

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Section 330.401 also issued under 5 U.S.C. 3310.

Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

Subpart I also issued under 106 Stat. 2720, 5 U.S.C. 3301 note.

2. Section 330.102 is revised, to read as follows:

§ 330.102 Federal employment information.

(a) *Vacancies open to the public.* (1) *Notice required*—(i) Under 5 U.S.C. 3327, Federal agencies must notify OPM promptly of:

(A) Open competitive examinations;

(B) Vacancies in the competitive service to be filled under direct hire procedures or part 333 of this chapter; and

(C) Vacancies in the Senior Executive Service for which the agency seeks applications from persons outside the Federal service. Also, in accordance with § 317.501(b)(2) of this chapter, agencies must notify OPM of all Senior Executive Service vacancies to be filled by initial career appointment.

(ii) OPM will provide this information to the employment offices of the United States Employment Service.

(2) *Agencies covered.* Paragraph (a)(1) of this section applies to:

(i) The executive departments listed at 5 U.S.C. 101;

(ii) The military departments listed at 5 U.S.C. 102;

(iii) Government owned corporations in the executive branch as described at 5 U.S.C. 103;

(iv) Independent establishments in the executive branch as described at 5 U.S.C. 104, including the Nuclear Regulatory Commission; and

(v) Government Printing Office.

(b) *All other vacancies*—(1) *Notice required.* Under 5 U.S.C. 3330, OPM must maintain, and make available to the public, a list of agency vacancy announcements for positions in the competitive service. Under § 330.706 of this chapter, agencies must notify OPM promptly of competitive service vacancies to be filled for more than 90 days when the agency will accept applications from individuals outside the agency's own work force.

(2) *Agencies covered.* Except for any executive agency or unit thereof whose principal function is the conduct of foreign intelligence or counterintelligence activities, as determined by the President, paragraph (b)(1) of this section applies to:

(i) The executive departments listed at 5 U.S.C. 101;

(ii) The military departments listed at 5 U.S.C. 102;

(iii) Government corporations in the executive branch as described at 5 U.S.C. 103; and

(iv) Independent establishments in the executive branch as described at 5 U.S.C. 104.

(c) *Funding.* Under 5 U.S.C. 3330(f), OPM is authorized to charge fees to agencies for their share of the cost of providing employment information to the public and to Federal employees. OPM will work with agencies to review the effectiveness and efficiency of the Federal Employment Information System in meeting Federal agency and public needs and identify improvements to the system, consistent with the minimum level of service and statutory requirements. Subsequently, OPM will annually compute the cost of providing employment information and notify each agency of its share, along with a full accounting of the costs, and payment procedures.

PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

3. The authority citation for part 333 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 3327, 3330; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; section 333.203 also issued under 5 U.S.C. 1104.

4. Section 333.102 is revised to read as follows:

§ 333.102 Notice of job announcements to OPM.

Under 5 U.S.C. 3327 and 3330, agencies are required to report job announcements to OPM when recruiting outside the register. This requirement is implemented through § 330.102 of this chapter.

PART 335—PROMOTION AND INTERNAL PLACEMENT

5. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1957–58 Comp., p. 218.

6. Section 335.105 is revised to read as follows:

§ 335.105 Notice of job announcements to OPM.

Under 5 U.S.C. 3330, agencies are required to report job announcements to OPM for vacancies for which an agency will accept applications from outside the agency's work force. This requirement is implemented through § 330.102 of this chapter.

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 1 and 47

Rules of Practice

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes and the Rules of Practice Under the Perishable Agricultural Commodities Act. This final rule provides that the adjudication, under the Perishable Agricultural Commodities Act, of whether an individual is “responsibly connected” with a particular commission merchant, dealer, or broker will be joined with any related disciplinary proceedings against the same commission merchant, dealer, or broker; and that any adjudications of such status will be made by Administrative Law Judges of the Department of Agriculture. USDA believes that the procedures, by reducing the incidence of multiple hearings, will facilitate speedy enforcement of the PACA and will result in savings in employee time and travel expense. They will also abolish the need for AMS to employ individuals to act as presiding officers at responsibly connected proceedings. In 1994, presiding officers were paid \$26,866, a large portion of which would be saved under the new regulation.

EFFECTIVE DATE: This final rule is effective April 22, 1996.

FOR FURTHER INFORMATION CONTACT:

Mary Hobbie, Assistant General Counsel, Trade Practices Division, Office of the General Counsel, USDA, Room 2446 South Building, 14th Street and Independence Avenue SW., Washington, DC 20250–1400 (202) 720–5293.

