

Guam and the Commonwealth of the Northern Mariana Islands; and (2) In the case of the Forestry Incentives Program, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands and the Territories and possessions of the United States.

Signed at Washington, DC on April 27, 1988.

Vern Neppi,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-9718 Filed 5-2-88; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 900

Changes in Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders and Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Rules of Practice and Procedure concerning the execution of marketing agreements so that the notice of issuance and effective date provisions conform to those which are currently in effect for marketing orders. The amendments are necessary so that marketing agreements may be published in the Code of Federal Regulations (CFR). This rule also makes minor changes in information collection regulations which will be necessary when the peanut agreement is codified.

EFFECTIVE DATE: May 3, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone, (202) 475-5697.

SUPPLEMENTARY INFORMATION: This action amends § 900.14(a) of Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders (7 CFR 900.1-900.18), and § 900.601 of Subpart—Information Collection (7 CFR 900.600-900.601).

This action is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has

been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601-612), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities because it involves only Department of Agriculture procedures and would not measurably affect costs for the directly regulated persons.

A marketing agreement is issued in conjunction with a marketing order or independently when handlers of a required percent of the commodity covered have signed an agreement with the Secretary of Agriculture. However, the Secretary can issue a marketing order independently if the order has received the required grower approval (generally, two-thirds of the growers who voted either by number or volume), and the Secretary finds that it is the only practical way of advancing growers' interests.

A marketing order, with or without handler approval, is binding on all handlers in the industry. A marketing agreement without a companion marketing order is binding only on those handlers who sign it.

The commodities which may be regulated through marketing orders and the ways in which they may be regulated are prescribed in the Act. No statutory limitations of these types are prescribed for marketing agreements.

Marketing agreement and order programs are based on evidence presented at a public hearing. At the hearing, the proponents present evidence in support of the program, and opponents submit evidence in support of their positions. Any order or agreement issued must be supported by substantial and reliable evidence contained in the record. The record must contain an explanation of how the program will fit the particular conditions of the industry and how it will solve the industry's marketing problems.

Section 900.14(a) concerning marketing agreements provides that if the Secretary determines that the required number of handlers execute a marketing agreement, the Secretary shall execute the marketing agreement, and notice of its effective date shall be mailed by the hearing clerk to each person who is a signatory to that agreement. That paragraph further provides that a marketing agreement shall be effective and binding upon any party thereto even though such party may not have received the notice provided for in paragraph (a), or the

hearing clerk may have failed to mail such notice.

The rules concerning marketing orders (with or without agreements) provide for publication in the Federal Register and contain different provisions with respect to notice and effective dates.

In order to codify and publish agreements in the CFR, the procedures in § 900.14(a) need to be brought into conformity with those contained in §§ 900.14 (d) and (e). The changes hereinafter set forth in § 900.14(a) bring the procedural requirements for marketing agreements without orders into conformity with those for orders with or without agreements.

This rule also makes conforming changes in § 900.601 of Subpart—Information Collection (7 CFR 900.600 and 900.601) which will be needed when the Marketing Agreement Regulating the Quality of Domestically Produced Peanuts (peanut agreement) is codified. Section 900.601 lists the Office of Management and Budget (OMB) control numbers assigned by OMB pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and the 7 CFR part numbers for various fruit, vegetable, and specialty crop commodities for which there are codified marketing orders with or without agreements. The control numbers provide a simple and effective way for the public to determine if an information collection burden has been approved by OMB. The information collection requirements of the peanut agreement have been approved by OMB. The OMB control number assigned to the peanut agreements is 0581-0067 and is added to § 900.601(b) by this action. Also, the part number "7 CFR Part 998," to be assigned to the peanut agreement, is added to § 900.601(a) by this action.

Pursuant to 5 U.S.C. 553, it is found that this action is exempt from the requirement to give preliminary notice and to engage in public rulemaking procedure in that: (1) This action is administrative only and prescribes agency practices and procedures for implementing executed marketing agreements without marketing orders and (2) this action merely displays the information collection control number assigned by the OMB for the peanut agreement in anticipation of its codification as 7 CFR Part 998. Good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register for the reasons stated above.

List of Subjects in 7 CFR Part 900

Marketing agreements and orders, Almonds, Apricots, Avocados, Celery, Cherries, Cranberries, Dates, Filberts,

Grapefruit, Grapes, Hazelnuts, Kiwifruit, Lemons, Lettuce, Limes, Melons, Nectarines, Olives, Onions, Oranges, Papayas, Peaches, Pears, Plums, Potatoes, Prunes, Raisins, Spearmint oil, Tangelos, Tangerines, Tomatoes, Walnuts, Peanuts.

