

DEPARTMENT OF AGRICULTURE**Office of the Secretary of Agriculture****7 CFR Parts 0 and 1****Agricultural Marketing Service****7 CFR Parts 47, 50, 51, 52, 53, 54, and 97****Grain Inspection, Packers and Stockyards Administration****9 CFR Chapter II and Part 202****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, the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act, the Rules of Practice Under the Perishable Agricultural Commodities Act, and the Rules of Practice Applicable to Reparation Proceedings Under the Packers and Stockyards Act. This final rule provides that conferences shall be conducted by telephone or correspondence, hearings shall be conducted by audio-visual telecommunication, and depositions shall be conducted either in the manner agreed to by the parties or by telephone, unless the person conducting the proceeding determines that the conference, hearing, or deposition may be conducted by some other means. The final rule also provides for the use of recordings of hearings and depositions and the exchange of written narrative statements of the direct testimony prior to hearings to be conducted by telephone. These amendments will save the government and those who participate in the proceedings time and money.

In addition, this rule amends 9 CFR chapter II to reflect the abolishment of the Packers and Stockyards Administration and the establishment of the Grain Inspection, Packers and Stockyards Administration in the recent Department of Agriculture reorganization.

EFFECTIVE DATE: This final rule is effective March 16, 1995, except for the amendments to the chapter heading of 9 CFR chapter II and the references to the agency name in the chapter which are effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Background**

The Department conducts a number of adjudicatory proceedings in which conferences, depositions, and hearings are held. Many of these conferences, depositions, and hearings are conducted by personal attendance which necessitates travel by those who participate in the conferences, depositions, and hearings.

Generally, conferences at which personal attendance is required are attended by the person conducting the proceeding (an administrative law judge, hearing officer, examiner, or presiding officer), the parties to the proceeding, and counsel for the parties to the proceeding. Depositions are attended by an officer authorized to administer oaths, a court reporter, the parties, counsel for the parties, and the deponent. Hearings are attended by the person conducting the proceeding, the parties to the proceeding, counsel for the parties to the proceeding, a court reporter, and witnesses called by the parties.

The costs associated with travel to conferences, depositions, and hearings (meals, lodging, and actual travel expense) are often substantial. These travel costs burden all taxpayers and particularly burden the individuals who attend these proceedings. In addition to expenditure of money, individuals personally attending the proceedings often must spend valuable time traveling to and from these conferences, depositions, and hearings.

Proposed Rule

Therefore, on February 25, 1994, we published a document in the **Federal Register** (59 FR 9114-9136) proposing to amend the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR 1.130 through 1.151) (referred to as the "Uniform Rules" below), the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act (7 CFR 1.160 through 1.175) (referred to as the "Capper-Volstead Rules" below), the Rules of Practice Under the Perishable Agricultural Commodities Act Applicable to Reparation Proceedings (7 CFR 47.1 through 47.25 and 47.46)

(referred to as the "PACA Reparation Rules" below), the Rules of Practice Under the Perishable Agricultural Commodities Act Applicable to Determinations as to Whether a Person is Responsibly Connected With A Licensee Under the Perishable Agricultural Commodities Act (7 CFR 47.1, 47.2(a) through 47.2(h), and 47.47 through 47.68) (referred to as the "PACA Responsibly Connected Rules" below), and the Rules of Practice Applicable to Reparation Proceedings Under the Packers and Stockyards Act (9 CFR 202.101 through 202.123) (referred to as the "P&S Reparation Rules" below). Specifically, we proposed to provide that: (1) Conferences may be conducted by telephone, correspondence, audio-visual telecommunication, or by personal attendance of the participants; (2) depositions and hearings may be conducted by telephone, audio-visual telecommunication, or personal attendance of the participants; (3) hearings and depositions may be recorded rather than transcribed; and (4) prior to a hearing, parties exchange written narrative statements of the direct testimony they intend to introduce at the hearing.

Comments on the Proposed Rule

We solicited comments concerning the proposal for a 60-day comment period ending April 26, 1994. We received 12 comments by that date. One of the commenters requested that we reopen and extend the comment period. In response to that request, on June 22, 1994, we published a document in the **Federal Register** (59 FR 32138) reopening and extending the comment period until July 22, 1994. We received two additional comments by the close of the reopening and extension of the comment period. The fourteen comments were from the following organizations and individual: (1) The Administrative Law Section of the American Bar Association; (2) the Agriculture Law Committee, Administrative Law Section of the American Bar Association; (3) the American Meat Institute; (4) the Eastern Meat Packers Association; (5) the Federal Administrative Law Judges Conference; (6) the Forum of United States Administrative Law Judges; (7) Janet L. Heins; (8) Holland & Knight; (9) the Livestock Marketing Association; (10) the National Association of Perishable Agricultural Receivers; (11) Olsson, Frank and Weeda, P.C.; (12) the Society for Animal Protective Legislation; (13) the United Fresh Fruit & Vegetable Association; and (14) the Western States Meat Association.