

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	FMIA Docket No. 12-0182
)	FMIA Docket No. 12-0183
Paul Rosberg and Kelly Rosberg,)	
d/b/a Nebraska's Finest Meats,)	Ruling Denying Respondents'
)	Motion for Extension of Time
Respondents)	To File an Appeal Petition

PROCEDURAL HISTORY

On January 29, 2015, Paul Rosberg and Kelly Rosberg [Respondents] filed a motion to extend the time for filing a second appeal of Administrative Law Judge Janice K. Bullard's¹ July 29, 2014, Decision and Order Dismissing Case as Moot [Decision].² Respondents contend the time for filing a second appeal petition should be extended for "excusable neglect," as authorized by Federal Rule of Criminal Procedure 45(b)(1)(B).

¹Effective January 4, 2015, Administrative Law Judge Janice K. Bullard [Chief ALJ] was appointed Acting Chief Administrative Law Judge.

²Respondents previously appealed the Chief ALJ's Decision. I denied Respondents' September 23, 2014, appeal petition because Respondents filed their appeal petition after the time for filing an appeal petition had expired. Rosberg (Order Denying Late Appeal), Nos. 12-0182, 12-0183, 2014 WL 6632116 (U.S.D.A. Nov. 7, 2014).

The Federal Rules of Criminal Procedure are applicable to criminal proceedings in the United States district courts, the United States courts of appeals, and the Supreme Court of the United States.³ The Federal Rules of Criminal Procedure are not applicable to this disciplinary administrative proceeding.⁴ Instead, the rules of practice applicable to this proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151) [Rules of Practice].

The Rules of Practice provide that an administrative law judge's written decision must be appealed to the Judicial Officer by filing an appeal petition with the Hearing Clerk within 30 days after service,⁵ and, unlike the Federal Rules of Criminal Procedure, the Rules of Practice contain no provision for an extension of time after time expires based upon excusable neglect.

The Hearing Clerk served Respondents with the Chief ALJ's Decision on August 18, 2014;⁶ therefore, Respondents were required to file their appeal petition with the Hearing Clerk no later than September 17, 2014. As Respondents filed their January 29, 2015, request to extend the time for filing a second appeal petition after Respondents' time for filing an appeal petition had expired, Respondents' request for an extension of time to file a second appeal of the Chief ALJ's July 29, 2014, Decision, must be denied.

For the foregoing reasons, the following Ruling is issued.

³Fed. R. Crim. P. 1(a)(1).

⁴*Morrow v. Department of Agric.*, 65 F.3d 168 (Table) (per curiam), 1995 WL 523336 (6th Cir. 1995), *printed in* 54 Agric. Dec. 870 (1995) (stating the Federal Rules of Criminal Procedure do not apply to administrative hearings); *Mister Discount Stockbrokers, Inc. v. SEC*, 768 F.2d 875, 878 (7th Cir. 1985) (same).

⁵7 C.F.R. § 1.145(a).

⁶United States Postal Service Domestic Return Receipt for article number 7012 3460 0003 3833 4177.

RULING

Respondents' January 29, 2015, motion for an extension of time to appeal the Chief ALJ's July 29, 2014, Decision, is denied.

Done at Washington, DC

February 3, 2015

William G. Jenson
Judicial Officer