

**INDEX**  
**JANUARY - DECEMBER 1996**

**ADMINISTRATIVE PROCEDURE**

abuse of discretion . . . . .	254, 562
admission of material allegations . . . . .	275
arbitrary and capricious . . . . .	728
bankruptcy petition properly considered by ALJ . . . . .	537
consent decision	
violation of . . . . .	148
estoppel inapplicable . . . . .	107
exhaustion of administrative remedies required . . . . .	562
hearing	
admission of allegations by failure to appear . . . . .	275
not required	
when no genuine dispute of material fact . . . . .	537
hearsay evidence admissible . . . . .	800
past recollection recorded . . . . .	800
independence of Judicial Officer . . . . .	176
judicial review . . . . .	738
laches not applicable to the Government	
acting in its sovereign capacity . . . . .	265
late appeal . . . . .	78
motions and requests . . . . .	1033
official notice . . . . .	564
pleadings	
answer	
failure to file . . . . .	443
remand authority of Judicial Officer . . . . .	176
Secretary's authority to institute PACA proceedings	
not dependent on continued existence of license . . . . .	506
standard of proof	
preponderance of evidence . . . . .	6, 107
standing . . . . .	728
subpoena power . . . . .	60
substantive rule subject to	
notice and comment procedures . . . . .	98

## AGENCY'S INTERPRETATION OF REGULATIONS

.....	6
arbitrary and capricious .....	738

## AGRICULTURAL MARKETING AGREEMENT ACT, 1937

milk marketing order .....	728, 737, 749
producer handler .....	749
promulgation history .....	
prohibited economic trade barrier .....	737
riding the pool .....	749
separate facilities .....	728
standing .....	728
purpose of AMAA .....	6
raisin marketing order .....	
compliance requirements .....	6
failure to have raisins inspected .....	6
failure to pay assessments .....	6
preponderance of the evidence .....	6
reporting requirements .....	6
reserve requirements .....	6
sanctions .....	
cease and desist order .....	2
civil penalty .....	2, 6
factors considered in determination .....	
of appropriate civil penalty .....	2, 6
sanction policy .....	6
tomato marketing order .....	
failure to pay assessments when due .....	2
handler .....	2

## ANIMAL QUARANTINE ACT

default .....	78
failure to file an answer .....	78
importation of deer antlers in velvet .....	78
interstate movement .....	
cattle in violation of brucellosis regulations .....	60, 767
swine without required certificate .....	60, 74
late appeal .....	78
petition for reconsideration denied .....	74

reliable hearsay . . . . .	60
right to cross-examine . . . . .	60
sanctions	
civil penalty . . . . .	60, 78, 767
sanction policy . . . . .	60, 767
service by certified mail . . . . .	78
settlement agreement . . . . .	60, 74
subpoena power not provided under Act . . . . .	60

## **ANIMAL WELFARE ACT**

dealers . . . . .	784
facilities housing the animals . . . . .	775
unsafe and unsanitary conditions . . . . .	775
holding period . . . . .	775
identification . . . . .	775
license	
operating without . . . . .	784
records . . . . .	775
alteration of . . . . .	775
due process satisfied . . . . .	107
employees of licensees . . . . .	148
estoppel . . . . .	107
exhibitors	
animal care and facilities,	
failure to provide adequate . . . . .	107
facilities housing animals	
failure to provide for rapid elimination of excess water . . . . .	107
failure to store feed properly . . . . .	107
food and water receptacles, unsanitary . . . . .	107
unsanitary facilities . . . . .	107
handling	
minimal risk to animal and public . . . . .	148
identification of animals . . . . .	107
license	
exhibition without . . . . .	148
nonhuman primates	
failure to maintain appropriate plan . . . . .	107
perimeter fence, structural strength . . . . .	107
records	
failure to keep and maintain . . . . .	107

standards of care as to animals	
failure to provide adequate shelter . . . . .	107
veterinary care,	
failure to provide . . . . .	107
evidence	
credibility of witnesses	
deference to ALJ not absolute . . . . .	148
past recollection recorded . . . . .	107
preponderance . . . . .	107
independent contractors working for licensees . . . . .	148
renewal of license not basis for dismissal . . . . .	107
sanctions	
ability to continue operation not relevant . . . . .	107
cease and desist order . . . . .	107, 148, 784
civil penalty . . . . .	107, 148, 784
license disqualification . . . . .	148
license suspension . . . . .	107
sanction policy . . . . .	107, 148, 784
willfulness . . . . .	107, 784
violation of consent decision . . . . .	148

**BEEF PROMOTION AND RESEARCH ACT**

constitutionality . . . . .	789
injunction . . . . .	789

**CONSTITUTIONAL ISSUES**

Animal Quarantine Act	
right to cross-examine . . . . .	60
due process . . . . .	98, 107, 284

