

Welcome to the Swamp:
Understanding the USDA Rules of Practice and Procedure

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I. Applicability and Scope

- a. The USDA Rules of Practice and Procedure (RPP) apply to adjudicatory proceedings instituted by USDA and administered by the Office of Administrative Law Judges (OALJ). This covers most, *but not all*, USDA adjudicatory proceedings. 7 CFR 1.131.
 - i. Proceedings brought under the following statutes are subject to the RPP include: Animal Welfare Act, Federal Meat Inspection Act, Poultry Products Inspection Act, Packers and Stockyards Act, Perishable Agricultural Commodities Act, Checkoff programs, Plant Protection Act, Grain Standards Act
- b. Supplemental Rules of Practice and Procedure govern certain laws subject to the RPP, such as the Plant Protection Act, Animal Welfare Act, and Horse Protection Act.
- c. Certain aspects of some laws subject to the RPP are subject to separate rules of practice that supersede the RPP in instances where the two sets of rules conflict. Examples include: rate proceedings under the Packers and Stockyards Act and several aspects of the Perishable Agricultural Commodities Act.

A helpful overview of the scope of the RPP and supplemental rules can be found here:
<https://oalj.oha.usda.gov/rules>

II. Basics

- a. Players (7 CFR 1.132):
 - i. Complainant – party instituting the proceeding
 - ii. Respondent – party the proceeding is instituted against
 - iii. Hearing clerk – receives and distributes all filings and pleadings
 - iv. Judge – career employee administrative law judge
 - v. Judicial Officer – equivalent to appellant judge, issues final agency decisions, appointed by Secretary of Agriculture
- b. Initiating a Proceeding (7 CFR 1.133)

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- i. any interested person may submit information alleging a violation of a law covered by the RPP to the administrator of the agency responsible for administrating the law
 - ii. The Administrator will investigate the information to determine if a complaint is warranted
 - iii. If the Administrator believes a covered law has been violated, they will file a complaint with the Hearing Clerk
 - 1. Complaint must state briefly and clearly the nature of the proceeding, ID the complainant and respondent, legal authority and jurisdiction, allegations of fact and provisions of law that constitute a basis for the proceeding, and relief sought
- c. Answer (7 CFR 1.136)
 - i. Must be filed within 20 days after service of the complaint (10 days if a PACA 4(d) complaint)
 - ii. Responses:
 - 1. Clearly admit, deny, or explain each allegation and set forth any defenses;
 - 2. Admit all facts in allegation; or
 - 3. Admit jurisdictional facts and neither admit nor deny remaining allegations
 - iii. *Failure to answer complaint within time limits is deemed an admission to all allegations and waives the right to hearing*
 - iv. Attorney appearance can be filed simultaneously with answer
- d. Motions and Requests (7 CFR 1.143)
 - i. Any motion can be made *except* for a motion to dismiss
 - ii. Party responding to a motion or request must respond within 20 days
 - iii. Parties can request certification to the Judicial Officer, akin to interlocutory appeals
 - iv. In practice, requests for extension of time are granted liberally so long as there is a reasonable basis
- e. Pre-Hearing Conference (7 CFR 1.140)
 - i. Initiated by party motion or judge's order
 - ii. Judge has discretion to order parties to prepare and exchange (i) an outline of the case or defense; (ii) legal theories that parties will rely on; (iii) exhibits; and (iv) witness lists
 - iii. Parties can also discuss stipulations, simplification of issues, limiting witnesses
- f. Discovery
 - i. Depositions allowed – can be conducted by telephone (7 CFR 1.148)
 - ii. Subpoenas for witnesses to appear at hearings and produce materials– must be authorized by underlying statute and approved by judge (7 CFR 1.149)

III. Hearings (7 CFR 1.141)

- a. Judge sets time, place, manner
 - i. Default rule is to conduct hearing through audio-visual conferencing
 - 1. In-person hearings are common
 - 2. Telephonic conferences are allowed
 - ii. If in person, convenience of the parties is considered
 - iii. Can be conducted on non-consecutive days
- b. Written statements of direct testimony – in most cases, parties are required to provide a written narrative verified statement of the oral direct testimony a witness is expected to provide at the hearing at least 10 days in advance of the hearing
- c. Evidence is provided through sworn testimony of witnesses, subject to cross-examination
- d. Overruled objections are automatically excepted, can serve as basis for appeal to Judicial Officer

IV. Post-hearing procedure (7 CFR 1.142)

- a. Parties have opportunity to review and make motions to correct transcript of hearing
- b. Prior to judge's issuance of order, parties have opportunity to submit proposed findings of fact, conclusions, order, and brief in support of the order
 - i. Submit to both judge and opposing party
- c. Judge may issue oral decision at conclusion of hearing or prepare a written decision
- d. Judge's decision becomes final 35 days after issuance of oral decision or service of written decision, unless appealed to the Judicial Officer.² This is *not* considered final agency action for the purposes of review.

V. Appeal & Judicial Review (7 CFR 1.145)

- a. ALJ decisions are appealable to the Judicial Officer by filing appeal petition with the Hearing Clerk within 30 days of oral decision or receiving service of written decision
 - i. State basis for appeal in plain and concise statements
- b. Opposing parties may response to appeal petition within 20 days
- c. Oral argument may be requested

² Decisions must be appealed to the Judicial Officer within 30 days of receiving the judge's decision

- d. Judicial Officer prepares written decision based on review of record or oral arguments. Judicial Officer has option of adopting ALJ's written decision.
- e. Judicial Officer decision is considered final agency action for purposes of judicial review. Non-USDA parties may seek judicial review of Judicial Officer decisions whereas USDA may not.
- f. Judicial review of Judicial Officer decisions can be sought in Article III courts
 - i. Default – Hobbs Act (28 USC 2344) – must seek judicial review in applicable U.S. Circuit Court of Appeals within 60 days
 - 1. Court will evaluate Judicial Officer decision and administrative record
 - ii. Some acts provide for *de novo* review in U.S. District Courts

VI. Practice Pointers

- a. In most instances, the *only* opportunity to introduce evidence is the initial hearing. The Judicial Officer and U.S. Circuit Court of Appeal will only rule on the record – make your evidence count
 - i. Some acts allow *de novo* review in U.S. District Court
- b. The Federal Rules of Evidence do not apply
- c. Default rule requires filings be printed in quadruplicate, but electronic service can be substituted for physical copies
- d. When possible, hearings are located in areas convenient for the respondent