

**§ 47.24 Rehearing, reargument, reconsideration of orders, reopening of hearings, reopening after default.**

(a) *Petitions to rehear, reargue, and reconsider.* A petition for rehearing or reargument of the proceeding, or for reconsideration of the order, shall be made by petition to the Secretary filed with the Hearing Clerk within 20 days after the date of service of the order. Every such petition shall state specifically the matters claimed to have been erroneously decided and the alleged errors. If the Secretary concludes that the questions raised by the petition have been sufficiently considered in the issuance of the order, the Secretary shall dismiss the petition without service on the other party. Otherwise, the Secretary shall direct that a copy of the petition be served upon such party by the Hearing Clerk. The filing of a petition to rehear or reargue a proceeding, or to reconsider an order, shall automatically operate to set aside the order pending final action on the petition. Only one petition to rehear, reargue, or reconsider will be accepted from each party, except when a mathematical or typographical error appears in either the original decision and order or in the decision on reconsideration.

(b) *Petition to reopen.* A petition to reopen the hearing to take further evidence may be filed with the examiner at any time prior to the issuance of the final order. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing. Every such petition shall be served by the Hearing Clerk on the other party in the proceeding.

(c) *Procedure for disposition of petitions.* Within 20 days following the service of any petition provided for in this section, the other party to the proceeding may file with the Hearing Clerk an answer thereto. In the event that any such petition is granted the applicable rules of practice shall be followed.

(d) *Reopening after default.* The party in default in the filing of an answer or reply required or authorized under this part may petition to reopen the pro-

ceeding at any time prior to the expiration of 20 days from the date of service of the default order. If, in the judgment of the examiner, after notice to and consideration of the views of the other party(ies), there is good reason for granting such relief, the party in default will be allowed 20 days from the date of the order reopening the proceeding to file an answer.

[10 FR 2209, Feb. 27, 1945, as amended at 56 FR 175, Jan. 3, 1991; 60 FR 8462, Feb. 14, 1995; 64 FR 38108, July 15, 1999; 65 FR 29941, May 10, 2000]

**§ 47.25 Filing; extensions of time; effective date of filing; computations of time; official notice.**

(a) *Filing, number of copies.* Except as is provided otherwise herein, all documents or papers required or authorized by these rules to be filed with the Hearing Clerk shall be filed in triplicate: *Provided*, That, where there are more than two parties to the proceeding, a sufficient number of copies shall be filed so as to provide for service upon all the parties to the proceeding. Any document or paper required or authorized by the regulations in this part to be filed with the Hearing Clerk shall, during the course of an oral hearing, be filed with the examiner.

(b) *Extensions of time.* The time for the filing of any document or paper (except an informal complaint) required or authorized under the regulations in this part to be filed may be extended by the examiner (before the transmittal of the record to the Secretary) or by the Secretary (after such transmittal), if, in the judgment of the examiner or the Secretary, as the case may be, there is good reason for the extension.

(c) *Effective date of filing.* Any document or paper required or authorized under the regulations in this part to be filed shall be deemed to be filed when it reaches the Department in Washington, DC; or, if filed with any officer or employee of the Regulatory Branch of the Fruit and Vegetable Programs at any place outside the District of Columbia, it shall be deemed to be filed at the time when it is received by such officer or employee.

## Agricultural Marketing Service, USDA

## § 47.49

(d) *Computations of time.* Saturdays, Sundays and holidays shall be included in computing the time allowed for the filing of any document or paper: Provided, That, when such time expires on a Saturday, Sunday or Federal holiday, such period shall be extended to include the next following business day.

(e) *Official notice.* In any proceeding official notice may be taken of (1) such matters as are judicially noticed by the courts of the United States; (2) any other matter of technical, scientific, or commercial fact of established character; and (3) relevant publications and records of the Department.

[10 FR 2217, Feb. 27, 1945; 11 FR 224, Jan. 4, 1946, as amended at 24 FR 10055, Dec. 12, 1959; 56 FR 175, Jan. 3, 1991; 60 FR 8462, Feb. 14, 1995; 64 FR 38108, July 15, 1999]

### RULES APPLICABLE TO DISCIPLINARY PROCEEDINGS

#### § 47.46 Rule applicable to all proceedings.

The Secretary may act in the place and stead of an examiner or judge in any proceeding hereunder. When the Secretary so acts, the Hearing Clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his or her final order in the proceeding: *Provided*, That the Secretary may issue a tentative order in which event the parties shall be afforded an opportunity to file exceptions before the issuance on the final order.

[12 FR 1026, Feb. 13, 1947, as amended at 38 FR 30447, Nov. 5, 1973; 60 FR 8462, Feb. 14, 1995]

### RULES APPLICABLE TO THE DETERMINATION AS TO WHETHER A PERSON IS RESPONSIBLY CONNECTED WITH A LICENSEE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

#### § 47.47 Additional definitions.

The following definitions, which are in addition to those in § 47.2 (a) through (h), shall be applicable to proceedings under §§ 47.47 through 47.49.

(a) *Chief* means the Chief of the PACA Branch, or any officer or em-

ployee to whom authority has heretofore lawfully been delegated or to whom authority may hereafter lawfully be delegated by the Chief, to act in such capacity.

(b) *PACA Branch* means that PACA Branch of the Fruit and Vegetable Programs.

(c) *Petition for review* means the document filed requesting review by an Administrative Law Judge of the Chief's determination.

[61 FR 11504, Mar. 21, 1996]

#### § 47.48 Scope and applicability.

These rules govern the determination of whether a person is responsibly connected with licensees under the Perishable Agricultural Commodities Act of 1930, as amended, or with persons whose license issued under the act has been suspended, revoked, or terminated or with persons who transact business subject to the act, but fail to obtain the required license.

[43 FR 30788, July 18, 1978]

#### § 47.49 Determinations.

(a) The PACA Branch shall determine whether a person was at the time in issue responsibly connected with a licensee whose license is subject to suspension, revocation, or termination or which is subject to having the facts and circumstances of violations of the act published. Such determination shall be made on the basis of license records on file with the PACA Branch, and such other information as may be available.

(b) Upon determining that a person was responsibly connected at the time in issue with a licensee which is subject to the suspension or revocation of its license, or which is subject to having the facts and circumstances of violations of the Act published, and that the employment status and licensing of such person may be restricted, the PACA Branch shall notify the person in writing of his or her status and of any employment and licensing restrictions resulting therefrom.

(c) If a person believes he or she was not responsibly connected with a licensee at the time in issue, he or she may submit the reasons for such belief