**DEFAULT DECISIONS**

. . . . . 344-425, 468-503, 711-725, 1062-1116, 1148-1163, 1411-1454

**EVIDENCE**

credibility determination of witnesses	
deference to ALJ not absolute . . . . .	6, 148
hearsay	
affidavits . . . . .	176
past recollection recorded . . . . .	107, 848, 892
reliability of . . . . .	60

preponderance standard . . . . .	6, 107
rebuttable presumption	
of responsible connection . . . . .	506, 537, 556
substantial evidence . . . . .	167, 176, 556

**FARM SERVICE AGENCY**

salary offset . . . . .	792, 796
-------------------------	----------

**FEDERAL MEAT INSPECTION ACT**

judicial review . . . . .	738
zero tolerance water washing standards . . . . .	738

**FEDERAL POULTRY INSPECTION ACT**

judicial review . . . . .	738
zero tolerance water washing standards . . . . .	738

**HORSE PROTECTION ACT**

affidavits, use as evidence . . . . .	176
Atlanta protocol devoid of merit . . . . .	176
complaint dismissed . . . . .	176
credibility of witnesses . . . . .	848, 853
decision on remand . . . . .	246
entering a sore horse . . . . .	167, 848, 853, 892
defined . . . . .	167
hearsay admissible . . . . .	848, 853
past recollection recorded . . . . .	848, 853, 892
independence of Judicial Officer . . . . .	176
learned avoidance . . . . .	176
opinion of veterinarians more persuasive than DQPs . . . . .	167
palpation evidence, reliance upon . . . . .	176, 800, 853, 892
remand authority of Judicial Officer . . . . .	176
sanctions	
civil penalty . . . . .	246, 800, 853, 892
disqualification from showing or exhibiting . . . . .	246, 800, 853, 892
soring . . . . .	167, 246
owner not liable if <i>Burton/Lewis</i> test satisfied . . . . .	167, 246
trainer	
knowledge of soreness not required . . . . .	167

substantial evidence . . . . .	167
statutory presumption . . . . .	892
<i>Young</i> not followed by USDA . . . . .	176, 800

**JUDICIAL REVIEW**

standard of review	
abuse of discretion . . . . .	254, 562
arbitrary and capricious . . . . .	254
substantial evidence . . . . .	167, 176, 556
strong presumption that Congress intends review . . . . .	739
sufficient law . . . . .	738

**NONPROCUREMENT DEBARMENT AND SUSPENSION**

arbitrary, capricious, abuse of discretion . . . . .	254
conviction	
selling property mortgaged or pledged to Farm Credit Agencies . . . . .	265
debarment of official's decision	
affirmed . . . . .	265
failure to meet time requirements . . . . .	254
related to valid administrative purpose . . . . .	265
vacated . . . . .	254
laches not applicable . . . . .	265
length of time since conviction not considered . . . . .	254
mitigating circumstances not considered . . . . .	254
period of debarment reduced . . . . .	265
suspending official's decision	
affirmed . . . . .	985
suspension	
mitigating factors need not be considered . . . . .	985
suspension period not considered in Notice of Debarment . . . . .	265
time requirements for issuance of decision . . . . .	985
failure to meet as grounds for vacating . . . . .	254
harmless error where delay is fault of respondent . . . . .	985

**PACKERS AND STOCKYARDS ACT, 1921**

alter ego . . . . .	430
custodial account	
line of credit no defense to violations . . . . .	430, 458
default vacated . . . . .	1121

failure to file an answer . . . . .	1121
jurisdiction . . . . .	1121
sanctions	
cease and desist . . . . .	430, 443, 458
civil penalty . . . . .	430, 458
permitted notwithstanding bankruptcy . . . . .	443
registration prohibition . . . . .	443
sanction policy . . . . .	430
stipulated facts . . . . .	430
sufficient funds	
necessary without regard to collection of receivables . . . . .	430
unfair and deceptive practices	
engaging in business without registration or bond . . . . .	443
failure to maintain and use properly custodial account . . . . .	430, 458
failure to make full and prompt payment . . . . .	443
issuing checks with insufficient funds . . . . .	443
willfulness . . . . .	443

**PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930**

abuse of discretion . . . . .	562
accord and satisfaction . . . . .	1307
necessary elements . . . . .	1307
bona fide dispute . . . . .	1307
payment in full . . . . .	1307
restrictive endorsements . . . . .	1307
alter ego . . . . .	1189
bond	
good faith effort to secure not sufficient . . . . .	564
burden of proof	
on seller to prove contract warranty inapplicable and absence of agent or place of business in market of rejection . . . . .	674
corporate veil pierced . . . . .	537
employment defined . . . . .	596
employment restrictions	
violation of . . . . .	564, 642
Equal Access to Justice Act	
substantial justification defined . . . . .	590
exhaustion of administrative remedies required . . . . .	562

