

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 1

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

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

**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the existing uniform rules of practice for administrative proceedings under various statutes. It concerns the method of service of documents or papers in such proceedings, and reflects a belief that ordinary mail is sufficient for all but a few of such items. It reduces requirements for use of certified or registered mail to what is necessary. It also provides that documents and papers served by ordinary mail on a party other than the Secretary will be deemed to be served at the time of mailing. It also extends times for filing certain documents and papers since such times will be computed from the date of mailing, rather than the date of receipt, of the documents and papers to which they must respond.

**EFFECTIVE DATE:** July 27, 1990, except that these amendments shall not apply to any document or paper to be filed, for which a filing date has been set by order of a Judge prior to such effective date, or for which a filing date has been specified in a written notice issued prior to such effective date and served, in a proceeding pending on such effective date.

**FOR FURTHER INFORMATION CONTACT:** John J. Casey, Office of the General Counsel, 2446 South Building, USDA, Washington, DC 20250-1400, 202/447-7357.

**SUPPLEMENTARY INFORMATION:** This is an amendment to the existing uniform rules of practice for administrative proceedings under various statutes. It concerns the method of service of documents or papers in such proceedings, and reflects a belief that ordinary mail is sufficient for all but a few of such items.

Requirements for use of certified or registered mail currently apply to all documents or papers served in such proceedings; such requirements are now being limited to a few such items:

1. A complaint or other document initially served on a person to make that person a party respondent in a proceeding;
2. A proposed decision and motion for adoption thereof upon failure to file an answer or admission of all material allegations of fact contained in a complaint;
3. A recommended final order;
4. A final order;
5. An appeal petition filed by the Department; and
6. Any other document specifically ordered by the Judge to be served by certified mail.

The amendment also provides that all other documents and papers served by ordinary mail will be deemed to be served on a party other than the Secretary at the time of mailing.

The amendment also extends times for filing certain documents and papers, from 10 days to 20, since such times will be computed from the date of mailing, rather than the date of receipt, of the documents and papers to which they must respond. No change is made in the method of filing, or service on the Secretary or agent thereof, and service of such documents will be considered made when the documents are received by the Hearing Clerk.

Recent decisions supporting the changed method of service are *Atkins v. Parker*, 472 U.S. 115 (1985); *U.S. Fire Ins. Co. v. Producciones Padosa, Inc.*, 835 F.2d 950 (1st Cir. 1987); *Old Ben Coal Co. v. Luker*, 826 F.2d 688 (7th Cir. 1987); and *U.S. v. Bolton*, 781 F.2d 528 (6th Cir. 1985), *cert. den.*, 476 U.S. 1158 (1986).

Notice of proposed rulemaking is not required by law for this amendment on the basis that it constitutes "rules of agency \* \* \* procedure, or practice" under 5 U.S.C. 553(b)(A).

#### Executive Order 12291 and Regulatory Flexibility Act

This final rule is exempt from Executive Order 12291 since it relates to internal agency management concerning rules of procedure or practice in formal adjudicatory proceedings. Also, this action is exempt from the provisions of the Regulatory Flexibility Act since it is not a rule as defined by that Act.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1980 does not apply to this final rule since it 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.

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

Agriculture, Administrative practice and procedure.

Accordingly, 7 CFR part 1, subpart H, is amended as set forth below.

#### PART 1—[AMENDED]

1. The authority citation for 7 CFR part 1, subpart H continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2621, 2714, 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, unless otherwise noted.

2. Section 1.132 is amended by adding new paragraphs (j) and (k) to read as follows:

#### § 1.132 Definitions.

(j) *Mail* means to deposit an item in the United States Mail with postage affixed and addressed as necessary to cause it to be delivered to the address shown by ordinary mail, or by certified or registered mail if specified.

(k) *Re-mail* means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail.

#### § 1.143 [Amended]

3. Section 1.143(d) is amended by removing the number "10" and inserting in lieu thereof the number "20."

4. Section 1.147 is amended by revising paragraph (b), by redesignating existing paragraphs (c), (d) and (e) as (f),

(g) and (h), respectively, and by adding new paragraphs (c), (d), and (e), to read as follows:

**§ 1.147 Filing; service; extensions of time; and computation of time.**

(b) *Who shall make service.* Copies of all such documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be served upon the parties by the Hearing Clerk, or by some other employee of the Department, or by a U.S. Marshal or deputy marshal.

(c) *Service on party other than the Secretary.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, proposed decision and motion for adoption thereof upon failure to file an answer or other admission of all material allegations of fact contained in a complaint, initial decision, final decision, appeal petition filed by the Department, or other document specifically ordered by the Judge to be served by certified or registered mail, shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *Provided that*, if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.

(2) Any document or paper, other than one specified in paragraph (c)(1) of this section or written questions for a deposition as provided in § 1.148(d)(2) of this part, shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of mailing by ordinary mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual.

(3) Any document or paper served other than by mail, on any party to a proceeding, other than the Secretary or agent thereof, shall be deemed to be received by such party on the date of:

(i) Delivery to any responsible individual at, or leaving in a conspicuous place at, the last known principal place of business of such party, last known principal place of

business of the attorney or representative of record of such party, or last known residence of such party if an individual, or

(ii) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(d) *Service on another.* Any subpoena, written questions for a deposition under § 1.148(d)(2) of this part, or other document or paper, served on any person other than a party to a proceeding, the Secretary or agent thereof, shall be deemed to be received by such person on the date of:

(1) Delivery by certified mail or registered mail to the last known principal place of business of such person, last known principal place of business of the attorney or representative of record of such person, or last known residence of such person if an individual;

(2) Delivery other than by mail to any responsible individual at, or leaving in a conspicuous place at, any such location; or

(3) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(e) *Proof of service.* Any of the following, in the possession of the Department, showing such service, shall be deemed to be accurate:

(1) A certified or registered mail receipt returned by the postal service with a signature;

(2) An official record of the postal service;

(3) An entry on a docket record or a copy placed in a docket file by the Hearing Clerk of the Department or by an employee of the Hearing Clerk in the ordinary course of business;

(4) A certificate of service, which need not be separate from and may be incorporated in the document or paper of which it certifies service, showing the method, place and date of service in writing and signed by an individual with personal knowledge thereof, *Provided that* such certificate must be verified by oath or declaration under penalty of perjury if the individual certifying service is not a party to the proceeding in which such document or paper is served, an attorney or representative of record for such a party, or an official or employee of the United States or of a State or political subdivision thereof.

5. The second sentence of 1.148(d)(2) is revised to read as follows:

**§ 1.148 Depositions.**

(d) *Procedure on examination.* \* \* \* (2) \* \* \* If the examination is conducted by means of written questions, copies of the applicant's questions must be received by the other party to the proceeding and the officer at least 10 days prior to the date set for the examination unless otherwise agreed, and any cross questions of a party other than the applicant must be received by the applicant and the officer at any time prior to the time of the examination. \* \* \*

6. Section 1.149 is amended by revising the last sentence of paragraph (a), and all of paragraph (b), to read as follows:

**§ 1.149 Subpoenas.\***

(a) *Issuance of subpoenas.* \* \* \* Except for good cause shown, requests for subpoenas shall be received by the Judge at least 10 days prior to the date set for the hearing.

(b) *Service of subpoenas.* Subpoenas may be served by any person not less than 18 years of age. The party at whose instance a subpoena is issued shall be responsible for service thereof. Subpoenas shall be served as provided in § 1.147 of this part.

Done at Washington, DC this 23rd day of July 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90-17511 Filed 7-26-90; 8:45 am]

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**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Parts 3, 103, 208, 236, 242, and 253**

[Atty. Gen. Order No. 1435-90]

**Aliens and Nationality; Asylum and Withholding of Deportation Procedures**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes procedures to be used in determining asylum under section 208 and withholding of deportation under section 243(h) of the Immigration and

\*This section relates only to subpoenas for the stated purpose and has no relevance with respect to investigatory subpoenas.