

## Agricultural Marketing Service, USDA

## § 900.12

order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 900.8(d), he shall include in the brief a concise statement concerning each such objection, referring where practicable, to the pertinent pages of the transcript.

### § 900.10 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings and proposed conclusions, and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of testimony his certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies, of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effected in copies other than the official record copy.

### § 900.11 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk, where it shall be available for examination dur-

ing official hours of business. Thereafter said transcript 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.

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

[25 FR 5907, June 28, 1960, as amended at 67 FR 10829, Mar. 11, 2002]

### § 900.12 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefor; (2) a ruling upon each proposed finding or conclusion submitted by interested persons, and (3) an appropriate proposed marketing agreement or marketing order effectuating his recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of his recommended decision, the Administrator shall give notice thereof, and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed marketing agreement or marketing order, or both, as the case may be, and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript and may suggest appropriate changes in the proposed marketing agreement or marketing order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that

## § 900.13

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

due and timely execution of his functions imperatively and unavoidably requires such omission.

### § 900.13 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any, and such exceptions as may have been filed.

### § 900.13a Decision by Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include: (a) A statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record, (c) a ruling upon each exception filed by interested persons and (d) either (1) a denial of the proposal to issue a marketing agreement or marketing order or (2) a marketing agreement and, if the findings upon the record so warrant, a marketing order, the provisions of which shall be set forth directly or by reference, regulating the handling of the commodity or product in the same manner and to the same extent as such marketing agreement, which order shall be complete except for its effective date and any determinations to be made under § 900.14(b) or § 900.14(c): *Provided*, That such marketing order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 900.14(b) or § 900.14(c) have been met.

### § 900.14 Execution and issuance of marketing agreements and marketing orders.

(a) *Execution and issuance of marketing agreement.* If the Secretary has ap-

proved a marketing agreement, as provided in § 900.13a, the Administrator shall cause copies thereof to be distributed for execution by the handlers eligible to become parties thereto. If and when such number of the handlers as the Secretary shall deem sufficient shall have executed the agreement, the Secretary shall execute the agreement. After execution of a marketing agreement, such agreement shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER. The marketing agreement shall not become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the agreement, fixes an earlier effective date therefor: *Provided*, That no marketing agreement shall become effective as to any person signatory thereto before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice that the Secretary has executed the agreement and the effective date of the marketing agreement.

(b) *Issuance of marketing order with marketing agreement.* Whenever, as provided in paragraph (a) of this section, the Secretary executes a marketing agreement, and handlers also have executed the same as provided in section 8c(8) of the Act, he shall, if he finds that it will tend to effectuate the purposes of the Act, issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a: *Provided*, That the issuance of such order shall have been approved or favored by producers as required by section 8c(8) of the act.

(c) *Issuance of marketing order without marketing agreement.* If, despite the failure or refusal of handlers to sign the marketing agreement, as provided in section 8c(8) of the Act, the Secretary makes the determinations required under section 8c(9) of the Act, the Secretary shall issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a.