

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 1

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is amending the uniform rules of practice governing formal adjudicatory administrative proceedings instituted by the Department or any agency thereof under the statutes and regulations designated in the subpart. This final rule permits an Administrative Law Judge to issue an oral decision at the close of a hearing instead of issuing a written decision at a later date. This procedure would allow proceedings to be concluded in a more expeditious and less costly manner. This final rule also changes the time periods for proposing corrections to the transcript and for the submission of proposed findings of fact, conclusions, orders, and briefs in administrative proceedings conducted under the uniform rules of practice to allow for the oral decision.

**EFFECTIVE DATE:** March 7, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ronald D. Cipolla, Assistant General Counsel, Regulatory Division, Office of the General Counsel, United States Department of Agriculture, Room 2422 South Building, 14th and Independence Avenue, SW., Washington, DC 20250-1400. Telephone: (202) 447-5550.

**SUPPLEMENTARY INFORMATION:** The Department has established in 7 CFR Part 1, Subpart H, uniform rules of practice governing formal adjudicatory administrative proceedings instituted by

the Secretary of Agriculture under various statutes and regulations.

Section 1.142 of the rules permits the parties to a proceeding to file proposed findings of fact, conclusions, and orders, based solely upon the record and on matters subject to official notice. This section also permits briefs to be filed in support of the proposed findings, conclusions, and orders. Under § 1.142(b), the Judge is required to announce at the hearing a definite period of time within which such documents may be filed. The Judge shall file his or her decision after the parties have had an opportunity to file such documents.

This procedure has precluded the use of an oral decision at the hearing unless all parties to a proceeding waived their right to file such documents. The Department believes that there are many administrative cases in which the issues are so clear that the parties could file briefs before the hearing and the Judge could announce a decision at the close of the hearing or shortly thereafter. This procedure would allow proceedings to be concluded in a more expeditious and less costly manner. Therefore, we are amending § 1.142 (b) and (c) to allow the issuance of such expedited decisions. In addition, § 1.142 of the regulations concerning the parties' opportunity to file corrections to the transcript must also be amended. Currently, corrections to transcripts must be filed no later than the filing date for the proposed findings of fact, conclusions, orders, and briefs. Obviously, the corrections to the transcript could not be filed with such documents, if the documents are filed before the hearing. Accordingly, we are amending § 1.142(a) to permit transcript corrections to be filed by the date set by the Judge.

This final rule relates to internal agency management concerning rules of agency procedure or practice in formal adjudicatory proceedings. Therefore, this rule is exempt from the provisions of 5 U.S.C. 553.

#### Executive Order 12291 and Regulatory Flexibility Act

Since this final rule relates to internal agency management concerning rules of procedure or practice in formal adjudicatory proceedings, it is exempt from Executive Order 12291. Also, this action is not a rule as defined by Pub. L.

96-351, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

#### Paperwork Reduction Act

This final rule does not seek answers to identical questions or reporting or recordkeeping requirements imposed on ten or more persons, and the information collected is not used for general statistical purposes. Therefore, the Paperwork Reduction Act of 1980 does not apply to this action.

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

Administrative practice and procedures.

## PART 1—ADMINISTRATIVE REGULATIONS

Accordingly, 7 CFR Part 1, Subpart H is amended as follows:

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

1. The authority citation for Subpart H is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 61, 87e; 149, 150gg, 162, 163, 164, 228, 268, 499a, 1592, 1624(b), 2151, 2908, 3812, 4610, 4815, 4910; 15 U.S.C. 1828; 16 U.S.C. 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b); 621, 1043; 43 U.S.C. 1740.

2. Section 1.142 is amended by revising paragraphs (a)(1), (a)(3), (b), and (c) to read as follows:

#### § 1.142 Post-hearing procedure.

(a) *Corrections to transcript.* (1) Within the period of time fixed by the Judge, any party may file a motion proposing corrections to the transcript.

(3) As soon as practicable after the close of the hearing and after consideration of any timely objections filed as to the transcript, the Judge shall issue an order making any corrections to the transcript which the Judge finds are warranted, which corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions, orders, and briefs.* Prior to the Judge's decision, each party shall be afforded a reasonable opportunity to submit for consideration proposed findings of fact, conclusions, order, and



brief in support thereof. A copy of each such document filed by a party shall be served upon each of the other parties.

