

# Rules and Regulations

Federal Register

Vol. 67, No. 47

Monday, March 11, 2002

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

### Agricultural Marketing Service

#### 7 CFR Parts 900 and 1200

[AMS-02-001]

#### Rules of Practice

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the United States Department of Agriculture (USDA) is amending the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders and the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs. AMS also is amending the Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders and the Rules of Practice and Procedure Governing Proceedings To Formulate and Amend an Order.

This final rule amends the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders and the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs: To provide that transcripts and exhibits do not have to be kept on file in the Office of the Hearing Clerk during the active status of a proceeding; to provide that transcripts may be obtained at the cost of duplication; to provide that the date of filing an appeal petition is the date the appeal petition is filed with the Hearing Clerk; to eliminate the postmark as an effective date of filing documents or papers; to provide that when the time for filing a document or paper expires

on a Saturday, the time allowed for filing the document or paper shall be extended to include the following business day; and to provide that the time for filing a motion to dismiss or an answer is within 30 days after the service of the petition.

This rule also amends the Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders and the Rules of Practice and Procedure Governing Proceedings To Formulate and Amend an Order to provide that: Transcripts may be obtained at the cost of duplication; to eliminate the postmark as an effective date of filing documents or papers; to provide that when the time for filing a document or paper expires on a Saturday, the time allowed for filing the document or paper shall be extended to include the following business day.

AMS also is making a number of minor and non-substantive changes for clarity and uniformity of style.

These amendments are necessary in order to expedite proceedings and save the United States and those who participate in the proceedings time and money.

**EFFECTIVE DATE:** March 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** Martha Ransom, Chief, Research and Promotion Branch, F&V, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535-S, Washington, DC 20250-0244, telephone (202) 720-9915, fax (202) 205-2800, e-mail [martha.ransom@usda.gov](mailto:martha.ransom@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *Availability of Transcripts and Evidence*

Section 900.60(f)(1) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders (7 CFR 900.60(f)(1)) and section 1200.52(d) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs (7 CFR 1200.52(d)), by cross-reference to section 900.60(f)(1), provide that during the period in which proceedings under the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders (7 CFR 900.50 through 900.71) and proceedings under the Rules of Practice

Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs (7 CFR 1200.50 through 1200.52) have an active status, the transcripts and exhibits shall be kept on file in the Office of the Hearing Clerk, where they shall be available for examination during official hours of business. Thereafter, the transcripts and exhibits shall be made available by the Hearing Clerk for examination during official hours of business after prior request and reasonable notice to the Hearing Clerk. AMS is removing this provision. During the "active status" of these litigation proceedings, it is impracticable to keep the transcripts and exhibits on file in the Office of the Hearing Clerk during official hours of business because they are used by administrative law judges to prepare the initial decisions and by the Judicial Officer to prepare final decisions.

AMS also is amending section 900.60(f)(2) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders (7 CFR 900.60(f)(2)); section 1200.52(d) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs (7 CFR 1200.52(d)), by cross-reference to section 900.60(f)(2); section 900.11(b) of the Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders (7 CFR 900.11(b)); and section 1200.12(b) of the Rules of Practice and Procedure Governing Proceedings To Formulate and Amend an Order (7 CFR 1200.12(b)). All of these sections provide that if a personal copy of a transcript is desired, the copy may be obtained on written application filed with the reporter and upon payment of any fees. These sections are not consistent with section 11 of the Federal Advisory Committee Act (5 U.S.C. app. at 6 (2000)) which requires that agencies make copies of transcripts of agency proceedings available to any person at actual cost of duplication. Therefore, AMS is amending these sections to provide that transcripts of proceedings shall be made available to any person at actual cost of duplication.

### *Transmission of Appeal Petitions*

Section 900.65(a) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders (7 CFR 900.65(a)) and section 1200.52(d) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs (7 CFR 1200.52(d)), by cross-reference to section 900.65(a), provide that an appeal from an administrative law judge's initial decision must be transmitted to the Hearing Clerk within 30 days after service of the initial decision. AMS is amending this provision to require that appeal petitions must be filed with the Hearing Clerk within 30 days after service of the initial decision. This amendment is necessary because, depending upon the method of transmission, the date of transmission may be difficult to discern; whereas documents filed with the Hearing Clerk are stamped with the date and time of filing.

