

(8) A schedule to be followed by the parties for the filing of cross-motions for summary judgment and completion of other actions decided at the conference; and

(9) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* A scheduling conference will not be stenographically reported unless so directed by the ALJ.

(e) *Attendance at scheduling conference.* In the event the ALJ concludes that personal attendance by the ALJ and the parties or counsel at a scheduling conference is unwarranted or impractical, but decides that a conference would expedite the appeal, the ALJ may conduct such conference by telephone.

(f) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report shall suffice.

§ 283.30 Cross motions for summary judgment.

Appeals filed pursuant to this subpart shall be determined upon cross motions for summary judgment unless the matter is heard under subpart B of this part in accordance with § 283.26. Cross motions for summary judgment shall be filed by the parties along with the appeal petition and answer or in accordance with the schedule established by the ALJ pursuant to § 283.29. Motions for summary judgment shall address the issues raised by the pleadings and may be supported by declarations. Motions and accompanying briefs in support of summary judgment shall not exceed 35 pages excluding exhibits unless otherwise authorized by the ALJ. Reply briefs may be filed by the parties in accordance with the schedule established by the ALJ. Reply briefs may not exceed 15 pages in length, excluding exhibits.

§ 283.31 Review of the record.

(a) The ALJ shall review the cross motions for summary judgment, briefs, reply briefs and supporting materials submitted by both FNS and the State agency.

(b) If the ALJ decides that additional information or briefing is required

from a party, a request for such information or briefing shall be submitted to such party with a copy to the other party. The request shall identify the additional information or specific issues to be addressed and shall specify the date(s) by which such information or briefing must be provided. Upon receipt of such additional information or briefing, the ALJ shall provide the other party an opportunity to submit responsive information or briefing.

(c) If the party to whom a request for additional information or briefing is made fails to submit the information or brief the issue(s) as requested, the ALJ may decide the appeal based on the existing record.

(d) If the ALJ decides that oral argument is necessary on legal issues, the ALJ shall set a time for the oral arguments as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FNS. The oral arguments shall be held at the U.S. Department of Agriculture, Washington, DC. Upon a showing of unusual or extraordinary circumstances, the ALJ may order that the argument be held at another location. The ALJ shall file a notice stating the time and place of the oral arguments. If any change in the time of the oral arguments is made, the ALJ shall file a notice of such change, which notice shall be served upon the parties, unless it is made during the course of the oral arguments and made a part of the transcript or actual notice given to the parties.

(e) Oral argument shall not be transcribed unless so ordered in advance by the ALJ for cause shown upon request of a party or upon the ALJ's own motion.

§ 283.32 ALJ's initial decision.

(a) The ALJ shall decide the appeal not later than 60 days after receipt of rebuttal evidence submitted by the State agency pursuant to § 283.8 or, if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal. The ALJ may extend this deadline for cause shown.

(b) The ALJ shall prepare, upon the basis of the record, and shall file an initial decision which shall include a decision on a request for good cause relief, a copy of which shall be served upon each of the parties.

(c) Such initial decision shall constitute the final notice of determination for purposes of judicial review without further proceedings, unless there is a motion for reconsideration filed pursuant to §283.17(d) or review by the Judicial Officer is sought pursuant to §283.20.

PART 284—PROVISION OF A NUTRITION ASSISTANCE PROGRAM FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI) [RESERVED]

PART 285—PROVISION OF A NUTRITION ASSISTANCE GRANT FOR THE COMMONWEALTH OF PUERTO RICO

Sec.

- 285.1 General purpose and scope.
- 285.2 Funding.
- 285.3 Plan of operation.
- 285.4 Audits.
- 285.5 Failure to comply.

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

SOURCE: Amdt. 209, 47 FR 32409, July 27, 1982, unless otherwise noted.

§285.1 General purpose and scope.

This part describes the general terms and conditions under which grant funds shall be provided by the Food and Nutrition Service (FNS) to the government of the Commonwealth of Puerto Rico for the purpose of designing and conducting a nutrition assistance program for needy persons. The Commonwealth of Puerto Rico is authorized to establish eligibility and benefit levels for the nutrition assistance program. In addition, with FNS approval, the Commonwealth of Puerto Rico may employ a small proportion of the grant funds to finance projects that the Commonwealth of Puerto Rico believes likely to improve or stimulate agriculture, food production, and food distribution.

§285.2 Funding.

(a) FNS shall, consistent with the plan of operation required by §285.3 of this part, and subject to availability of funds, provide nutrition assistance grant funds to the Commonwealth of Puerto Rico to cover 100 percent of the expenditures related to food assistance provided to needy persons and 50 percent of the administrative expenses related to the food assistance. The amount of the grant funds provided to the Commonwealth of Puerto Rico shall not exceed amounts appropriated for this purpose for each fiscal year.

(b) FNS shall, subject to the provisions in §§285.3 and 285.5 in this part, and limited by the provisions of paragraph (a) of this section, pay to the Commonwealth of Puerto Rico for the applicable fiscal year, the amount estimated by the Commonwealth of Puerto Rico pursuant to §285.3(b)(4). Payments shall be made no less frequently than on a monthly basis prior to the beginning of each month consistent with the Treasury Fiscal Requirement Manual, Volume I, part 6, section 2030; these letters of credit shall be drawn on an as-needed basis. The amount shall be reduced or increased to the extent of any prior overpayment or underpayment which FNS determines has been made and which has not been previously adjusted. The payment(s) received by the Commonwealth of Puerto Rico for a fiscal year shall not exceed the total authorized for the grant, or the total cost for the nutrition assistance program eligible for funding, whichever is less, for that fiscal year.

(c) FNS may recover from the Commonwealth of Puerto Rico, through offsets to funding during any fiscal year, funds previously paid to the Commonwealth of Puerto Rico and later determined by the Secretary to have been overpayments. Funds which may be recovered include, but are not limited to:

- (1) Costs not included in the approved plan of operation;
- (2) Unallowable costs discovered in audit or investigation findings;
- (3) Funds allocated to the Commonwealth of Puerto Rico which exceeded expenditures during the fiscal year for which the funds were authorized; or