failure to make full payment promptly for produce	
.....	572, 581, 617, 621, 1183, 1189, 1204, 1234
failure to pay license fee	617
failure to pay reparation awards	642
failure to show cause	
why application for license should not be denied	572
fraudulent intent	1167
full payment promptly defined	581, 617
hearing	
not required	
when no genuine dispute of material fact	537
injunctive relief denied	562
inspection certificates	
alteration of	1167
interstate commerce	1167
license	
denial of application	1204
failure to obtain	
does not alter or negate requirements	1183
providing false and misleading information on application	1189
revocation	596, 1204
misrepresentation of place of origin	1174
mitigating factors	
excuses for payment violations never sufficient	581, 1189
official notice	564
payment	
failure to make full payment promptly	572, 581, 617, 621
per se reading of statute	558
personal liability	
based upon fault knowledge of illegality	532
prohibited affiliation	572, 596
remand order	642
reparation proceedings	
acceptance	
subsequent rejection precluded	1345
acceptance of rejection	
meaningless where rejection effective	674
agency	1284
arbitration	1298
binding arbitration agreements	1298

scope . . . . .	1298
breach of contract . . . . .	1331
material breach defined . . . . .	1331
damages . . . . .	1352
percentage of defects . . . . .	1352
foreign commerce . . . . .	1382
grower's agents	
failure to enter into written agreement . . . . .	1312
failure to furnish written statement to grower . . . . .	1312
unauthorized allowances . . . . .	1312
interstate commerce . . . . .	1382
jurisdiction . . . . .	1387
dealer defined . . . . .	1387
transaction defined . . . . .	1387
movement of commodity in bond . . . . .	1382
open price . . . . .	1352
computation of reasonable value . . . . .	1352
open sales	
losses sustained by the buyer . . . . .	1341
rejection of goods	
duties of receiver after	
obligation to resell . . . . .	674
subsequent acceptance not precluded . . . . .	135
title reverts to seller where effective . . . . .	674
shipper's obligations	
adequacy of transport vehicle . . . . .	1287
standing to initiate reparation complaint . . . . .	684
warranty of merchantability . . . . .	1331
responsible connection	
defined . . . . .	558
employment restrictions,	
affiliation constituting violation of . . . . .	564, 596, 642
prima facie evidence . . . . .	532, 596
rebuttable presumption . . . . .	505, 537, 556
sanctions	
administrative versus criminal . . . . .	1167
civil penalties . . . . .	642
flagrant and repeated violations	
. . . . .	537, 596, 617, 621, 1174, 1189, 1204, 1234
license revocation . . . . .	1204, 1234

publication of violations . . . . .	581, 617, 621, 1183, 1189
reduction of sanction . . . . .	564
sanction policy . . . . .	596, 621
suspension of license . . . . .	642
willfulness . . . . .	617, 621, 1174, 1189, 1204, 1234
finding not required unless license suspension sought . . . . .	581
Secretary's authority to institute PACA proceedings	
not dependent on continued existence of license . . . . .	506
substantial evidence . . . . .	556
unfair and deceptive practices . . . . .	1189

**PLANT QUARANTINE ACT**

bringing prohibited and restricted articles into	
United States . . . . .	275, 996, 1010
failure to appear at hearing . . . . .	275
failure to file a timely answer . . . . .	996, 1010
government conspiracy or abuse not found . . . . .	284
intent as an element of the violation . . . . .	1010
notice and opportunity for a hearing . . . . .	284, 996, 1010
petition for reconsideration denied . . . . .	284
quarantine policy . . . . .	275
sanctions	
civil penalty . . . . .	275, 996, 1010
sanction policy . . . . .	275
ability to pay . . . . .	275

**SANCTIONS, GENERALLY**

ability to continue operation not relevant . . . . .	107
administrative versus criminal . . . . .	1167
cease and desist order . . . . .	2, 107, 148, 430, 443, 458, 784
civil penalty . . . . .	2, 6, 60, 78, 107, 148, 246, 275, 430, 458, 642,
. . . . .	767, 784, 800, 853, 892
ability to pay . . . . .	275
factors considered in determination	
of appropriate civil penalty . . . . .	2, 6
debarment . . . . .	265
disqualification from showing or exhibiting . . . . .	246
flagrant and repeated violations . . . . .	537, 596, 617, 621, 1174, 1189,
. . . . .	1204, 1234
injunctive relief denied . . . . .	246

license disqualification . . . . .	148
license revocation . . . . .	596, 1204, 1234
license suspension . . . . .	107, 642
permitted notwithstanding bankruptcy . . . . .	443
publication of violations . . . . .	581, 617, 621, 1183, 1189
reduction of sanction . . . . .	564
registration prohibition . . . . .	443
sanction policy . . . . .	6, 60, 107, 148, 275, 430, 596, 621, 767, 784
willfulness . . . . .	107, 443, 617, 621, 784
finding not required unless license suspension sought . . . . .	581