

# Rules and Regulations

Federal Register

Vol. 68, No. 26

Friday, February 7, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 1

RIN 0503-AA25

#### Appeal of Oral Decisions Under the Rules of Practice

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

**ACTION:** Final rule.

**SUMMARY:** The Office of the Secretary is amending the rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes. This final rule amends the rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes to provide that any appeal to the Judicial Officer from an oral decision of an administrative law judge must be filed within 30 days after the oral decision is issued. The Office of the Secretary is also making a number of minor, nonsubstantive changes to the rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes.

**EFFECTIVE DATE:** February 7, 2003.

#### FOR FURTHER INFORMATION CONTACT:

Patrice Harps, Deputy Assistant General Counsel, Trade Practices Division, Office of the General Counsel, USDA, Room 2309, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720-5293.

#### SUPPLEMENTARY INFORMATION:

#### Background

##### *Appeal to the Judicial Officer*

The rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes (7 CFR 1.130 through 1.151) (referred to as the "uniform rules" below) provide that an administrative law judge may issue an oral or written decision. Current 7

CFR 1.142(c)(2) provides that if an administrative law judge orally announces a decision, a copy of the decision shall be furnished to the parties by the Hearing Clerk. Irrespective of the date a copy of the decision is mailed, the issuance date of the oral decision is the date the decision is orally announced. Current 7 CFR 1.145(a) provides that a party who disagrees with an administrative law judge's decision may appeal to the Judicial Officer within 30 days after receiving service of the administrative law judge's decision.

The Judicial Officer has held that an appeal from an oral decision must be filed within 30 days after the date the administrative law judge orally announces the decision. *In re PMD Produce Brokerage Corp.*, 59 Agric. Dec. 344 (2000) (order denying late appeal); *In re PMD Produce Brokerage Corp.*, 59 Agric. Dec. 351 (2000) (order denying petition for reconsideration). On appeal, the United States Court of Appeals for the District of Columbia Circuit held that current 7 CFR 1.142(c)(2) and 7 CFR 1.145(a) are ambiguous because the Secretary of Agriculture did not give fair notice that the uniform rules require an appeal to be filed within 30 days after the administrative law judge orally announces a decision. *PMD Produce Brokerage Corp. v. U.S. Department of Agriculture*, 234 F.3d 48 (D.C. Cir. 2000).

The Office of the Secretary is amending 7 CFR 1.145(a) to eliminate the ambiguity found by the United States Court of Appeals for the District of Columbia Circuit. Specifically, the Office of the Secretary is amending 7 CFR 1.145(a) to provide that any appeal to the Judicial Officer from an oral decision issued by an administrative law judge must be filed within 30 days after the administrative law judge issues the oral decision.

#### *Miscellaneous Changes*

The Office of the Secretary is also making a number of minor, nonsubstantive changes.

The uniform rules are applicable to adjudicatory proceedings under the statutory provisions listed in 7 CFR 1.131(a). One of the statutory provisions listed in current 7 CFR 1.131(a) is the "Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, 401, 502(b), and 505 of the Act, and section 1, 57 Stat. 422, as amended by section

4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 218a, 218d, 221)." Sections 502 and 505 of the Packers and Stockyards Act were repealed by section 10 of the Poultry Producers Financial Protection Act of 1987. Therefore, in order to reflect the 1987 amendment to the Packers and Stockyards Act, the Office of the Secretary is amending the reference in 7 CFR 1.131(a) to the Packers and Stockyards Act to read "Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, and 401 of the Act, and section 1, 57 Stat. 422, as amended by section 4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 221)."

Current 7 CFR 1.131(a) also lists the "Perishable Agricultural Commodities Act, 1930, sections 1(9), 3(c), 4(d), 6(c), 8(a), 8(b), 8(c), 9 and 13(a), (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))." The Perishable Agricultural Commodities Act was amended by the Perishable Agricultural Commodities Act Amendments of 1995 on November 15, 1995. Section 11 of the Perishable Agricultural Commodities Act Amendments of 1995 added section 8(e) to the Perishable Agricultural Commodities Act which provides for the assessment of civil penalties for violations of the Perishable Agricultural Commodities Act after an adjudicatory proceeding conducted by the Secretary. These proceedings are currently conducted in accordance with the uniform rules. Therefore, in order to reflect the 1995 amendment to the Perishable Agricultural Commodities Act, the Office of the Secretary is amending the reference in 7 CFR 1.131(a) to the Perishable Agricultural Commodities Act by adding a reference to section 8(e) and to the section in the United States Code in which section 8(e) is codified, 7 U.S.C. 499h(e). The Office of the Secretary is also correcting the reference to section "1(9)" to read "1(b)(9)" and adding a reference to the section in the United States Code in which section 1(b)(9) of the Perishable Agricultural Commodities Act is codified, 7 U.S.C. 499a(b)(9).

Current 7 CFR 1.131(a) also lists the "United States Grain Standards Act, sections 7(g)(3), 9, (footnote 2) 10, and 17A(d) (7 U.S.C. 79(g)(3), 85, 86)." Footnote 2 states: "[t]he rules of practice in this subpart are applicable to formal proceedings under section 9 of the United States Grain Standards Act for