

## Agricultural Marketing Service, USDA

## § 48.2

### § 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 in written form, along with all pertinent documents, within 30 days of the receipt of such notification to the Chief, who will promptly review the matter and advise the person in writing of the Chief's determination and the reasons for reaching such determination.

(d) Within 30 days of receipt of notification of the Chief's determination, a person who disagrees with such determination may file with the Hearing Clerk, pursuant to §1.130-1.151 of this

title, a petition for review of the determination.

[43 FR 30788, July 18, 1978, as amended at 60 FR 8462, Feb. 14, 1995; 61 FR 11504, Mar. 21, 1996]

## PART 48—REGULATIONS OF THE SECRETARY OF AGRICULTURE FOR THE ENFORCEMENT OF THE PRODUCE AGENCY ACT

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AUTHORITY: Sec. 3, 44, Stat. 1355, as amended; 7 U.S.C. 494.

SOURCE: 24 FR 7127, Sept. 3, 1959, unless otherwise noted.

### DEFINITIONS

#### § 48.1 Meaning of words.

Words in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

#### § 48.2 Definitions.

Unless the context otherwise requires, the following terms shall be construed as follows:

(a) *Act* means "An act to prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others, and to require them truly and correctly to account for all farm produce received by them," approved March 3, 1927 (44 Stat. 1355; 7 U.S.C. 491-497).

(b) *Person* means an individual, partnership, association or corporation.

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(c) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) *Service* means the Consumer and Marketing Service, United States Department of Agriculture.

(e) *Deputy Administrator* means the Deputy Administrator for Marketing Services, or any officer or employee of the Service, to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his stead.

(f) *Director* means the Director of the Fruit and Vegetable Division of the Service, or any officer or employee of the Division to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated by the Director to act in his stead.

(g) *Produce* means all fresh fruits and fresh vegetables generally considered by the trade as perishable fruits and vegetables, melons, dairy or poultry products, or any perishable farm products of any kind or character.

(h) *Truly and correctly to account* means, unless otherwise stipulated by the parties, that the consignee of produce shall, within ten days after the final sale is made of any produce received for sale on consignment in interstate commerce or in the District of Columbia, render to the consignor thereof a true and correct itemized statement of the gross sales as well as all selling charges and all other charges or expenses paid and a statement of the net proceeds or deficit, and make full payment to the consignor of the net proceeds so received together with a full explanation of the disposition of any and all produce not sold.

(i) *Good and sufficient cause* means, with respect to destroyed, abandoned, discarded, or dumped produce, that the produce so dealt with had no commercial value, or that some other legal justification for so dealing with such produce existed, such as an order of condemnation by a health officer or definite authority from the shipper.

(j) *Commercial value* means any value that the produce may have for any pur-

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pose that can be ascertained in the exercise of due diligence by the consignee without unreasonable expense on loss of time.

#### ADMINISTRATION

##### § 48.3 Director.

The Director shall perform, for and under the supervision of the Secretary and the Deputy Administrator, such duties as the Secretary or the Deputy Administrator may require in enforcing the provisions of the Act and the regulations issued thereunder.

#### VIOLATIONS

##### § 48.4 Destroying or dumping.

Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another who, without good and sufficient cause, shall destroy or abandon, discard as refuse, or dump any produce, directly or indirectly or through collusion with any person, shall be considered to have violated the Act.

##### § 48.5 False report or statement.

Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another shall be considered to have violated the Act if, knowingly and with intent to defraud, he makes any false report or statement to the person from whom such produce was received concerning the handling, condition, quality, quantity, sale, or disposition thereof.

##### § 48.6 Failure to account.

Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another shall be considered to have violated the Act if, knowingly and with intent to defraud, he fails truly and correctly to account to the person from whom such produce was received.

#### JUSTIFICATION FOR DUMPING

##### § 48.7 Evidence to justify dumping.

Any person, receiving produce in interstate commerce or in the District of Columbia, having reason to destroy, abandon, discard as refuse or dump

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such produce, should, prior to such destroying, abandoning, discarding or dumping, obtain a dumping certificate or other evidence of justification for such action. Certification, showing that the produce has no commercial value, should be obtained from:

(a) An inspector authorized by the United States Department of Agriculture to inspect produce; or (b) a health officer, or food inspector of any State, county, parish, city or municipality or of the District of Columbia. When no inspector or health officer, as designated in paragraph (a) or (b) of this section is available, affidavits as to the condition of the produce should be obtained from two disinterested persons having no financial interest in the produce involved or in the business of a person financially interested therein, and who are unrelated by blood or marriage to any such financially interested person, and who, at the time of certification, and for a period of at least one year immediately prior thereto, have been engaged in the handling of the same general kind or class of produce with respect to which such affidavits are to be made. The certificate or affidavit obtained for justifying dumping should identify the produce to be dumped by giving the name of the shipper, any identifying marks or brands on the original container, the type of container, the commodity, the quantity, the date of inspection, and contain a short description of the condition of the produce to be dumped at the time of inspection. The name, address and title of the person or persons making such inspection should also be designated on the certificate or affidavit.

### COMPLAINTS

#### § 48.8 Filing of complaints.

Any person having reason to believe that the Act or the regulations in this part have been violated should submit promptly all available facts with respect thereto to the Director for investigation and appropriate action.

## PART 50—RULES OF PRACTICE GOVERNING WITHDRAWAL OF INSPECTION AND GRADING SERVICES

### Subpart A—General

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50.1 Scope and applicability of rules of practice.

### Subpart B—Supplemental Rules of Practice

50.10 Definitions.

50.11 Conditional withdrawal of service.

50.12 Summary suspension of service.

AUTHORITY: 7 U.S.C. 1621 *et seq.*; 7 CFR 2.35, 2.41.

SOURCE: 60 FR 8463, Feb. 14, 1995, unless otherwise noted.

### Subpart A—General

#### § 50.1 Scope and applicability of rules of practice.

(a) The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title are rules of practice applicable to adjudicatory proceedings under the regulations promulgated under 7 U.S.C. 1621 *et seq.* for denial or withdrawal of inspection, certification, or grading service. In addition, the supplemental rules of practice in subpart B of this part shall be applicable to adjudicatory proceedings under the regulations promulgated under 7 U.S.C. 1621 *et seq.* for denial or withdrawal of inspection, certification, or grading service.

(b) Neither the rules of practice in §§ 1.130 through 1.151 of this title nor the supplemental rules of practice in subpart B of this part modify existing procedures for refusing to inspect, grade, or certify a specific lot of a product because of adulteration, improper preparation of the lot for grading, improper presentation of the lot for grading, or because of failure to comply with any similar requirements set forth in applicable regulations.