SUPPLEMENTARY INFORMATION:

Disciplinary Proceedings

Section 2 of the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. 499b, proscribes as unfair various conduct on the part of commission merchants, dealers, or brokers. The PACA provides redress for such unlawful conduct in the form of suspension or revocation of required licenses, and to a limited extent, civil penalties. The Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) enforces section 2 of the PACA, in part, through

administrative proceedings adjudicated by Administrative Law Judges.

While the PACA is the substantive law governing these administrative disciplinary proceedings, The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (Rules of Practice), at 7 CFR 1.130-1.151 provide their procedural framework.

Disciplinary proceedings are instituted by filing a formal complaint with the Hearing Clerk. The respondent is given the opportunity to file an answer to the complaint. An Administrative Law Judge determines the issues and makes a decision after opportunity for a full evidentiary hearing. Both parties may request testimonial and documentary subpoenas. Any decision of the Administrative Law Judge may be appealed to the Judicial Officer, acting for the Secretary. An appeal from a decision of the Judicial Officer may be taken to the appropriate U.S. Circuit Court of Appeals.

Proceedings To Determine Responsibly Connected Status

In addition to the proscription against unfair conduct embodied in section 2, section 8(b) of the PACA (7 U.S.C. 499h(b)) forbids a licensee from employing a person who is or has been "responsibly connected" with a firm or person whose license has been revoked or is under suspension by the Secretary, a person who has been found to have committed any flagrant or repeated violation of section 2, or against whom there is an unpaid reparation award. Such employment violations subject the employing firm or individual to license suspension or revocation. On November 15, 1995, the PACA Amendments of 1995 were signed into law. One of those amendments, 7 U.S.C. 499h(e), provides for the sanction of civil penalties in lieu of revocation or suspension of license. The final rule reflects this amendment.

The PACA, in section 1(9) (7 U.S.C. 499a), defines "responsibly connected" to mean "affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association."

Prior to 1975, the determination as to responsibly connected status was made without the benefit of an oral hearing. After the decision of the U.S. Court of Appeals for the District of Columbia in *Quinn v. Butz*, 510 F.2d 743 (D.C. Cir. 1975), USDA instituted a procedure governed by regulations published at 7 CFR 47.47-47.68 giving any person finally determined by the PACA Branch of AMS to have been responsibly

connected to a firm subject to license revocation or suspension the opportunity for an oral hearing before a presiding officer appointed by AMS.

Currently, determinations as to whether an individual is responsibly connected to a particular commission merchant, dealer, or broker are made independently of any related disciplinary proceeding against the commission merchant, dealer, or broker. Although typically the two proceedings involve a common fact nucleus, currently no mechanism exists for joining the procedures to achieve a more efficient use of resources. In addition, in those cases where the individual requests an oral hearing, responsibly connected proceedings frequently are not concluded until the sanction in the related disciplinary proceeding has been in effect for a year or more. Thus, although an offending entity's license may have been revoked for as much as a year, those individuals responsible for the violations may nevertheless continue to be employed in the industry pending a determination of responsibly connected status.

The rules currently governing determination of responsibly connected status are set out at 7 CFR 47.47-47.68. In brief, these rules provide for a preliminary determination by the Perishable Agricultural Commodities Branch (PACA Branch), AMS, as to the status of a person who is potentially responsibly connected, notification of the preliminary determination, and an opportunity to respond and furnish evidence to the Chief, PACA Branch. If the Chief, PACA Branch, sustains the preliminary determination that the individual is responsibly connected, the individual is then entitled to file a petition with the Administrator of AMS for a review proceeding and final decision and to request an oral hearing. If an oral hearing is requested, it is held before a hearing officer appointed by the Administrator. Appeals of adverse decisions of the Administrator lie to the U.S. Circuit Courts of Appeal. In any event, no employment sanction begins to run until one of the following three conditions set forth in section 8(b) of the PACA exists: (1) the license of the firm with which the responsible connection exists has been suspended or revoked; (2) there is a finding that the firm has committed a flagrant or repeated violation of section 2 of the PACA; or (3) the firm has failed to pay a reparation award under section 7 of the PACA.

