

**RULES OF PRACTICE GOVERNING
FORMAL ADJUDICATORY
ADMINISTRATIVE PROCEEDINGS
INSTITUTED BY THE SECRETARY**



COMPILED APRIL 20, 2005

UNITED STATES DEPARTMENT OF AGRICULTURE

SUPPLEMENTAL RULES OF PRACTICE**

Title 7 – Agriculture

Supplemental rules applicable to proceedings under the Plant Protection (Quarantine) Act, section 424 (7 U.S.C. 7734), the Federal Plant Pest Act, the Endangered Species Act Amendment of 1973, as amended, section 11(a) (16 U.S.C. 1540(a)), the Lacey Act Amendments of 1981, section 4(a) and (b) (16 U.S.C. 3373(a) and (b)), and the Act of January 31, 1942, as amended (7 U.S.C. 149).

§ 380.10 Stipulations.

(a) At any time prior to the issuance of a complaint seeking a civil penalty under any of the Acts listed in § 380.1, the Administrator, in his discretion, may enter into a stipulation with any person in which:

(1) The Administrator or the Administrator's delegate gives notice of an apparent violation of the applicable Act, or the regulations issued thereunder, by such person and affords such person an opportunity for a hearing regarding the matter as provided by such Act;

(2) Such person expressly waives hearing and agrees to pay a specified penalty within a designated time; and

**Not reproduced herein are the rules of practice applicable to proceedings under the Perishable Agricultural Commodities Act, which are codified at 7 CFR §§ 47.1-47.5, 47.46-47.49, or the rules of practice applicable to rate proceedings under the Packers and Stockyards Act, which are codified at 9 CFR §§ 202.1-202.7. Copies of those rules are available upon request to the Hearing Clerk, Mail Stop 9203, Room 1031 - South Building, Washington, DC 20250-9203. Phone at (202) 720-4443, Fax at (202)-720-9776.

(3) The Administrator agrees to accept the specified penalty in settlement of the particular matter involved if the penalty is paid within the designated time.

(b) If the specified penalty is not paid within the time designated in such a stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

[48 FR 33468, July 22, 1983]

Title 9 – Agriculture

Supplemental rules applicable to proceedings under the Animal Welfare Act.

§ 4.10 Summary action.

(a) In any situation where the Administrator has reason to believe that any person licensed under the Act has violated or is violating any provision of the Act, or the regulations or standards issued thereunder, and he deems it warranted under the circumstances, the Administrator may suspend such person's license temporarily, for a period not to exceed 21 days, effective, except as provided in § 4.10(b), upon written notification given to such person of the suspension of his license pursuant to § 1.147(b) of the Uniform Rules of Practice (7 CFR 1.147(b)).

(b) In any case of actual or threatened physical harm to animals in violation of the Act, or the regulations or standards issued thereunder, by a person licensed under the Act, the Administrator may suspend such person's license temporarily, for a period not to exceed 21 days, effective upon oral or written notification, whichever is earlier. In the event of oral notification, a written confirmation thereof shall be given to such person pursuant to § 1.147(b) of the Uniform Rules of Practice (7 CFR 1.147(b)) as promptly as circumstances permit.

(c) The temporary suspension of a license shall be in addition to any sanction which may be

imposed against said person by the Secretary pursuant to the Act after notice and opportunity for hearing.

§ 4.11 Stipulations.

(a) At any time prior to the issuance of a complaint seeking a civil penalty under the Act, the Administrator, in his discretion, may enter into a stipulation with any person in which:

(1) The Administrator gives notice of an apparent violation of the Act, or the regulations or standards issued thereunder, by such person and affords such person an opportunity for a hearing regarding the matter as provided by the Act;

(2) Such person expressly waives hearing and agrees to pay a specified penalty within a designated time; and

(3) The Administrator agrees to accept the specified penalty in settlement of the particular matter involved if it is paid within the designated time.

(b) If the specified penalty is not paid within the time designated in such a stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

Title 9 – Agriculture

Supplemental rules applicable to proceedings under the Horse Protection Act.

§ 12.10 Stipulations.

(a) At any time prior to the issuance of a complaint seeking a civil penalty under the Act, the Administrator, in his discretion, may enter into a stipulation with any person in which:

(1) The Administration gives notice of an apparent violation of the Act or the regulations issued thereunder by such person and affords such person an opportunity for a hearing regarding the matter as provided by the Act;

(2) Such person expressly waives hearing and agrees to a specified order including an agreement to pay a specified civil penalty within a designated time; and

(3) The Administrator agrees to accept the specified order including a civil penalty in settlement of the particular matter involved if it is paid within the designated time.

