

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	
)	Docket No. 16-0079
Donald C.R. Hinkel,)	
)	
)	^{85C} Proposed Default Decision and
)	Order as to the Respondent Donald C.R.
)	Hinkel
Respondent)	

This administrative proceeding seeks the assessment of a civil penalty for violations of the Plant Protection Act, as amended and supplemented (7 U.S.C. §§ 7701 et seq.) (Act), and the regulations promulgated thereunder, in accordance with the rules of practice applicable to this proceeding as set forth in 7 C.F.R. §§ 1.130 et seq. and 380.1 et seq.

On or about March ^{11 85C}~~10~~, 2016, the Administrator of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), initiated this proceeding by filing an administrative complaint against the Respondent. The Respondent Donald C.R. Hinkel is an individual. The Respondent's mailing address was not provided in the complaint to protect the privacy of Mr. Hinkel, but was provided to the Hearing Clerk, United States Department of Agriculture, for the purpose of service of the complaint and future documents. On March 11, 2016 the Hearing Clerk sent an envelope containing the complaint, Hearing Clerk's letter, and Rules of Practice via Certified mail (tracking number [REDACTED] 3186), to the Respondent's mailing address, which was returned by the Postmaster on May 9, 2016 as "Unclaimed". On May 12, 2016 the Hearing Clerk sent another envelope again containing the complaint, Hearing Clerk's letter, and Rules of Practice via Regular mail to the Respondent's mailing address. The Respondent again failed to respond to the May 12, 2016 Hearing Clerk's mailing. The complaint was mailed to the Respondent both certified mail,

return receipt requested and regular mail. Therefore, the Respondent is deemed to have been properly served with the complaint.

Section 1.136 of the rules of practice (7 C.F.R. § 1.136) states that an answer to a complaint should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer or otherwise respond to an allegation of the complaint within twenty (20) days after service of the complaint shall be deemed both an admission of the allegations in the complaint and a waiver of a hearing. The Respondent's answer thus was due no later than June 1, 2016, twenty days after service of the complaint (7 C.F.R. § 136(a)). Pursuant to section 1.136 of the Rules of Practice, the Respondent was informed in both the complaint and the Hearing Clerk's letter accompanying the complaint that an answer should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer within twenty (20) days after service of the complaint constitutes an admission of the allegations in the complaint and waiver of a hearing. Despite being so notified, the Respondent has not filed an answer to the complaint.

The Respondent has failed to file an answer within the time prescribed in section 1.136(a) of the Rules of Practice and thus has failed to deny or otherwise respond to the allegations of the complaint. In accordance with section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), the Respondent's failure to answer the complaint is deemed an admission of the allegations in the complaint. Furthermore, section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) states that an admission of the allegations in a complaint constitutes a waiver of hearing. Because the Respondent failed to answer the complaint this constitutes an admission of the allegations in the complaint pursuant to section 1.136(c), it likewise constitutes a waiver of hearing pursuant to section 1.139. Accordingly, the material allegations in the complaint are adopted and set forth in

this default decision as the Findings of Fact, and this decision is issued pursuant to section 1.139 of the rules of practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Donald C.R. Hinkel is an individual. The Respondent's mailing address was not provided in the complaint to protect the privacy of Mr. Hinkel, but was provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purpose of service of the complaint and future documents.

2. On or about June 15, 2014, the Respondent moved a private aircraft, tail # N50DH, from Rafael Hernandez Airport (BQN), Aguadilla, Puerto Rico to Witham Field Airport (KSUA) in Stuart, Florida, United States. Respondent did not offer the inspector the opportunity to inspect the aircraft prior to departure and the inspector did not grant the Respondent the authority to depart in violation of 7 C.F.R. § 318.13-9(a).

3. On or about June 7, 2015, the Respondent moved a private aircraft, tail # N50DH, from Rafael Hernandez Airport (BQN), Aguadilla, Puerto Rico to Witham Field Airport (KSUA) in Stuart, Florida, United States. Respondent did not offer the inspector the opportunity to inspect the aircraft prior to departure and the inspector did not grant the Respondent the authority to depart in violation of 7 C.F.R. § 318.13-9(a).

Conclusion

By reason of the Findings of Fact set forth above, the Respondent violated 7 C.F.R. § 318.13-9(a) on or about both June 15, 2014 and June 7, 2015. Therefore, the following Order is issued.

Order


The Respondent is hereby assessed a total civil penalty of two thousand dollars (\$2,000.00). Pursuant to 7 U.S.C. § 7734(b)(1) the civil penalty assessed for the initial violation of on or about June 15, 2014 is one thousand dollars (\$1,000.00). The civil penalty assessed for the second violation of on or about June 7, 2015 is one thousand dollars (\$1,000.00).

The Respondent shall send a certified check or money order for two thousand dollars (\$2,000.00), made payable to the U.S. Department of Agriculture, to USDA APHIS, P. O. Box 979043, St. Louis, Missouri 63197-9000 within thirty (30) days from the effective date of this Order. The Respondent shall indicate on the certified check or money order that this payment is in reference to Docket No. 16-0079.

This order shall be final and effective thirty five (35) days after service of this default decision and order upon the Respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145). *Such Appeal would be filed with the Hearing Clerk within 30 days after service. See Appendix A. ysc*

Done at Washington, D.C.

this 6 day of sept, 2016



Administrative Law Judge

Jill S. Clifton

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145