### *Effective Date of Filing*

AMS is amending section 900.69(d) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders (7 CFR 900.69(d)); section 1200.52(d) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs (7 CFR 1200.52(d)), by cross-reference to section 900.69(d); section 900.15(c) of the Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders (7 CFR 900.15(c)); and section 1200.17(c) of the Rules of Practice and Procedure Governing Proceedings To Formulate and Amend an Order (7 CFR 1200.17(c)). All of these sections provide that any document or paper, except a petition, shall be deemed to have been filed when it is postmarked or received by the Hearing Clerk. AMS is amending this provision to provide that a document or paper will only be deemed to be filed when it is received by the Hearing Clerk. Under the current provision, a document or paper which has a timely postmark is timely-filed even if the document or paper is received by the Hearing Clerk after the time for filing. The use of the postmark to determine timeliness causes uncertainty. The Hearing Clerk must wait for days after a document or paper is required to be filed before notifying the other parties, the administrative law judge, or the Judicial Officer that a document or paper has not been timely-

filed. Moreover, at least theoretically, the Hearing Clerk can never be absolutely certain that a document or paper is not timely because the Hearing Clerk may never receive a document or paper with a timely postmark. Therefore, in order to provide certainty and a single method for determining the effective date of filing, we are eliminating the provision under which documents or papers are deemed to be filed when postmarked. Any party who believes that he or she has not been allowed sufficient time for a document or paper to be received by the Hearing Clerk may move for an extension of time for filing the document or paper.

### *Computation of Time for Filing*

AMS is amending section 900.69(e) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders (7 CFR 900.69(e)); section 1200.52(d) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs (7 CFR 1200.52(d)), by cross-reference to section 900.69(e); section 900.15(d) of the Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders (7 CFR 900.15(d)); and section 1200.17(d) of the Rules of Practice and Procedure Governing Proceedings To Formulate and Amend an Order (7 CFR 1200.17(d)). All of these sections provide that Sundays and Federal holidays shall be included in computing time allowed for filing any document or paper, and that when the time for filing expires on a Sunday or Federal holiday, the time for filing shall be extended to include the next following business day. AMS is amending these sections to make it clear that each day, including Saturdays, Sundays, and legal public holidays, is included in computing time allowed for filing any document or paper. Further, because the Hearing Clerk's office is now closed on Saturdays, we are amending these sections to provide that when the time for filing a document or paper expires on a Saturday, the time allowed for filing the document or paper shall be extended to include the following business day.

### *Time for Filing a Motion To Dismiss or Answer*

AMS is amending sections 900.52(c)(1) (7 CFR 900.52(c)(1)) and 900.52a(a) (7 CFR 900.52a(a)) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders and section 1200.52(c) (7 CFR 1200.52(c))

and section 1200.52(d) (7 CFR 1200.52(d)) of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs, by cross-reference to section 900.52a(a). These sections provide that the Administrator may file a motion to dismiss or an answer within 30 days after the filing of a petition. AMS is amending these provisions to provide that the AMS Administrator may file a motion to dismiss or an answer within 30 days after the service of the petition. Under the current provisions, there is no way to determine with certainty when the petition is received by the Administrator from the Hearing Clerk's office. Theoretically, under the current provisions, the Administrator can receive the petition from the Hearing Clerk's office after the 30-day period to file a motion to dismiss or an answer has elapsed. Therefore, in order to provide certainty and to ensure that the Administrator receives the petition in sufficient time to file a motion to dismiss or an answer, we are amending these provisions to provide that a motion to dismiss or an answer may be filed within 30 days after the service of the petition.

### *Minor and Non-substantive Changes*

AMS also is making a number of minor and non-substantive changes. Specifically, AMS is: (1) Correcting an incorrect cross-reference in 7 CFR 900.51(j); (2) making editorial changes in 7 CFR 900.2(d), 7 CFR 900.51(d), 7 CFR 900.51(o), 7 CFR 900.52(b), 7 CFR 900.52(c)(2), 7 CFR 900.52a(a), 7 CFR 900.62(c), 7 CFR 900.64, 7 CFR 900.68, 7 CFR 900.70(a), 7 CFR 1200.2(e), and 7 CFR 1200.51(e) for clarity, to correct typographical errors, and for uniformity of style; (3) eliminating gender-specific references in 7 CFR 900.2(c), 7 CFR 900.2(e), 7 CFR 900.51(c), 7 CFR 900.51(e), and 7 CFR 900.52(c)(1); (4) eliminating the following provisions which have been reserved, 7 CFR 900.2(f), 7 CFR 900.51(f), 7 CFR 900.51(n), and 7 CFR 900.60(e); and (5) eliminating the definition of the **Federal Register** in 7 CFR 900.51(g) which is not used in the Rules of Practice Governing Proceedings or Petitions To Modify or To Be Exempted From Marketing Orders.

