

term is defined in 5 U.S.C. 551(8), the Administrator, in an effort to effect an amicable or informal settlement of the matter, shall give written notice to the person involved of the facts or conduct concerned and shall afford such person an opportunity, within a reasonable time fixed by the Administrator, to demonstrate or achieve compliance with the applicable requirements of the statute, or the regulation, standard, instruction or order promulgated thereunder.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8455, Feb. 14, 1995; 61 FR 11503, Mar. 21, 1996; 68 FR 6340, Feb. 7, 2003]

#### § 1.134 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the Hearing Clerk, and thereafter the proceeding shall be referred to by such number.

#### § 1.135 Contents of complaint or petition for review.

(a) *Complaint.* A complaint filed pursuant to § 1.133(b) shall state briefly and clearly the nature of the proceeding, the identification of the complainant and the respondent, the legal authority and jurisdiction under which the proceeding is instituted, the allegations of fact and provisions of law which constitute a basis for the proceeding, and the nature of the relief sought.

(b) *Petition for review.* The Petition for Review of responsibly connected status shall describe briefly and clearly the determination sought to be reviewed and shall include a brief statement of the factual and legal matters that the petitioner believes warrant the reversal of the determination.

[42 FR 743, Jan. 4, 1977, as amended at 61 FR 11503, Mar. 21, 1996]

#### § 1.136 Answer.

(a) *Filing and service.* Within 20 days after the service of the complaint (within 10 days in a proceeding under section 4(d) of the Perishable Agricultural Commodities Act, 1930), or such other time as may be specified therein, the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in

the proceeding. The attorney may file an appearance of record prior to or simultaneously with the filing of the answer. The answer shall be served upon the complainant, and any other party of record, by the Hearing Clerk. As response to a petition for review of responsibly connected status, the Chief, PACA Branch, shall within ten days after being served by the Hearing Clerk with a petition for review, file with the Hearing Clerk a certified copy of the agency record upon which the Chief, PACA Branch, made the determination that the individual was responsibly connected to a licensee under the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, and such agency record shall become part of the record in the review proceeding.

(b) *Contents.* The answer shall:

(1) Clearly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent; or

(2) State that the respondent admits all the facts alleged in the complaint; or

(3) State that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(c) *Default.* Failure to file an answer within the time provided under paragraph (a) of this section shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138.

[42 FR 743, Jan. 4, 1977, as amended at 61 FR 11504, Mar. 21, 1996; 68 FR 6340, Feb. 7, 2003]

#### § 1.137 Amendment of complaint, petition for review, or answer; joinder of related matters.

(a) *Amendment.* At any time prior to the filing of a motion for a hearing, the complaint, petition for review, answer, or response to petition for review may be amended. Thereafter, such an amendment may be made with consent

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of the parties, or as authorized by the Judge upon a showing of good cause.

(b) *Joinder*. The Judge shall consolidate for hearing with any proceeding alleging a violation of the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, any petitions for review of determination of status by the Chief, PACA Branch, that individuals are responsibly connected, within the meaning of 7 U.S.C. 499a(b)(9), to the licensee during the period of the alleged violations. In any case in which there is no pending proceeding alleging a violation of the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, but there have been filed more than one petition for review of determination of responsible connection to the same licensee, such petitions for review shall be consolidated for hearing.

[61 FR 11504, Mar. 21, 1996, as amended at 68 FR 6340, Feb. 7, 2003]

#### § 1.138 Consent decision.

At any time before the Judge files the decision, the parties may agree to the entry of a consent decision. Such agreement shall be filed with the Hearing Clerk in the form of a decision signed by the parties with appropriate space for signature by the Judge, and shall contain an admission of at least the jurisdictional facts, consent to the issuance of the agreed decision without further procedure and such other admissions or statements as may be agreed between the parties. The Judge shall enter such decision without further procedure, unless an error is apparent on the face of the document. Such decision shall have the same force and effect as a decision issued after full hearing, and shall become final upon issuance to become effective in accordance with the terms of the decision.

#### § 1.139 Procedure upon failure to file an answer or admission of facts.

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by

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the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing. Copies of the decision or denial of complainant's Motion shall be served by the Hearing Clerk upon each of the parties and may be appealed pursuant to § 1.145. Where the decision as proposed by complainant is entered, such decision shall become final and effective without further proceedings 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.145: *Provided, however*, That no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

#### § 1.140 Conferences and procedure.

(a) *Purpose and scope*. (1) Upon motion of a party or upon the Judge's own motion, the Judge may direct the parties or their counsel to attend a conference at any reasonable time, prior to or during the course of the hearing, when the Judge finds that the proceeding would be expedited by a conference. Reasonable notice of the time, place, and manner of the conference shall be given. The Judge may order each of the parties to furnish at or subsequent to the conference any or all of the following:

- (i) An outline of the case or defense;
  - (ii) The legal theories upon which the party will rely;
  - (iii) Copies of or a list of documents which the party anticipates introducing at the hearing; and
  - (iv) A list of anticipated witnesses who will testify on behalf of the party.
- At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way such as a short statement of the type of evidence they will offer.

(2) The Judge shall not order any of the foregoing procedures that a party