(c) *Judge's decision.* (1) The Judge may, upon motion of any party or in his or her own discretion, issue a decision orally at the close of the hearing, or within a reasonable time after the closing of the hearing.

(2) If the decision is announced orally, a copy thereof, excerpted from the transcript of the record, shall be furnished to the parties by the Hearing Clerk. Irrespective of the date such copy is mailed, the issuance date of the decision shall be the date the oral decision was announced.

(3) If the decision is in writing, it shall be filed with the Hearing Clerk and served upon the parties as provided in § 1.147.

(4) The Judge's decision shall become effective without further proceedings 35 days after the issuance of the decision, if announced orally at the hearing, or if the decision is in writing, 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.145; *Provided, however*, that no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

Done in Washington, DC, this 19th day of February 1988.

John J. Franke, Jr.,

*Assistant Secretary for Administration.*

[FR Doc. 87-4769 Filed 3-4-87; 8:45 am]

BILLING CODE 3410-01-M

## Farmers Home Administration

### 7 CFR Part 1944

#### Section 502 Rural Housing Loan Policies, Procedures and Authorizations

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) adopts its interim rule published December 2, 1987 (52 FR 45807). This action amends FmHA Section 502 Rural Housing (RH) loan regulations which establish the requirements for a dwelling to be financed by the agency. FmHA had issued regulations which prohibited financing the construction or purchase of a new home with both a basement and a garage, regardless of climatic conditions; however, implementation drew Congressional concern about the hardships placed on FmHA borrowers,

and resulted in a statutory requirement prohibiting the use of funds to implement the provision. This action will permit the agency to resume financing the construction or purchase of a new home with both a basement and a garage where it is customary and, because of severe weather, living in a home without both a basement and a garage would be a hardship for the occupant.

**EFFECTIVE DATE:** March 7, 1988. Interim rule is effective December 2, 1987.

#### FOR FURTHER INFORMATION CONTACT:

Joyce M. Halasz, Loan Specialist, Single Family Housing, Processing Division, Farmers Home Administration, USDA, Room 5336, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone: (202) 382-1474 or (FTS) 382-1474.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. FmHA published this as an interim rule at 52 FR 45807-45808, effective December 2, 1987 since it involved an emergency situation. The comment period expired on February 1, 1988, and no comments were received.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10410. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program". It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

#### List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs, Housing and community development, Low and moderate-income housing, Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

## PART 1944—[AMENDED]

Accordingly, the interim rule amending 7 CFR Part 1944, Subpart A which was published at 52 FR 45807-45808 on December 2, 1987, is adopted as a final rule without change.

Dated: February 9, 1988.

Vance L. Clark,

*Administrator, Farmers Home Administration.*

[FR Doc. 88-4855 Filed 3-4-88; 8:45 am]

BILLING CODE 3410-07-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

#### Financial Reporting Requirements for Futures Commission Merchants and Introducing Brokers; Correction

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules; correction.

**SUMMARY:** This document corrects and clarifies the amendatory language describing recent amendments to § 1.10(d) promulgated under the Commodity Exchange Act (7 U.S.C. 1 *et seq.* (1982)). That rules set forth the required contents of financial reports which must be filed under the rules of the Commodity Futures Trading Commission ("Commission"). For the convenience of the reader, the Commission is also publishing herein the full text of Rule § 1.10(d) (1) and (2). The rule amendments were published in the *Federal Register* on Wednesday, February 17, 1988, beginning at 53 FR 4606 and the amendatory language which is being corrected appeared at page 4611 in the first column. The regulatory text and the preamble discussion which appears in that adopting release are correct.

#### FOR FURTHER INFORMATION CONTACT:

Paul H. Bjarnason, Jr., Deputy Director, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, 2033 K Street NW., Washington, DC 20581, telephone: (202) 254-8955, or Henry J. Matecki, Branch Chief, Central Region, Audit and Financial Review Unit, Division of Trading and Markets, 233 South Wacker Drive, Suite 4600, Chicago, Illinois 60606, telephone: (312) 353-6642.

The following correction is made in FR Doc. 88-3133, which was published in the issue of Wednesday, February 17, 1988, beginning at page 4606: