

(3) In determining whether an employee should receive a superior qualifications appointment and, if so, at what level the employee's pay should be set, the agency must consider the possibility of authorizing a recruitment bonus as provided in Part 575 of this chapter.

(4) Each agency that makes superior qualifications appointments must establish documentation and recordkeeping procedures sufficient to allow reconstruction of the action taken in each case. Documentation must include—

(i) The superior qualifications of the individual or special need of the agency that justified use of this authority;

(ii) The factors considered in determining the individual's existing pay and the reason for setting pay at a rate higher than that needed to match existing pay; and

(iii) The reasons for authorizing an advanced rate instead of or in addition to a recruitment bonus.

(5) Each agency using the superior qualifications authority must establish appropriate internal guidelines and evaluation procedures to ensure compliance with the law, these regulations, and agency policies.

[FR Doc. 91-25398 Filed 10-21-91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 24 and 2400

Amendment of Regulations and Rules of Procedure, Agriculture Board of Contract Appeals

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Agriculture Board of Contract Appeals (Board) amends the regulations and Rules and Procedure governing appeals before it, 7 CFR part 24, so that they properly reflect the Board's jurisdiction and underlying authority. The amendment also clarifies the role of the hearing examiner, corrects minor typographical errors, and removes 7 CFR part 2400, which has been superseded.

DATES: Effective on October 22, 1991.

FOR FURTHER INFORMATION CONTACT: Marilyn M. Eaton, Vice Chair, Board of Contract Appeals, room 2912, South Building, U.S. Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Objective

The objective of this rule is to amend the regulations and Rules of Procedure of the Board of Contract Appeals, Department of Agriculture, 7 CFR part 24, to reflect changes in jurisdiction and underlying authority which have occurred since publication in 1982. The regulations, at § 24.4(d), previously provided for appeals of debarment actions by authorized officials of (1) the Commodity Credit Corporation (CCC) under 7 CFR 1407.6(d); (2) the Department of Agriculture under 41 CFR 4-1.604-1(b); and (3) the Farmers Home Administration (FmHA) under 7 CFR chapter XVIII, part 1918, subpart C.

The Agriculture Acquisition Regulation (AGAR), at 48 CFR 409.470, authorizes the Board to hear appeals by procurement contractors from both suspension and debarment actions by Department debarment officials. The regulations of the CCC, at 7 CFR 1407.2, make the provisions of 48 CFR 409.403 *et seq.* applicable to all CCC suspension and debarment proceedings. The amendment of § 24.4(d)(1) reflects the Board's jurisdiction, under the AGAR, over suspensions as well as debarments.

Forest Service regulations, at 36 CFR 223.138(b)(8), authorize the Board to hear appeals by timber purchasers from debarment actions by officials of the Forest Service. The addition of § 24.4(d)(2) reflects this jurisdiction.

Section 3017.515 of the Governmentwide Debarment and Suspension (Nonprocurement) regulations, as adopted by the Department of Agriculture, 54 FR 4729 (1989), 7 CFR part 3017, establishes jurisdiction over nonprocurement debarment and suspension appeals in the Office of Administrative Law Judges. Accordingly, the reference to the Board's review of debarment actions by the FmHA is deleted.

Procurement contractors must appeal suspension and debarment actions by officials of the Department of Agriculture and the CCC within 90 days of their receipt of a decision to this effect. Timber purchasers must appeal debarment actions by the Forest Service within 30 days of receipt of a decision. Accordingly, the amendment of § 24.5 reflects these times.

With regard to the conduct of hearings for appeals considered under the Contract Disputes Act, Rule of Procedure 20 refers to an "examiner." Amended § 24.3 clarifies the role of this individual. Additionally, this amendment corrects minor typographical errors and omissions and removes the Board's telephone number pending change to FTS 2000.

The Board's former regulations, 7 CFR part 2400, were superseded effective September 25, 1974, but continued to be published for application to appeals pending on that date. The Board no longer has any cases pending under 7 CFR part 2400. Accordingly, that section is deleted.

The Board published its proposed amendments in the Federal Register on May 31, 1991, 56 FR 24738. No substantive comments were received. They, therefore, are adopted as proposed.

Regulatory Impact

This action reflects jurisdictional changes that already have been adopted, and it is therefore exempt from the requirements of Executive Order 12291. This action is not a rule as defined by the Regulatory Flexibility Act, so it is also exempt from the provisions of that Act. This action relates to delegations of authority and internal management of the Department of Agriculture, and it does not constitute a major federal action affecting the quality of the human environment. Finally, the rule imposes no additional paperwork requirements on individuals or groups who appeal to the Board of Contract Appeals.

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 in the Preamble, and under the Secretary's authority, 5 U.S.C. 301, part 24, title 7, Code of Federal Regulations is amended as follows:

PART 24—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE

1. The authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 714b, 714g, and 714h; 16 U.S.C. 551; 40 U.S.C. 486(c); 41 U.S.C. 601-613.

Subpart A—Organization and Functions

2. Section 24.2 is amended by revising the third sentence to read as follows:

§ 24.2 Composition of the Board.

* * * Except as provided in Rule 12.2 the Small Claims (Expedited) Procedure, and rule 12.3 the Accelerated Procedure, of appendix A to § 24.21, and in rule 9 Accelerated Procedure of appendix B to § 24.21, 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.

3 Section 24.3 is amended by revising the introductory text to read as follows:

§ 24.3 Presiding Administrative Judge.

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

4. Section 24.4 is amended by revising paragraph (d) to read as follows:

§ 24.4 Jurisdiction.

(d) *Suspension and debarment.* (1) The Board shall have jurisdiction to hear and determine the issue of suspension or debarment and the period thereof, if any, on an appeal by a person suspended or debarred by:

(i) an authorized official of the Department of Agriculture, under 48 CFR 409.470; or

(ii) an authorized official of the Commodity Credit Corporation under 7 CFR part 1407.

(2) In addition, the Board shall have jurisdiction to hear and determine the issue of debarment and the period thereof, if any, on an appeal by a timber purchaser debarred by an authorized official of the Forest Service under 36 CFR part 223.

5. Section 24.5 is revised to read as follows:

§ 24.5 Time for filing notice of appeal.

A notice of appeal under §§ 24.4(a), 24.4(d)(1)(i), or 24.4(d)(ii) shall be filed within 90 days from the date of receipt of a contracting officer's or suspending or debarring official's decision. A notice of appeal under § 24.4(b)(1) shall be filed within 30 days from the date of receipt of the contracting officer's decision or within such different time as may be prescribed in the contract or other applicable regulation of the Department of Agriculture. A notice of appeal under §§ 24.4(b)(2), or 24.4(d)(2) shall be filed within 30 days from the date of receipt of the contracting officer's or debarring official's decision. The time for filing a notice of appeal shall not be extended by the Board.

§ 24.6 [Amended]

6. Section 24.6, Board Location and Address, is amended by removing the last sentence.

7. Section 24.21 is amended by redesignating paragraph (b) as appendix A to § 24.21, by removing the paragraph designation for paragraph (a) and

redesignating paragraphs (a) (1) and (2) as paragraphs (a) and (b), and by revising newly designated paragraph (b) to read as follows:

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

(b) No member of the Board or 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 nor to ex parte communication concerning the Board's administrative functions or procedures.

8. In newly designated appendix A to § 24.21, the heading is revised to read as follows:

Appendix A to § 24.21—Rules of Procedure Applicable to Appeals Under § 24.4(a)

9. Rule 34 of newly designated appendix A to § 24.21 is revised to read as follows:

Rule 34. Applicability of these rules

These Rules of Procedure for § 24.4(a) shall apply (1) mandatorily to all appeals relating to contracts entered into on or after March 1, 1979, and (2) at the Contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

10. The heading and text following rule 34 of newly designated appendix A to § 24.21 is designated as appendix B to § 24.21 and the heading is revised to read as follows:

Appendix B to § 24.21—Rules of Procedure Applicable to Appeals Under §§ 24.4(b), (c) and (d)

11. Rule 22 of newly designated Appendix B to § 24.21 is revised to read as follows:

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 required by the Board in its discretion as a condition for granting permission for such withdrawal.

PART 2400—ORGANIZATION, FUNCTIONS AND RULES OF PROCEDURE

Part 2400, title 7, Code of Federal Regulations is removed and chapter XXIV is vacated.

Done at Washington, DC, this 23rd day of September, 1991.

Edward Madigan,
Secretary of Agriculture.

[FR Doc. 91-25415 Filed 10-21-91; 8:45 am]
BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 89-150]

Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: October 22, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-6188.

SUPPLEMENTARY INFORMATION:

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*. The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Veterinary Services was the official responsible for various decisions under

these regulations. We are revising 9 CFR part 78 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate Federal Register documents.

To clarify the regulations with respect to the Administrator's authority and responsibility, we are making nonsubstantive changes in the regulations. We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and are removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service (APHIS)." We are also adding definitions of "Administrator," and "APHIS representative" and deleting the definitions of "Deputy Administrator," "Veterinary Services," and "Veterinary Services representative." In addition, we are inserting the definition of "Accredited veterinarian" from 9 CFR 160.1, instead of referring to that section, to make it consistent with other parts contained in 9 CFR.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR part 78 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.1 [Amended]

2. In § 78.1, the terms "Deputy Administrator", "Veterinary Services", and "Veterinary Services representative" are removed from the list of terms that follows immediately after the introductory sentence, "The following terms are defined in this section:" and the following terms are added in alphabetical order, "Administrator" and "APHIS representative".

§ 78.1 [Amended]

3. In § 78.1, the definitions of "Deputy Administrator", "Veterinary Services", and "Veterinary Services representative" are removed and the definition of "Accredited veterinarian" is revised to read as follows:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

§ 78.1 [Amended]

4. In § 78.1, definitions of "Administrator" and "APHIS representative" are added, in alphabetical order, to read as follows:

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

§ 78.1 [Amended]

5. In § 78.1, definition of "Epidemiologist", remove the words "Veterinary Services,".

6. In § 78.1, definition of "Veterinarian in Charge", remove the words "Veterinary Services," and add, in their place, the word "the".

7. In § 78.1, remove the words "A Veterinary Services" and add, in their place, the words "An APHIS" in the following places:

(a) Definition of "Official eartag"; and
(b) Definition of "Official vaccination eartag."

§§ 78.33 and 78.40 [Amended]

8. In addition to the amendments set forth above, in 9 CFR part 78, capitalize the word "state" in the following places:

(a) Section 78.33, paragraph (d)(1)(iii), both times the word appears; and
paragraph (e)(1)(ii), both times the word appears.

(b) Section 78.40, second sentence, the additional six times the word appears.

§§ 78.1, 78.2, 78.8, 78.9, and 78.44 [Amended]

9. In addition to the amendments set forth above, in 9 CFR part 78, remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 78.1, definition of "Approved individual herd plan";

(b) Section 78.1, definition of "Approved intermediate handling facility", sixth sentence, paragraph (e);

(c) Section 78.1, definition of "Certificate", paragraph (b)(1);

(d) Section 78.1, definition of "Class A State or area", paragraphs (a)(2) and (b)(2);

(e) Section 78.1, definition of "Class B State or area", paragraphs (a)(2) and (b)(2);

(f) Section 78.1, definition of "Class C State or area", paragraphs (a)(2) and (b)(2);

(g) Section 78.1, definition of "Class Free State or area", paragraphs (a)(2) and (b)(2);

(h) Section 78.1, definition of "Designated epidemiologist";

(i) Section 78.1, definition of "Official test", paragraphs (a)(1)(i), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(10);

(j) Section 78.1, definition of "Official vaccinate";

(k) Section 78.1, definition of "Quarantined feedlot", second sentence;

(l) Section 78.1, definition of "Quarantined pasture", fourth sentence;

(m) Section 78.1, definition of "'S' brand permit", third sentence;

(n) Section 78.1, footnote 3;

(o) Section 78.2, paragraph (b);

(p) Section 78.8, paragraph (c)(2)(i);

(q) Section 78.9, paragraph (d)(1)(vi)(D), first sentence, the second time the term appears;

(r) Section 78.44, paragraph (c), within the text under the heading "Cooperation", both times the term appears, and within the text under the heading "Records"; and

(s) Section 78.44, paragraph (d), within the text under the heading

"Cooperation", both times the term appears, and within the text under the heading "Records".