(b) If the specified penalty is not paid within the time designated in such a stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

[42 FR 10960, Feb. 25, 1977, as amended at 68 FR 6342, Feb. 7, 2003]

Title 9 – Agriculture

Supplemental rules applicable to proceedings relating to the control and eradication of livestock or poultry diseases and the interstate transportation of animals (including poultry) and animal products under the Animal Industry Act, section 7, as amended (21 U.S.C. 117), the Cattle Contagious Diseases Act, section 3, as amended (21 U.S.C. 122), the Act of March 3, 1905, section 6, as amended (21 U.S.C. 127), the Act of July 2, 1962, section 6(a), as amended (21 U.S.C. 134e), and the Animal Health Protection Act, (7 U.S.C. 8301 *et seq.*).

§ 49.10 Stipulations.

(a) At any time prior to the issuance of a complaint seeking a civil penalty under any of the Acts listed in § 49.1, the Administrator, in his discretion, may enter into a stipulation with any person in which:

(1) The Administrator or the Administrator's delegate gives notice of an apparent violation of the applicable Act, or the regulations issued thereunder, by such person and affords such person an

opportunity for a hearing regarding the matter as provided by such Act;

(2) Such person expressly waives hearing and agrees to pay a specified penalty within a designated time; and

(3) The Administrator agrees to accept the penalty in settlement of the particular matter involved if the penalty is paid within the designated time.

(b) If the penalty is not paid within the time designated in such a stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

Title 9 – Agriculture

Supplemental rules applicable to proceedings relating to the Revocation or Suspension of Veterinarians' Accreditation.

§ 162.10 Summary suspension of accreditation of veterinarians.

In any situation where the Administrator has reason to believe that any veterinarian accredited under the provisions of 9 CFR parts 160 and 161 of this subchapter has not complied with the “Standards for Accredited Veterinarian Duties” set forth in § 161.3 of this subchapter, and deems such action necessary in order to prevent the introduction into the United States or the spread from one State to another of a contagious, infectious, or communicable disease of animals, or to insure that animals intended or offered for export to foreign countries are free from disease, the Administrator may suspend the accreditation of such veterinarian pending final determination in the proceeding, effective upon oral or written notification, whichever is earlier. In the event of oral notification, a written confirmation thereof shall be given to such veterinarian pursuant to § 1.147(b) of the Uniform Rules of Practice (7 CFR 1.147(b)) as promptly as

circumstances permit. Such suspension shall have no relevance with respect to the final determination in the proceeding.

§ 162.11 Notification.

The Veterinarian-in-Charge shall notify an accredited veterinarian when there is reason to believe that the accredited veterinarian has not complied with the “Standards for Accredited Veterinarian Duties” as contained in § 161.3 of this subchapter. The notification shall be in writing, with a copy to the State Animal Health Official, and shall include a statement of the basis for the belief that the accredited veterinarian has failed to comply with the Standards and shall notify the accredited veterinarian if the Veterinarian-in-Charge has arranged to hold an informal conference to discuss the matter.

§ 162.12 Informal conference.

(a) The Veterinarian-in-Charge, in consultation with the State Animal Health Official and the accredited veterinarian, shall designate the time and place for the holding of an informal conference to review the matter, unless the Veterinarian-in-Charge determines that an informal conference is inappropriate. An informal conference is inappropriate only if the Veterinarian-in-Charge decides to dismiss the case based on available facts, or if civil or criminal charges based on the actions or inactions believed to be in violation of the “Standards for Accredited Veterinarian Duties” contained in § 161.3 of this subchapter are pending against the accredited veterinarian. An informal conference shall include the Veterinarian-in-Charge or his or her representative, the accredited veterinarian, and any other persons the Veterinarian-in-Charge requests to attend due to their involvement in or knowledge of the possible violation. The State Animal Health Official will be invited to attend each informal conference held regarding activities in his or her State.

(b) Prior to, during, or at the conclusion of the informal conference, the Veterinarian-in-Charge may issue a written warning to the accredited veterinarian without further procedure after determining that a warning with appropriate instructions will be adequate to attain compliance with the Standards.

(c) If prior to, during, or at the conclusion of, the informal conference, the accredited veterinarian consents, in writing, to the issuance of an order revoking or suspending his or her accreditation for a specified period of time, in lieu of further procedure, the Veterinarian-in-Charge may issue such a consent order without further procedure.

(d) If prior to, during, or after the informal conference, but prior to the issuance of a formal complaint, the accredited veterinarian is found not to have violated the regulations, the Veterinarian-in-Charge will issue a letter dismissing the case, and provide a copy of the letter to the accredited veterinarian and to the State Animal Health Official. Prior to, during, or after the informal conference, the Veterinarian-in-Charge may issue a letter identifying actions of the accredited veterinarian that were minor violations of the Standards, instructing the accredited veterinarian in proper procedures, and admonishing the accredited veterinarian to use greater care in performing these procedures in the future.

[57 FR 54915, Nov. 23, 1992; 57 FR 60086, Dec. 18, 1992]

§ 162.13 Formal complaint.

If a consent order has not been issued, or if, after an informal conference, the Veterinarian-in-Charge has not issued a letter of dismissal or letter of warning to the accredited veterinarian, a formal complaint may be issued by the Administrator in accordance with § 1.135 of the Uniform Rules of Practice (7 CFR 1.135).