

## § 279.9

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]

## 7 CFR Ch. II (1-1-03 Edition)

### 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