Proposed Rule

On July 3, 1995, we proposed to modify the procedures for determining

responsibly connected status to accomplish two objectives: (1) to consolidate, where the possibility exists, hearings in disciplinary cases and related determinations of responsibly connected status; and (2) to provide for review by an Administrative Law Judge of the final determination of the Chief, PACA Branch, that an individual is responsibly connected. Because the issues in both the disciplinary proceedings and the responsibly connected hearings are based upon identical or closely-related facts, and because the sanctions are related, such a procedure eliminates the need for duplicative litigation. The procedure we proposed also offers the advantage of insuring that the sanctions against the licensee and the individuals responsibly connected with it will commence concurrently.

Instead of filing a petition for review with the Administrator of AMS, under the proposed procedures, the individual contesting the final determination by the Chief, PACA Branch, that he or she is responsibly connected would file a petition for review with the Office of the Hearing Clerk, and the petition would be decided by an Administrative Law Judge, after opportunity for oral hearing. Any hearing on a responsibly connected determination will be consolidated with the hearing, if any, on the disciplinary matters out of which the issue of responsibly connected status arose. Likewise, all responsibly connected hearings arising out of the relationships between more than one individual and one particular PACA licensee would be consolidated.

To illustrate by hypothetical, assume that PACA Branch, AMS, institutes a disciplinary proceeding against the Acme Produce Company, of which the officers, directors, and shareholders of greater than 10 percent of the stock consist of Able, Jones, and Smith. Under the proposal, all issues arising out of the disciplinary infractions charged against Acme and all employment sanctions arising out of the relationships between Acme on the one hand and Able, Jones, and Smith on the other hand will be consolidated for hearing to the extent that the employment sanctions originate from Acme's alleged disciplinary violations. If for any reason there is no hearing on the issues involving Acme, but Able, Jones, and Smith file petitions for review of their status as responsibly connected individuals and request hearings, those hearings will be consolidated in one proceeding before an Administrative Law Judge.

To the extent that no disciplinary proceeding has been instituted against Acme and the proposed employment

sanctions against Able, Jones and Smith arise under PACA section 8(b)(3) solely from Acme's failure to pay one or more reparation awards under PACA section 7, all hearings on petitions for review will be consolidated in one proceeding before an Administrative Law Judge. The vehicle used to achieve this consolidation will be a mandatory joinder under the Rules of Practice as amended.

USDA believes that the proposed procedures, by reducing the incidence of multiple hearings, will facilitate speedy enforcement of the PACA and will result in savings in employee time and travel expense. They will also abolish the need for AMS to employ individuals to act as presiding officers at responsibly connected proceedings. In 1994, presiding officers were paid \$26,866, a large portion of which would be saved under the proposed new regulation.

Comments on the Proposed Rule

We solicited comments concerning the proposal for a 30-day comment period ending August 2, 1995. We received no comments from members of the public. However, upon thorough review of the rule as proposed, we have determined that several minor changes are appropriate in order to better reflect the intent of the proposal.

We have amended 7 CFR 1.132, Definitions, to add the definition of "petitioner." This obviates any confusion with respect to the denomination of the parties to a proceeding pursuant to the PACA. The person filing a petition for review shall be called "petitioner."

In § 1.133(b)(2), we have clarified in the final version that the new procedures apply whenever there is an issue of responsibly connected status where, for whatever reason, a licensee is potentially subject to license suspension or revocation. Thus, the new procedures apply whether the potential license suspension or revocation stems from alleged violation of 7 U.S.C. 499b (unfair practices), 7 U.S.C. 499h(b) (employment violations), or as provided in 7 U.S.C. 499g(d) (failing to pay reparation awards).

We are also modifying language in the final version of 7 CFR 1.136 to clarify that the Chief, PACA Branch, must file the record with the hearing clerk 10 days after service of the petition for review upon the Chief, PACA Branch.

Conclusion

Based on the rationale in the proposed rule and this rulemaking document, we are adopting the provisions of the proposal as a final rule

except as previously discussed in this rulemaking document and except for minor editorial changes for clarity.

Executive Order 12866 and Regulatory Flexibility Act

The Secretary has determined that this final rule would not have a significant economic impact on a substantial number of small entities. While small entities will continue to be subject to identical substantive requirements under the revised procedures, the new procedures will not result in any new burdens. The new rule merely changes the form of the hearing utilized to determine responsibly connected status.

This rule has been determined not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 does not apply to this rule since the rule does not seek answers to identical questions or impose reporting or recordkeeping requirements on 10 or more persons, and the information collected is not used for general statistical purposes.

