 21. Copies of papers

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be submitted therefor, during or after the hearing.

Rule 22. Withdrawal of exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be repaired by the Board in its discretion as a condition of granting permission for such withdrawal.

Rule 23. Decisions

The Board shall issue written decisions containing findings of fact and conclusions and shall send copies simultaneously to the parties by certified mail or, if delivered directly, with a notation of the date of delivery. Decision of the Board will be made solely upon the record as described in Rule 20.

Rule 24. Reconsideration, Motion for

A motion for reconsideration of a Board decision, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion and shall be filed within 30 days from the date of receipt of a copy of the Board decision by the party filing

the motion. The Board, in its discretion, may deny the motion or permit such additional proceedings as deemed necessary.

Dismissals

Rule 25. Dismissals

(a) *Lack of jurisdiction.* A motion to dismiss for lack of jurisdiction may be filed by a party at any time. The Board may also raise the question of jurisdiction at any time on its own motion. The presiding officer shall prescribe any necessary proceedings including but not limited to written arguments, briefs or hearing on the issue of jurisdiction. The presiding officer shall issue a Ruling on the issue of jurisdiction unless the Chairman requires a full three member panel or consider the issue of jurisdiction in which event the designated panel shall issue the Ruling on the issue of jurisdiction.

(b) *Failure to prosecute.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the presiding officer, comply with orders of the presiding officer, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the presiding officer may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the presiding officer may issue an Order of Dismissal for failure to prosecute or take such other action deemed reasonable and proper under the circumstances.

(c) *Without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the presiding officer, exercising sound discretion, may dismiss such appeals without prejudice to restoration to the docket when the cause of suspension has been removed. Unless either party or the Board acts within 3 years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

(d) *Settlement or withdrawal.* The parties may settle the issues at any state of the proceedings before issuance of a decision of the Board. The appellant may withdraw the appeal at any time. The presiding officer in the event of settlement or withdrawal shall issue an Order of Dismissal.

Miscellaneous

Rule 26. Representation of Parties.

Appellant may appear before the Board in person or be represented by an authorized representative or attorney subject to the limitations prescribed in 7 CFR 1.26 regarding representation before the Department. The Government shall be represented by the Government attorney.

For Subpart A:

Dated: December 22, 1982.

John R. Block,

Secretary of Agriculture.

For Subpart B:

Dated: December 6, 1982.

Jewel F. Lewis,
Administrative Judge, Chair, Board of
Contract Appeals.

[FR Doc. 82-35134 Filed 12-27-82; 8:45 am]

BILLING CODE 3410-01-M

Food and Nutrition Service

7 CFR Parts 273, 274, 275 and 276

[Amdt. No. 237]

Food Stamp Program; Corrections to Food Stamp Rules

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; Corrections and clarity revisions.

SUMMARY: This action amends Food Stamp Program regulations in the areas of: (1) State agency liabilities and Federal sanctions; (2) Performance Reporting Systems; (3) State agency reporting and destruction of unusable coupons; and (4) Thrifty Food Plan Amounts. This action corrects errors in paragraph referencing and makes clarity revisions only. The action will not result in any policy changes. This document also corrects similar errors or makes clarity changes in the following individual Federal Register publications: 1980 Amendments to the Food Stamp Act of 1977, Policy Interpretations, and Miscellaneous Technical Amendments (issued April 23, 1982); Proration of Initial Month Benefits (issued May 14, 1982); Nondiscretionary Fraud, Waste, Abuse and Simplification Provisions (issued August 13, 1982); Household Composition, Income Standards, Adjustments, Deductions, Outreach and Technical Amendments (issued November 19, 1982); and Eligibility Criteria and Reduction or Termination of Benefits (issued December 14, 1982).

EFFECTIVE DATE: This action is effective January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291. The rule will not result in annual economic impacts of more than \$100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign

trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises. Therefore, the rule has been classified as "non-major".

Regulatory Flexibility Act

The rule also has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities.

Public Participation

As noted above, the amendments made by this final rule are to correct errors and improve clarity and will result in no change in policy. For these reasons, the Department has determined in accordance with 5 U.S.C. 553(b) that notice of proposed rulemaking and public comment on this rulemaking is unnecessary.

Paperwork Reduction Act

This rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget.

7 CFR 273.2(f)(1)(ii)(A) is being amended to change the reference to § 273.4(a) (2) through (6) to reference § 273.4 (a)(2) through (a)(8). Rules issued April 23, 1982 (47 FR 17756), added two more alien provisions to § 273.4.