This rule amends provisions of the rules of practice governing the conduct of certain proceedings under Marketing Agreements and Orders, and under Research, Promotion, and Education Programs. Therefore, pursuant to section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, it is exempt from the APA's notice and comment

requirements. In addition, this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

#### Executive Orders 12866 and 12988

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 7 CFR Part 900

Administrative practice and procedure, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 1200

Administrative practice and procedure, Blueberries, Cotton, Dairy, Eggs, Fluid milk, Honey, Marketing agreements, Mushrooms, Peanuts, Popcorn, Pork, Potatoes, Soybeans, Watermelons.

For the reasons stated in the preamble, 7 CFR parts 900 and 1200 are amended as follows:

## PART 900—GENERAL REGULATIONS

### Subpart—Rules of Practice and Procedure Governing Procedures on Petitions To Formulate Marketing Agreement and Marketing Orders

1. The authority citation for Subpart—Rules of Practice and Procedure Governing Proceedings on Petitions To Formulate Marketing Agreements and Marketing Orders is revised to read as follows:

**Authority:** 7 U.S.C. 610.

2. Amend § 900.2 as follows:

a. Paragraph (c) is amended by removing the words “in his stead” and adding the words “for the Secretary” in their place.

b. Paragraph (d) is amended by removing the words “terms Administrative Law Judge or Judge” and

adding the words “term *judge*” in their place.

c. Paragraph (e) is revised to read as set forth below.

d. Paragraph (f) is removed.

#### § 900.2 Definitions.

\* \* \* \* \*

(e) The term *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

\* \* \* \* \*

3. In § 900.11, paragraph (b) is revised to read as follows:

#### § 900.11 Copies of the transcript.

\* \* \* \* \*

(b) Transcripts of hearings shall be made available to any person at actual cost of duplication.

4. In § 900.15, paragraphs (c) and (d) are revised to read as follows:

#### § 900.15 Filing; extensions of time; effective date of filing; and computation of time.

\* \* \* \* \*

(c) *Effective date of filing.* Any document or paper required or authorized in this subpart to be filed shall be deemed to be filed at the time it is received by the Hearing Clerk.

(d) *Computation of time.* Each day, including Saturdays, Sundays, and legal public holidays, shall be included in computing the time allowed for filing any document or paper: Provided, That when the time for filing a document or paper expires on a Saturday, Sunday, or legal public holiday, the time allowed for filing the document or paper shall be extended to include the following business day.

### Subpart—Rules of Practice Governing Procedures on Petitions To Modify or To Be Exempted From Marketing Orders

5. The authority citation for Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders is revised to read as follows:

**Authority:** 7 U.S.C. 608c.

6. Amend § 900.51 as follows:

a. Paragraph (c) is amended by removing the words “in his stead” and adding the words “for the Secretary” in their place.

b. Paragraph (d) is amended by removing the words “terms *administrative law judge* or” and adding the word “term” in their place.

c. Paragraph (e) is revised to read as set forth below.

d. Paragraph (j) is revised to read as set forth below.

e. Paragraph (o) is amended by removing the word “rules” and adding the word “rulings” in its place.

#### § 900.51 Definitions.

\* \* \* \* \*

(e) The term *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

\* \* \* \* \*

(j) The term *proceeding* means a proceeding before the Secretary arising under section 8c(15)(A) of the Act.

\* \* \* \* \*

#### § 900.52 [Amended]

7. Amend § 900.52 as follows:

a. Paragraphs (b)(2), (b)(3), and (b)(4) are amended by adding the word “marketing” immediately after the words “provisions of the”.

b. Paragraph (c)(1) is amended by removing the word “he” and adding the words “the Administrator” in its place; by removing the words “the filing” and adding the words “the service” in their place; and by removing the word “his”.

c. In paragraph (c)(2), the paragraph heading is amended by removing the words “*Administrative Law*” and adding the word “*the*” in their place.

#### § 900.52a [Amended]

8. In § 900.52a, paragraph (a) is amended by removing the words “the filing” and adding the words “the service” in their place, and by removing the words “administrative law judge” and adding the word “Judge” in their place.

9. Amend § 900.60 as follows:

a. Remove paragraph (e).

b. Redesignate paragraph (f) as paragraph (e) and revise newly designated paragraph (e) to read as follows.

#### § 900.60 Oral hearings before judge.

\* \* \* \* \*

(e) *Transcript.* Transcripts of hearings shall be made available to any person at actual cost of duplication.