For the reasons set forth in the preamble, §§ 900.14 and 900.601 are amended as follows:

PART 900—GENERAL REGULATIONS

1. The authority citation for Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate Marketing Agreements and Orders (7 CFR 900.1–900.18) continues to read as follows:

Authority: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

2. Section 900.14 is amended by revising the section heading and paragraph (a) to read as follows:

§ 900.14 Execution and issuance of marketing agreements and marketing orders.

(a) *Execution and issuance of marketing agreement.* If the Secretary has approved a marketing agreement, as provided in § 900.13a, the Administrator shall cause copies thereof to be distributed for execution by the handlers eligible to become parties thereto. If and when such number of the handlers as the Secretary shall deem sufficient shall have executed the agreement, the Secretary shall execute the agreement. After execution of a marketing agreement, such agreement shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the *Federal Register*. The marketing agreement shall not become effective less than 30 days after its publication in the *Federal Register*, unless the Secretary, upon good cause found and published with the agreement, fixes an earlier effective date therefor: *Provided*, That no marketing agreement shall become effective as to any person signatory thereto before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice that the Secretary has executed the agreement and the effective date of the marketing agreement.

3. The authority citation for Subpart—Information Collection (7 CFR 900.600–900.601) continues to read as follows:

Authority: 44 U.S.C. Ch. 35.

4. Section 900.601 is amended by changing "993" to "998" in paragraph (a), and adding an OMB Control Number

for domestically produced peanuts to read as follows:

§ 900.601 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

998, Domestic Peanuts.....0581–0067

Dated: April 25, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88–9526 Filed 5–2–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

8 CFR Part 3

[A.G. Order 1270–88]

Executive Office for Immigration Review; Board of Immigration Appeals; Designation of Judges

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule provides for the designation of immigration judges as temporary, additional members to supplement the regular Board of Immigration Appeals.

This provision is necessary because it has become apparent that periodic substantial increases in the Board case load have created a need for additional members to assist in the efficient review of cases. This rule will effectively increase the Board's capacity to review cases since it will be possible to create two panels of three members, each one capable of reviewing cases. Also, in the event of Board vacancies, this provision will permit the temporary utilization of immigration judges to assist in the review of cases.

EFFECTIVE DATE: May 3, 1988.

FOR FURTHER INFORMATION CONTACT:

Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 756–6470.

SUPPLEMENTARY INFORMATION: This final rule provides for temporary, additional Board members to be designated by the Director of the Executive Office for Immigration Review, from among immigration judges.

This provision is necessary because it has become apparent that periodic substantial increases in the Board case load have created a need for additional members to assist in the efficient review of cases. This rule will effectively increase the Board's capacity to review

cases since it will be possible to create two panels of three members, each one capable of reviewing cases. Also, in the event of Board vacancies, this provision will permit the temporary utilization of immigration judges to assist in the review of cases.

This rule is also promulgated as a contingency for national emergencies. If ever there is a situation where for national security considerations or other critical reasons, large numbers of cases must be reviewed quickly, this rule will assist in the speedy review of such matters.

Finally, this rule will provide a cost-effective method of increasing Board productivity. Since immigration judges may be designated as temporary, additional Board members during peak periods on an as needed basis, substantial cost savings will be realized when compared to the creation of additional, permanent Board members.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Further, this rule is not a major rule within the definition of section 1(b) of Executive Order 12291.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is not necessary because this rule relates to agency organization and management.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Aliens.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Subpart A—Board of Immigration Appeals

1. The authority citation for Part 3 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362; 28 U.S.C. 509, 510, 1746; 5 U.S.C. 301, Section 2 Reorg. Plan No. 2 of 1950.

2. Section 3.1, paragraph (a)(1) is revised to read as follows:

§ 3.1 General authorities.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review. The Board shall exercise so much of the immigration and nationality laws as he may delegate to it. The Board shall consist of a Chairman and four

other members. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of the remaining members to exercise all the powers of the Board, and three members of the Board shall constitute a quorum of the Board. The Director may in his discretion designate immigration judges to act as temporary, additional Board members for whatever time the Director deems necessary. In the event that immigration judges are so designated, two panels of three members each may be designated by the Chairman. Each panel shall be empowered to review cases by majority vote. Each panel may exercise the appropriate authority of the Board as set out in Part 3 which is necessary to review cases before it. The permanent Board may, by majority vote on its own motion, reconsider en banc any case decided by a panel. The total number of Board members and temporary, additional Board members may not exceed seven individuals at any time. There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

Date: April 21, 1988.