7 CFR 273.10, Appendix B is being removed. Appendix B sets forth the Thrifty Food Plan Amounts (the amounts on which FSP coupon allotments are based) that were applicable for Guam and the Virgin Islands beginning January 1980. We neglected to delete the Appendix B table when Appendix A to 7 CFR 273.10 was revised to set forth the January 1981 Thrifty Food Plan Amounts for all FSP areas of operation.

7 CFR 271.6(b) (i) and (vi) are being amended to reflect that the State of New York is under the jurisdiction of the Food and Nutrition Services' Burlington, Massachusetts Regional Office, not the Robbinsville, New Jersey Regional Office.

7 CFR 274.2 is being amended to remove paragraph (4) from paragraph (h) and add it to paragraph (i) instead. The paragraph was added to (h) based on rules issued December 8, 1981 (46 FR 60160). However, before the December rules were issued, an earlier rule issued October 9, 1981 (46 FR 50277), redesignated paragraph (h) as (i). This redesignation was overlooked when the December 8 rules were issued. Also, the

December 8 rules redesignated paragraph (g) of 7 CFR 273.11 as (h). A reference to § 273.11 (g)(2) appearing in 7 CFR 274.2(h)(1) and 274.3(c)(1) which were overlooked when the redesignation occurred are corrected by the rule to reference § 273.11(h)(2).

7 CFR 274.3(b)(2) is being amended to replace the reference to Form FNS-136 with a reference to form FNS-471, Coupon Account and Destruction Report. Form FNS-471 has officially replaced form FNS-136 and is currently in use.

7 CFR 275.3(b) is being amended to reflect that the review of a State agency's Performance Reporting System consists of one phase, not two phases. The second phase was removed from the CFR by final rules issued January 23, 1981, at 46 FR 7257.

7 CFR 275.11(f) is being amended to delete the last sentence of the section which states that State agencies' eligibility for enhanced funding is dependent on achievement of a 95 percent sample completion rate. Through an agency oversight, the above referenced line was not removed when the Sanction/Incentive System regulations were published on January 23, 1981, (46 FR 7257) which changed this policy. Failure to meet the 95 percent competition rate results in adjustments to a State agency's error rate and does not automatically render a State agency ineligible for enhanced funding.

7 CFR 276.1(a)(1) is being amended to correct an error in paragraph referencing. This action removes the reference to § 276.2(c)(iv) appearing in paragraph (a)(1). This regulatory paragraph does not exist.

Amendments to Individual Federal Register Publications

This action corrects typographical errors or clarifies provisions issued in the individual Federal Register publications of April 23, 1982, May 14, 1982 and August 13, 1982.

At 47 FR 17756 issued April 23, 1982

(a) § 271.2, in the definition of a "Drug addiction or alcoholic treatment and rehabilitation program", appearing in the rule at page 17762, the reference to 278.1 (a), (b) and (d)(1) is being removed. The phrase gives the impression that one must meet the requirements of 7 CFR 278.1 to be granted Program participation. This is not true nor was this the intent of the final rule change in the definition. Only those who also wish to be authorized as a retailer must comply with 7 CFR 278.1. Thus, a correction is necessary to remove the reference and eliminate confusion or misapplication of the provision.

(b) § 273.2, paragraph (f)(1)(ii)(C), appearing on page 17762, is being amended to correct the reference to § 273.4 (a)(4) through (a)(6). The reference should be to § 273.4 (a)(4) through (a)(8). The April 23rd rule added two more alien provisions to § 273.4.

(c) Also in § 273.2, paragraph (f)(1)(ii)(E) appearing on page 17763 is being corrected to add a reference to section 203(a)(7) of the Immigration and Nationality Act that was unintentionally left out.

(d) In § 273.4, paragraphs (a)(4) and (a)(5) appearing on page 17763, are being amended to correct the cut-off dates appearing in these paragraphs to reflect new dates that were recently prescribed by rules issued by the Immigration and Naturalization Service (INS). Paragraph (f)(1)(ii)(C) under § 273.2 on page 17763 is also being amended to add the April 1, 1980, date to clarify when an INS form I-94 is valid for FSP purposes.

(e) § 273.8, amendatory instruction No. (6)(a) on page 17764 which requires a revision to the last sentence of paragraph (d) under that section is incorrect. The sentence that should be revised is the next to last sentence in § 273.8(d). This is being corrected.