§§ 78.1, 78.8, 78.9, 78.11, and 78.44 [Amended]

10. In addition to the amendments set forth above, in 9 CFR part 78, remove the words "a Veterinary Services" and add, in their place, the words "an APHIS" in the following places:

- (a) Section 78.1, definition of "Certificate";
- (b) Section 78.1, definition of "Official adult vaccinate", paragraph (a)(1);
- (c) Section 78.1, definition of "Official calfhood vaccinate", paragraph (a)(1);
- (d) Section 78.1, definition of "Permit", first sentence;
- (e) Section 78.1, footnote 1;
- (f) Section 78.1, footnote 2;
- (g) Section 78.8, paragraph (a)(2)(iii)(D), both times the term appears;
- (h) Section 78.8, paragraph (a)(4)(iii)(D), both times the term appears;
- (i) Section 78.9, paragraph (c)(1)(iv)(D), both times the term appears;
- (j) Section 78.9, paragraph (c)(1)(vi)(D), both times the term appears;
- (k) Section 78.9, paragraph (d)(1)(iv)(D), both times the term appears;
- (l) Section 78.9, paragraph (d)(1)(vi)(D);
- (m) Section 78.11, paragraph (c)(2), both times the term appears;

§ 78.44 [Amended]

11. In § 78.44, paragraph (c), within the text under the heading "Request Approval" and immediately under the subheading "Approval Granted", remove the term

"Deputy Administrator
Veterinary Services"

and replace it with the term

"Administrator
Animal and Plant Health Inspection
Service".

12. In § 78.44, paragraph (d), within the text under the heading "Request Approval" and immediately under the subheading "Approval Granted", remove the term

"Deputy Administrator
Veterinary Services"

and replace it with the term

"Administrator
Animal and Plant Health Inspection
Service".

§§ 78.1, 78.13, 78.25, 78.30, 78.34, and 78.44 [Amended]

13. In addition to the amendments set forth above, in 9 CFR part 78, remove

the word "Deputy" in the following places:

- (a) Section 78.1, definition of "Approved intermediate handling facility", first and last sentences.
- (b) Section 78.1, definition of "Class A State or area", introductory text, both times the word appears; and paragraph (b)(1);
- (c) Section 78.1, definition of "Class B State or area", introductory text, both times the word appears; and paragraph (b)(1);
- (d) Section 78.1, definition of "Class C State or area", introductory text, both time the word appears; and paragraph (b)(1);
- (e) Section 78.1, definition of "Class Free State or area", introductory text, both time the words appears;
- (f) Section 78.1, definition of "Quarantined pasture", first and second sentences;
- (g) Section 78.1, definition of "Specifically approved stockyard";
- (h) Section 78.1, definition of "Validated brucellosis-free State", paragraph (a)(3);
- (i) Section 78.1, definition of "Veterinarian in Charge";
- (j) Section 78.13, all three times the word appears;
- (k) Section 78.25, all three times the word appears;
- (l) Section 78.30, paragraph (b), both times the word appears;
- (m) Section 78.34, all three times the word appears;
- (n) Section 78.44, paragraph (a);
- (o) Section 78.44, paragraph (b)(1), both times the words appears;
- (p) Section 78.44, paragraph (b)(2), all three times the word appears; and
- (q) Section 78.44, paragraph (b)(3).

Done in Washington, DC, this 15th day of October 1991.

Robert Melland,

*Acting Administrator, Animal and Plant
Health Inspection Service.*

[FR Doc. 91-25300 Filed 10-21-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

**Federal Energy Regulatory
Commission**

18 CFR Part 37

[Docket No. RM90-12-000]

**Generic Determination of Rate of
Return on Common Equity for Public
Utilities**

October 15, 1991.

AGENCY: Federal Energy Regulatory
Commission.

ACTION: Final rule; notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the benchmark rate of return on common equity for public utilities applicable to rate filings made during the period November 1, 1991 through January 31, 1992. This benchmark rate is set at 11.47 percent.

EFFECTIVE DATE: November 1, 1991.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1283.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308 at the Commission's Headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

**Benchmark Rate of Return on Common
Equity for Public Utilities**

Issued October 15, 1991.

On December 26, 1990, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 532) concerning the generic determination of the rate of return on common equity for public utilities.¹ In

¹ Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 532, 56 FR 10, (January 2, 1991), Order No. 532, 111 FERC Statutes and Regulations ¶ 30,909 (1991).