

Food and Nutrition Service, USDA

§ 279.10

civil money penalty or fine, direct that an official warning letter be issued to the firm in lieu of any period of disqualification or civil money penalty or fine, or direct that no administrative action be taken. The administrative review officer may change a disqualification of a firm selling a substantial variety of staple foods to a civil money penalty if the review officer receives information that the disqualification would cause a hardship to participating households because there are no other firms in the area selling as large a variety of staple food items at comparable prices, and this information was not available to the appropriate FNS office when the appropriate FNS office made its determination to disqualify the firm. In such a case, the administrative review officer, before he/she makes a determination, shall provide the information to the appropriate FNS office, which shall report to the administrative review officer whether the new information warrants a civil money penalty in lieu of disqualification. If the administrative review officer determines that a civil money penalty in lieu of a disqualification is warranted, the review officer shall determine the amount of the penalty in accordance with § 278.6.

(d) *Review of denial of claim.* In the case of a request for review of a denial of all or part of a claim of a firm, the determination of the administrative review officer shall sustain the action under review or shall specify the amount of the claim to be paid by FNS.

(e) *Notice of review officer determination.* The administrative review officer shall notify the firm of the determination by certified mail. The notification shall be sent to the representative of the firm who filed the request for review.

(f) *Notifying the appropriate FNS office.* The administrative review officer shall send a copy of the notification to the firm to the appropriate FNS office, which shall take any action which may be necessary to comply with the determination of the review officer.

(g) *Effective date.* The determination of the administrative review officer shall take effect 30 days after the date

of delivery of the determination to the firm.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 334, 57 FR 3913, Feb. 3, 1992; Amdt. 356, 59 FR 29714, June 9, 1994]

§ 279.9 Legal advice and extensions of time.

(a) *Advice from Office of the General Counsel.* If any request for review involves any doubtful questions of law, the administrative review officer shall obtain the advice of the Department's Office of the General Counsel.

(b) *Extensions of time.* Upon timely written request to the administrative review officer by the firm requesting the review, the administrative review officer may grant extensions of time if, in the review officer's discretion, additional time is required for the firm to fully present information in support of its position. However, no extensions may be made in the time allowed for the filing of a request for review.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 356, 59 FR 29714, June 9, 1994]

Subpart C—Judicial Review

§ 279.10 Judicial review.

(a) *Filing for judicial review.* Except for firms disqualified from the program in accordance with § 278.6(e)(8) of this chapter, a firm aggrieved by the determination of the administrative review officer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. The complaint must be filed within 30 days after the date of delivery or service upon the firm of the notice of determination of the administrative review officer in accordance with § 279.8(e); otherwise the determination shall be final.

(b) *Summons and complaint.* Service of the summons and complaint in any such action shall be made in accordance with the rules of civil procedure for the U.S. district courts. The copy of the summons and complaint required by the rules to be served on the officer

§ 279.11

or agency whose order is being attacked shall be sent by registered or certified mail to the person in charge of the applicable regional office of FNS.

(c) *Trial de novo*. The suit in the U.S. district court or in the State court, as the case may be, shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action. If the court determines that the administrative action is invalid, it shall enter a judgment or order which it determines is in accordance with the law and the evidence.

(d) *Stay of action*. During the pendency of any judicial review, or any appeal therefrom, the administrative action under review shall remain in force unless the firm makes a timely application to the court and after hearing thereon, the court stays the administrative action after a showing that irreparable injury will occur absent a stay and that the firm is likely to prevail on the merits of the case. However, permanent disqualification actions taken in accordance with § 278.6(e)(1) of this chapter shall not be subject to such a stay of administrative action. If the disqualification action is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 356, 59 FR 29714, June 9, 1994; 64 FR 23174, Apr. 30, 1999]

§ 279.11 Implementation of amendments relating to administrative and judicial review.

(a) *Amendment No. 257*. The program change to § 279.3(a)(4) shall be effective September 14, 1984.

(b) *Amendment No. 274*. The program change of *Amendment No. 274* at § 279.10(d) is effective retroactively to December 23, 1985.

(c) *Amendment No. 334*. The program changes made to part 279 by this amendment are effective February 1, 1992.

[Amdt. 257, 49 FR 32539, Aug. 15, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 334, 57 FR 3913, Feb. 3, 1992]

7 CFR Ch. II (1-1-01 Edition)

PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

AUTHORITY: 7 U.S.C. 2011-2036.

SOURCE: Amdt. 192, 46 FR 8922, Jan. 27, 1981, as amended at 56 FR 63617, Dec. 4, 1991.

EDITORIAL NOTE: OMB control numbers relating to this part 280 are contained in § 271.8.

§ 280.1 Interim disaster procedures.

The Secretary shall, after consultation with the official empowered to exercise the authority provided for by section 302(a) of the Disaster Relief Act of 1974, establish temporary emergency standards of eligibility for the duration of the emergency for households who are victims of a disaster which disrupts commercial channels of food distribution, if such households are in need of temporary food assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of such households. Such standards as are prescribed for individual emergencies may be promulgated without regard to section 4(c) of this Act or the procedures set forth in section 553 of Title 5 of the United States Code. In addition to establishing temporary emergency standards of eligibility, the Secretary shall provide for emergency allotments to eligible households to replace food destroyed in a disaster. Such emergency allotments would be equal to the value of the food actually lost in such disaster but not greater than the applicable maximum monthly allotment for the household size.

PART 281—ADMINISTRATION OF THE FOOD STAMP PROGRAM ON INDIAN RESERVATIONS

Sec.

281.1 General purpose and scope.

281.2 Administration.

281.3 Determination of failure.

281.4 Determining Indian tribal organization capability.

281.5 Responsibilities of an Indian tribal organization designated as State agency.

281.6 Liabilities and sanctions.

281.7 Indian tribal organization failure.

281.8 Transfer of program administration.

281.9 Funding.

281.10 Appeals.