(f) In § 273.8, paragraph (e)(11)(ix) appearing on page 17764, is being changed to correct a reference to a Public Law. Paragraph (c)(10)(ix) under § 273.9 at page 17765 is also being corrected for a similar Public Law reference error.

(g) Also in § 273.8, paragraph (h)(1)(vi) appearing on page 17764, is being corrected to reflect revised language for this paragraph that was added by a final rule issued August 25, 1981 (46 FR 43020) and was unintentionally excluded in the April 23rd rule.

(h) Again, in § 273.8, paragraph (h)(4)(iii) appearing on page 17764, is being corrected to add a phrase in the first sentence that was unintentionally omitted.

(i) In § 273.18, paragraph (b)(3)(ii) appearing on page 17767 is being corrected to add a phrase that was unintentionally omitted.

At 47 FR 20739 issued May 14, 1982

(a) In § 272.8, paragraph (h) appearing on page 20741 is being corrected because of a typographical error. The word "retrospective" should be "retroactive".

At 47 FR 35166 issued August 13, 1982

(a) In § 272.4 paragraphs (c) and (f) on page 35168 were relettered as (b) through (e). However, these paragraphs contained regulatory references to each other that were not revised to reflect the

new designated paragraphs. The references are being corrected.

At 47 FR 52328 issued November 19, 1982

(a) In § 272.4, amendatory instruction number 6 (appearing in column 1, page 52334) is incorrect. The reference to revise paragraphs (c)(1) and (c)(2) should refer to revisions for paragraphs (b)(1) and (b)(2) as rules issued August 13, 1982 (47 FR 35166) redesignated all of paragraph (c) as (b). The amendatory instruction and its corresponding regulatory amendment are being corrected.

(b) In § 273.11, in amendatory instruction number 13 (column 3, page 52337), the portion of that instruction calling for a revision to paragraphs (a)(4)(ii)(C) and (c)(3) and an amendment to paragraph (c)(4) is being removed. Paragraph (a)(4)(ii)(C) was further revised by rules issued on April 23, 1982 (47 FR 17756), and paragraphs (c)(3) and (c)(4) were redesignated and revised by rules issued on October 8, 1982 (47 FR 44692). Respectively, the April 23rd and October 8th language of these paragraphs is the final version intended to be adopted by the Department. Therefore, amendatory instruction number 13 of the November 19, 1982 rules is being corrected by this final action to remove any instruction to change these three paragraphs.

(c) In the preamble to the November 19, 1982 rule (column 2, page 52332) it was stated that 7 CFR 273.20 was being amended to remove all references to the State of Massachusetts. However, we neglected to provide conforming regulatory language to initiate the deletions. The regulatory text of the November 19 rule is being corrected to add the necessary amendatory instruction to remove the references.

At 47 FR 55903 issued December 14, 1982

(a) In the preamble of the December 14 interim rule (column 1, page 55904), the Department explained that 1982 Food Stamp Act amendments redefined who constitutes an elderly or disabled member for Food Stamp Program purposes. The interim rule amended 7 CFR 271.2 to reflect the new definition of elderly and disabled persons. However, the Department unintentionally overlooked other sections throughout the regulations which refer to the old definition of an elderly and disabled household that also needed to be changed. Therefore, this action is correcting the regulatory text of the December 14, 1982 rule to add necessary amendatory instructions and/or pertinent regulatory language to reflect

the new definition in 7 CFR 273.9(d)(3) and (d)(4), 273.10(e)(2)(i)(A), and 273.21(b)(2)(i)(B) and (b)(2)(ii).

List of Subjects

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Penalties.

Accordingly, as set out below, the Code of Federal Regulations is amended at 7 CFR Parts 273, 274, 275 and 276. Also, amendments are made to regulations issued on April 23, 1982 (47 FR 17756), May 14, 1982 (47 FR 20739), and August 13, 1982 (47 FR 35166).

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Corrected]

1. At 47 FR 17762 (column 1), issued on April 23, 1982, the definition of a "Drug addict or alcoholic treatment and rehabilitation program" in § 271.2 is corrected for clarity by removing the words "the requirement of paragraphs (a), (b), and (d)(1) of § 278.1 are met and", appearing in the last sentence.

2. In 7 CFR 271.2, paragraph (b)(1)(i) is amended by removing the reference to the State of "New York" in paragraph (b)(1)(i) and adding a reference to the State of "New York" to paragraph (b)(1)(vi) in alphabetical order.