Edwin Meese III,
Attorney General.

[FR Doc. 88-9740 Filed 5-2-88; 8:45 am]

BILLING CODE 1531-26-M

DEPARTMENT OF ENERGY

10 CFR Part 1004

Freedom of Information; Uniform Fee Schedule and Administrative Guidelines

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: This final rule revises the DOE regulations that implement the Freedom of Information Act (FOIA), 5 U.S.C. 552. Revisions include a new schedule of fees associated with processing of FOIA requests, guidelines that implement the fee schedule, and current addresses of Department organizational entities.

EFFECTIVE DATE: June 2, 1988.

FOR FURTHER INFORMATION CONTACT:

John H. Carter, Chief of Freedom of Information and Privacy Acts, MA-232.1, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5955
Abel Lopez, Office of General Counsel, GC-43, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8618

SUPPLEMENTARY INFORMATION: This final rule conforms to the guidelines issued by the Office of Management and Budget (OMB), as required by the Freedom of Information Reform Act of 1986 (FOIRA), Pub. L. No. 99-570, 100 Stat. 3207-49. In addition, there are many editorial revisions and changes to the existing DOE rule on FOIA which are incorporated in this final rule.

General Information

The Freedom of Information Reform Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207-49, requires that each agency (1) promulgate regulations which establish a fee schedule to process requests for information and (2) establish procedures and guidelines to determine when such fees should be waived or reduced. The DOE fee schedule and procedures conform to the guidelines issued by the OMB for agencies to follow in implementing these regulations. This final rule revises existing DOE fee schedules and procedures in accordance with the FOIA, as amended, and makes other technical and editorial changes to the DOE regulations that implement the FOIA. The DOE published its proposed rule for comment on June 17, 1987 (52 FR 23155).

Executive Order No. 12291

It has been determined that these regulations are not a major rule subject to the requirements of Executive Order No. 12291 (46 FR 13193, February 19, 1981), because they are not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions, or cause significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These regulations were submitted to the Director of the Office of Management and Budget for a 10 day review period as required by section 3(c)(3) of Executive Order No. 12291. The Director has concluded his review under that Executive Order.

Analysis of Comments Received

Comments postmarked or received within the comment period were considered in the development of this final rule. In response to a suggestion by three commenters, the DOE will again include the language of the FOIA exemptions in the rule. Additional comments are addressed below

according to the subsections of the regulation to which they apply.

1. *Definitions (Section 1004.2).* Three commenters objected to certain definitions contained in this section, especially that of "representative of the news media." However, these definitions were drawn from the OMB Fee Guidelines, that became final after a period of public notice and comment in which concerns similar to those raised by these commenters were considered. See OMB Fee Guidelines, sec. 6g-6j, 52 FR 10011, 10017-18 (March 27, 1987); see also 52 FR 10013-15 (OMB analysis of comments on definitions). The DOE is required by the FOIA to conform its fee schedule, which includes these definitions of categories of requesters, to the OMB Fee Guidelines. Furthermore, the DOE firmly believes that these definitions, including that of "representative of the news media," properly implement the statutory intent of the amended Act.

2. *Fees to be charged (Section 1004.9(a)).* One commenter objected to the use of private sector firms to locate, reproduce and disseminate records in response to FOIA requests, because these private firms might have access to trade secrets and confidential commercial information. However, this provision was taken directly from the OMB Fee Guidelines. See OMB Fee Guidelines, sec. 7, 52 FR 10011, 10018 (March 27, 1987). The DOE believes that this correctly implements the statutory provision concerning making records promptly available.

3. *Review of records (Section 1004.9(a)(3)).* One commenter objected to the provision for charging review costs for a subsequent review of records previously withheld pursuant to an exemption determined to no longer apply. The DOE believes that such review qualifies under the statute as an "initial examination" because the record is being reviewed for the first time to determine whether other exemptions which had not been previously considered now apply. If these review costs were precluded, the DOE would be compelled at the time of initial processing to review these records to determine the applicability of all possible exemptions, even though at the time of processing one exemption may clearly apply to the entire record or portions thereof. Such an approach would unnecessarily increase review costs to requesters.

4. *Notification of charges (Section 1004.9(a)(7)).* One commenter stated that it is unclear whether a requester must agree to pay all fees for charges over \$25.00 before the time deadlines for a