List of Subjects

7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Brokers.

For the reasons set out in the preamble 7 CFR part 1 and 7 CFR chapter I are amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for part 1, Subpart H, continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o,

608c(14), 1592, 1624(b), 2151, 2621, 2714, 2908, 3812, 4610, 4815, 4910; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 11, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

§ 1.131 [Amended]

2. Section 1.131 is amended as follows:

a. In paragraph (a), in the listing, by adding "1(9)," immediately after the entry "Perishable Agricultural Commodities Act, 1930, sections" and immediately before "3(c)".

3. Section 1.132 is amended by adding, in alphabetical order, a new definition to read as follows:

§ 1.132 Definitions.

* * * * *

Petitioner means an individual who has filed a petition for review of a determination that the individual is responsibly connected to a licensee within the meaning of 7 U.S.C. 499a(9).

* * * * *

4. Section 1.133 is amended as follows:

a. In paragraph (b), by revising the paragraph heading; and

b. In paragraph (b), by redesignating paragraph (b)(2) as paragraph (b)(3), and by adding a new paragraph (b)(2), to read as follows:

§ 1.133 Institution of proceedings.

* * * * *

(b) *Filing of complaint or petition for review.* * * * (2) Any person determined by the Chief, PACA Branch, pursuant to 7 CFR 47.47–47.68 to have been responsibly connected within the meaning of 7 U.S.C. 499a(9) to a licensee who is subject or potentially subject to license suspension or revocation as the result of an alleged violation of 7 U.S.C. 499b or 499h(b) or as provided in 7 U.S.C. 499g(d) shall be entitled to institute a proceeding under this section and to have determined the facts with respect to such responsibly connected status by filing with the Hearing Clerk a petition for review of such determination.

* * * * *

5. Section 1.135 is amended as follows:

a. By revising the section heading;

b. By designating the text of current § 1.135 as paragraph (a), and by adding a heading to newly designated paragraph (a); and

c. By adding paragraph (b), to read as follows:

§ 1.135 Contents of complaint or petition for review.

(a) *Complaint.* * * *

(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.

6. Section 1.136 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 1.136 Answer.

(a) * * * 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.

* * * * *

7. Section 1.137 is revised to read as follows:

§ 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 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(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.

8. Section 1.141 is amended as follows:

a. By adding a new sentence after the first sentence of paragraph (a);

b. By designating the text of paragraph (e) following the heading as paragraph (e)(1), and by adding a new paragraph (e)(2), to read as follows:

§ 1.141 Procedure for hearing.

(a) * * * A petition for review shall be deemed a request for a hearing. * * *

(e) *Failure to appear.* (1) * * *

(2) If the petitioner in the case of a Petition for Review of a determination of responsibly connected status within the meaning of 7 U.S.C. 499a(9), having been duly notified, fails to appear at the hearing without good cause, such petitioner shall be deemed to have waived his right to a hearing and to have voluntarily withdrawn his petition for review.

* * * * *

PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

9. The authority citation for part 47 continues to read as follows:

Authority: 7 U.S.C. 499o; 7 CFR 2.17(a)(8)(xiii), 2.50 (a)(8)(xiii).

§ 47.47 Additional definitions.

10. Section 47.47 is revised to read as follows:

§ 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 employee 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 Division.

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

§ 47.49 [Amended]

11. Section 47.49 is amended as follows:

a. In paragraphs (a), (b), and (c), the words "Regulatory Branch" are removed each time they occur and the words "PACA Branch" are added in their place.

b. Paragraph (d) is amended by removing all words appearing after "may file" and adding in their place the words "with the Hearing Clerk, pursuant to § 1.130–1.151 of this title, a petition for review of the determination."

c. Paragraphs (e) and (f) are removed.

§ 47.50 through 47.68 [Removed]

12. Sections 47.50 through 47.68 are removed.

Done in Washington, DC, this 29th day of February 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96-6693 Filed 3-20-96; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 54

[No. LS-95-006]

Amendment to Meats, Prepared Meats, and Meat Products (Grading, Certification and Standards)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Meats, Prepared Meats, and Meat Products (Grading, Certification and Standards) by adding definitions, changing certificate forms, removing two outdated official stamp imprints, and adding three new official stamp imprints. Program changes made to better serve our customers and improve efficiency resulted in development of the above new items, and caused the disuse of the old stamps and certificates.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, Meat Grading and Certification Branch, (202) 720-1246.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Administrator of the AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of the