PART 272—REQUIREMENTS FOR PARTICIPATION STATE AGENCIES

§ 272.8 [Corrected]

3. At 47 FR 20741 (column 3), issued May 14, 1982, in paragraph (h) of § 272.8, the word "retrospective" is corrected to read "retroactive."

§ 272.4 [Corrected]

4. At 47 FR 35168 (column 3), issued August 13, 1982, amendatory instruction number 3 under § 272.4 is corrected by adding a new sentence at the end of the instruction to read as follows:

"Also, regulatory references contained in some of these newly redesignated paragraphs are amended as follows:

- (b)(1)—the reference to (c)(2) and (3) is amended to read (b)(2) and (3),
- (b)(2)(iii)—the reference to (c)(3) is amended to read (b)(3),
- (b)(4)—the reference to (c)(2) and (3) is amended to read (b)(2) and (3),
- (b)(5)—the reference to (c)(3) or (4) is amended to read (b)(3) or (4),
- (c)(2)—the reference to (d)(1) is amended to read (c)(1),
- (d)(1)(i)—the reference to (e)(1)(iv) is amended to read (d)(1)(iv) and
- (d)(3)—the reference to (e)(1)(iv) is amended to read (d)(1)(iv)."

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.2 [Amended]

5. In 7 CFR 273.2, paragraph (f)(1)(ii)(A) is amended by replacing the reference to "(a)(2) through (6)" with the reference to "(a)(2) through (a)(8)."

§ 273.10 [Amended]

6. In 7 CFR 273.10, Appendix B is removed.

§ 273.2 [Corrected]

7. At 47 FR 17762 (column 3), issued April 23, 1982, the reference to "§ 273.4 (a)(4) through (a)(6)" appearing in paragraph (f)(1)(ii)(C) of § 273.2 is corrected to read "§ 273.4 (a)(4) through (a)(8)."

8. At 47 FR 17763 (column 1), issued April 23, 1982, the second sentence in paragraph (f)(1)(ii)(C) of § 273.2 is corrected by adding a new sentence after the second sentence to read as follows:

§ 273.2 Application processing.

- (f) Verification. * * *
- (1) Mandatory verification. * * *
- (ii) Alien status. * * *
- (C) * * * However, an INS Form I-94 annotated with section 203(a)(7) of the Immigration and Nationality Act must have been issued prior to April 1, 1980 to be considered as acceptable verification. * * *

9. At 47 FR 17763 (column 1), issued April 23, 1982, paragraph (f)(1)(ii)(E) of § 273.2 is corrected by adding the reference of "203(a)(7)" in the second sentence, between the reference to "101(a)(20)" and "207".

§ 273.4 [Corrected]

10. At 47 FR 17763 (column 3), issued April 23, 1982, paragraph (a)(4) and (a)(5) of § 273.4 are corrected by replacing the dates of March 17, 1980

and March 18, 1980, with the dates of March 31, 1980 and April 1, 1980, respectively.

§ 273.8 [Corrected]

11. At 47 FR 17764 (column 1), issued April 23, 1982, amendatory instruction number 6(a) under § 273.8 is corrected to read that "The next to the last sentence in paragraph (d) is revised." Therefore, the last sentence of paragraph (d) as codified based on rules issued December 8, 1981 (46 FR 60166) remains unchanged.

12. At 47 FR 17764 (column 2), issued April 23, 1982, the reference to "Public Law 94-433" in paragraph (e)(11)(ix) of § 273.8 is corrected to read "Public Law 95-433."

13. At 47 FR 17764, issued April 23, 1982, paragraph (h)(1)(vi) of § 273.8 (column 2) and the first sentence of paragraph (h)(4)(iii) of § 273.8 (column 3) are corrected to read as follows:

§ 273.8 Resource eligibility standards.

(h) Handling of licensed vehicles

(i) * * *

(vi) Necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle for physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member.

(4) * * *

(iii) Any other vehicle used to transport household members (or an ineligible alien or disqualified household member whose resources are being considered available to household) to and from employment, or to and from training or education which is preparatory to employment, or to seek employment in compliance with the job search criteria. * * *

§ 273.9 [Corrected]

14. At 47 FR 17765 (column 1), issued April 23, 1982, the reference to "(c)(1)(iii)" appearing in paragraph

(b)(1)(iv) of § 273.9 is corrected to read "(c)(10)(iii)".

