

against FNS, or the forfeiture of a collateral bond, the review officer shall direct that the firm not be approved for participation, not be paid any part of the disputed claim, or not be reimbursed for any bond forfeiture, until the review officer has made a determination. In any case, notice to the appropriate FNS office shall be accompanied by a copy of the request filed by the firm.

(b) *Filing supporting information.* If the request filed by the firm includes a request for an opportunity to file written information in support of its position at a later date, the administrative review officer shall promptly notify the firm of the date by which the information shall be filed. If the firm fails to file any information in support of its position by the designated date, the information submitted with the original request shall be considered to be the only information submitted by the firm. In that case, if no information in support of the firm's position was submitted with the original request, the action of the appropriate FNS office shall be final.

(c) *Failure to meet with review officer.* If the firm filing the request for review asks to appear before the administrative review officer in person, the review officer shall promptly notify the firm of the date, time and place set for the appearance. If the firm fails to appear before the administrative review officer as specified, any written information timely submitted in accordance with this section shall be considered to be the only information submitted by the firm.

(d) *Basis for regional office determination.* The administrative review officer shall require the appropriate FNS regional office to promptly submit, in writing, all information which was the basis for the administrative action for which the review has been requested.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22059, May 25, 1984; Amdt. 258, 49 FR 28393, July 12, 1984; 49 FR 29769, July 24, 1984; Amdt. 356, 59 FR 29714, June 9, 1994; 64 FR 23174, Apr. 30, 1999]

**§ 279.8 Determination of the administrative review officer.**

(a) *Basis for review officer determination.* The administrative review officer

shall make a determination based upon:

(1) The information submitted by the appropriate FNS office;

(2) Information submitted by the firm in support of its position; and

(3) Any additional information, in writing, obtained by the review officer from any other person having relevant information.

(b) *Review of denial of application or withdrawal of approval.* In the case of a request for review of a denial of an application or withdrawal of approval to participate in the program, the determination of the administrative review officer shall sustain the action under review or shall direct that the firm be approved for participation.

(c) *Review of disqualification or civil money penalty or fine.* In the case of a request for review of action disqualifying a firm from participation in the program or assessing a civil money penalty or fine against the firm, the determination of the administrative review officer shall sustain the action under review or specify a shorter period of disqualification or a reduced 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,

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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]

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### 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 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