#### § 900.62 [Amended]

10. In § 900.62, paragraph (c), the second sentence is amended by removing the word “postoffice” and adding the words “post office” in its place.

§ 900.64 [Amended]

11. Amend § 900.64 as follows:
a. The section heading is amended by removing the words "Administrative Law".
b. Paragraph heading (c) is amended by removing the words "Administrative Law".

§ 900.65 [Amended]

12. In § 900.65, paragraph (a), the first sentence is amended by removing the words "by transmitting an appeal petition to the hearing clerk" and adding the words "by filing an appeal petition with the Hearing Clerk" in their place.

§ 900.68 [Amended]

13. Amend § 900.68 as follows:
a. In § 900.68, the section heading is amended by removing the word "Applications" and adding the word "Petitions" in its place.
b. In paragraph (a)(1), the first sentence is amended by removing the words "An application" and adding the words "A petition" in their place.

14. In § 900.69, paragraphs (d) and (e) are revised to read as follows:

§ 900.69 Filing; service; extensions of time; effective date of filing; and computation of time.

(d) Effective date of filing. Any document or paper required or authorized in this subpart to be filed shall be deemed to be filed at the time it is received by the Hearing Clerk.

(e) Computation of time. Each day, including Saturdays, Sundays, and legal public holidays, shall be included in computing the time allowed for filing any document or paper: Provided, That when the time for filing a document or paper expires on a Saturday, Sunday, or legal public holiday, the time allowed for filing the document or paper shall be extended to include the following business day.

§ 900.70 [Amended]

15. In § 900.70, paragraph (a) is amended by removing the word "or" immediately after the word "Secretary" and adding the word "for" in its place.

PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND EDUCATION PROGRAMS

16. The authority citation for part 1200 is revised to read as follows:

Authority: 7 U.S.C. 2111, 2620, 2713, 4509, 4609, 4814, 4909, 6106, 6306, 6410, 7418, and 7486.

17. Amend § 1200.2 as follows:
a. Paragraph (a) is amended by removing the following references, "the Floral Research and Consumer Information Act, Pub. L. 97-98, 97th Cong., approved December 22, 1981, 7 U.S.C. 4301-4319;" and "the Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95-113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401-3417;".

b. Paragraph (e) is revised to read as set forth below.

§ 1200.2 Definitions.

(e) The term Administrator means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

18. In § 1200.12, paragraph (b) is revised to read as follows:

§ 1200.12 Copies of the transcript.

(b) Transcripts of hearings shall be made available to any person at actual cost of duplication.

19. In § 1200.17, paragraphs (c) and (d) are revised as follows:

§ 1200.17 Filing, extension of time, effective date of filing, and computation of time.

(c) Effective date of filing. Any document or paper required or authorized in this subpart to be filed shall be deemed to be filed at the time it is received by the Hearing Clerk.

(d) Computation of time. Each day, including Saturdays, Sundays, and legal public holidays, shall be included in computing the time allowed for filing any document or paper: Provided, That when the time for filing a document or paper expires on a Saturday, Sunday, or legal public holiday, the time allowed for filing the document or paper shall be extended to include the following business day.

20. In § 1200.51, paragraph (e) is revised to read as set forth below.

§ 1200.51 Definitions.

(e) The term Administrator means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may

hereafter be delegated to act for the Administrator.

§ 1200.52 [Amended]

21. In § 1200.52, paragraph (c) is amended by removing the words "the filing" and adding the words "the service" in their place.

Dated: March 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-5368 Filed 3-8-02; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

RIN 0572-AB70

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA. ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that no adverse comments were received regarding the direct final rule amending its regulations for the Distance Learning and Telemedicine (DLT) Loan and Grant Program, and confirms the effective date of the direct final rule.

DATES: The direct final rule published in the Federal Register on January 23, 2002 (67 FR 3039) is effective March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Chief DLT Branch, Advanced Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1550, Washington, DC 20250-1550. Telephone: 202-720-0413; e-mail at mmorgan@rus.usda.gov; or, Fax: 202-720-1051.

SUPPLEMENTARY INFORMATION:

Background

RUS is amending 7 CFR part 1703, subparts D, E, F, and G of its regulations for the Distance Learning and Telemedicine (DLT) Loan and Grant Program. The current regulations implement the provisions of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 950aaa et seq.) to encourage and improve telemedicine services and distance learning services in rural areas. The direct final rule addresses the amendments affecting the grant program. These amendments will