15. At 47 FR 17765 (column 2), issued April 23, 1982, the reference to "Public Law 95-443" appearing in paragraph (c)(10)(ix) of § 273.9 is corrected to read "Public Law 95-433."

16. At 47 FR 17767 (column 2), issued April 23, 1982, the first sentence in paragraph (b)(3)(ii) of § 273.18 is corrected to read as follows:

§ 273.18 Claims against households.

(b) *Nonfraud claims.* * * *

(3) *Collecting nonfraud claims.* * * *

(ii) State agencies shall initiate collection action by sending the household a written demand letter, designed by FNS, which informs the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the State agency's determination. * * *

§ 273.11 [Corrected]

17. At 47 FR 52337 (column 3), issued November 19, 1982, amendatory instruction number 13 is corrected by removing that portion of the instruction calling for a revision to paragraphs (a)(4)(ii)(C) and (c)(3) and an amendment to paragraph (c)(4). Also the corresponding amendatory language under § 273.11 for paragraphs (a)(4)(ii)(C) and (c)(3) appearing on page 52338 in columns 1 and 2, respectively are removed.

18. At 47 FR 52334 (column 1), issued November 19, 1982, amendatory instruction number 6 and its accompanying language change to § 272.4 are corrected to read as follows:

"6. In § 272.4, paragraph (b)(1) and the introductory sentence to paragraph (b)(2) are revised to read as follows:

§ 272.4 Program administration and personnel requirements.

(b) *Bilingual requirements.* (1) Based on the estimated total number of low-income households in a project area which speak the same non-English language (a single-language minority), the State agency shall provide bilingual program information and certification materials, and staff or interpreters as specified in paragraphs (b) (2) and (3) of this section. Single-language minority refers to households which speak the same non-English language and which do not contain adult(s) fluent in English as a second language;

(2) The State agency will provide materials used in Program informational

activities in the appropriate language(s) as follows. * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

19. At 47 FR 52338 (column 3), issued November 19, 1982, the regulatory text is being corrected to add the following new amendatory instruction and accompanying amendatory text in numerical order to read as follows:

"15. In § 273.20, paragraphs (a), (b) and (c) are amended by removing all references to the State of Massachusetts."

20. At 47 FR 55909, issued December 14, 1982, the regulatory text is corrected by adding new amendatory instructions (d) and (e) to amendatory instruction No. 7 appearing in the middle of column 2. The instructions read as follows:

"(d) Paragraph (d)(3) is amended by removing everything in the first sentence after the phrase "incurred by any household member who is" and inserting the phrase "elderly or disabled as defined in § 271.2" at the end of that sentence instead.

(e) Paragraph (d)(4) is amended by removing everything in the second sentence after the phrase "unless the household contains a member who is" and inserting the phrase "elderly or disabled as defined in § 271.2" at the end of that sentence instead."

21. At 47 FR 55909, issued December 14, 1982, the regulatory text is corrected by adding a new amendatory instruction (m) to the end of amendatory instruction No. 8 appearing near the top of column 3. The instruction reads as follows:

"(m) Paragraph (e)(2)(i)(A) is amended by removing the phrase "sixty years of age or over, or a member who receives Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act or disability and blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act" and inserting the phrase "elderly or disabled as defined in § 271.2 "in its place."

22. At 47 FR 55910, issued December 14, 1982, the regulatory text is being corrected by adding new amendatory instructions No. 10 (a) and (b) just after the last five asterisks appearing at the end of column 2. The instructions read as follows:

"10. In § 273.21:

(a) Paragraph (b)(2)(i)(A) is amended by removing everything after the phrase "are all without earned income and are" and inserting the phrase "elderly or disabled as defined in § 271.2" instead.

(b) Paragraph (b)(2)(ii) is amended by removing everything between the phrase "are all without earned income and are"

and the phrase "unless these households file AFDC monthly reports" and inserting the phrase "elderly or disabled as defined in § 271.2" between the remaining phrases."

PART 274—ISSUANCE AND USE OF FOOD COUPONS

23. In 7 CFR 274.2 paragraph (h)(4) is removed and the third sentence of paragraph (h)(1) is amended by replacing the reference to § 273.11(g)(2) with a reference to § 273.11(h)(2).

24. In 7 CFR 274.2, a paragraph (4) is added to paragraph (i) to read as follows:

§ 274.2 Issuance systems.

(i) * * *

(4) Residents of shelters for battered women and children, as such shelters are defined in § 271.2 and which are not authorized by FNS to redeem through wholesalers, may request that all or part of their coupons be of the 1-dollar denomination and State agencies are authorized to grant this request where feasible.

§ 274.3 [Amended]

25. In 7 CFR 274.3, paragraph (c)(1) is amended by replacing the reference of "§ 273.11(g)(2)" with a reference to "§ 273.11(h)(2)."

§ 274.8 [Amended]

26. In 7 CFR 274.8, paragraph (b)(2) is amended by replacing the reference to "Form FNS-136, Certificate of Destruction of Food Coupons" with a reference to "Form FNS-471, Coupon Account and Destruction Report".

PART 275—PERFORMANCE REPORTING SYSTEM

27. In 7 CFR 275.3, paragraph (b) is revised to read as follows:

§ 275.3 Federal monitoring.

(b) *Reviews of State Agency's Performance Reporting System.* FNS will review each State agency's performance reporting system on an annual basis (in terms of management evaluation (ME) reviews conducted by the State agency). The review will include but not be limited to a determination of whether or not the State is complying with FNS regulations, an assessment of the State's methods and procedures for conducting ME reviews including sampling techniques, and an assessment of the data collected by the State in conducting the reviews.

§ 275.11 [Amended]

28. In 7 CFR 275.11, paragraph (f) is amended by removing the last sentence of the paragraph.

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

29. In 7 CFR 276.1, paragraph (a)(1) is amended by replacing the phrase "Except as set forth in § 276.2(c)(iv)," with the phrase "Except as otherwise provided in these regulations,".

(91 Stat. 958 (7 U.S.C. 2011-2029))

(Catalog of Federal Domestic Assistance Programs No. 10. 551, Food Stamps)

Dated: December 21, 1982.

Robert E. Leard,
Associate Administrator.

[FR Doc. 82-35092 Filed 12-27-82; 8:45 am]

BILLING CODE 3410-30-M

NUCLEAR REGULATORY COMMISSION**10 CFR part 50****Filing of Copies of Changes to Emergency Plans and Procedures**

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reduce the number of copies of changes to nuclear power plant emergency plans and procedures. The total number of copies to be submitted will be reduced from 13 to 3. The Commission has determined that 3 copies will be sufficient for processing purposes. These amendments will reduce the regulatory burden on the affected licensees.

DATE: The effective date of this rule will be December 28, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Perkins, Chief, Incident Response Branch, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (Telephone 301-492-7361).

SUPPLEMENTARY INFORMATION: On August 19, 1980, the Nuclear Regulatory Commission published in the Federal Register (45 FR 55402) amendments to its regulations for the upgrading of emergency planning and preparedness. The effective date for those regulations was November 3, 1980.

In those regulations, § 50.54(q) required licensees to furnish three copies of changes to the emergency plan

and emergency plan implementing procedures to NRC Regional Administrators and ten copies to the Director, Office of Nuclear Reactor Regulation. The amendment contained in this notice reduces to 3 the total number of copies the licensee is required to submit (one copy to be sent to the appropriate Regional Administrator and two copies to NRC Headquarters).

Because these amendments relate solely to procedural matters, the Commission has found that good cause exists for omitting notice of proposed rulemaking and public procedure thereon, as unnecessary. Since the amendment relieves licensees from restrictions under regulations currently in effect, it is effective upon publication.

Paperwork Reduction Act Statement

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget; OMB approval No. 3150-0011.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 are published as a document subject to codification.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68

Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Paragraph (q) of § 50.54 is revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(q) A licensee authorized to possess and/or operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in § 50.47(b) of this part and the requirements in Appendix E to this Part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the requirements in Appendix E of this part. The nuclear power reactor licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of §§ 50.47(b) of this part and the requirements of Appendix E of this Part. The research reactor licensee and/or the fuel facility licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of Appendix E of this part. Proposed changes that decrease the effectiveness of the approved emergency plans shall not be implemented without application to and approval by the Commission. The licensee shall furnish one copy of each proposed change for approval to the Administrator of the appropriate NRC Regional Office specified in Appendix D of Part 20 of this chapter and two copies to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If a change is made without approval, the licensee shall furnish one copy to the Administrator of the appropriate NRC Regional Office specified in Appendix D of Part 20 of this chapter and two copies of the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days after the change is made.

3. Part V, "IMPLEMENTING PROCEDURES," of Appendix E is revised to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities

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