

**INDEX**  
**JANUARY - DECEMBER 1997**

**ADMINISTRATIVE PROCEDURE**

admission of material allegations .....	617, 843, 880, 898, 1757, 1774
answer	
complainant's counsel not obligated to file .....	504
appeals	
untimely .....	373
burden of proof .....	1095
complaint	
amendments .....	279
post-hearing .....	269
consideration of whole record .....	269
due process .....	82
hearing	
admission of allegations by failure to appear .....	158, 1757, 1228
off the record discussions between counsel and witness .....	166
hearsay evidence admissible .....	82
past recollection recorded .....	529
Jencks Act .....	1242
judicial review .....	873
official notice	
bankruptcy petition .....	880, 898
standard of proof	
preponderance of evidence .....	82, 166, 433, 529, 1095

**AGRICULTURAL MARKETING AGREEMENT ACT, 1937**

almonds .....	1158
beef/apple orders inapposite .....	1045
burden of proof .....	37, 82, 117, 1095, 1158
presumption that agency action valid .....	117
butterfat tests .....	37
Bartlett formula tolerances .....	37
Market Administrator's authority to verify .....	37
t-tests .....	37
constitutionality .....	1, 82
discharge of official duties .....	102
dismissal of 15(A) petition .....	102, 1045, 1158

with prejudice .....	102
due process .....	82
Equal Protection .....	117
evidence	
hearsay .....	82
failure to file an answer .....	1661
Fifth Amendment	
condemnation .....	1045
due process .....	1045
First Amendment .....	1, 1158
generic advertising .....	1
handler .....	102
disclosure of information .....	102
inspection fees	
failure to pay .....	1095
inspection	
failure to obtain .....	1095
requirements .....	1095
inverse condemnation .....	146
jurisdiction	
handlers only allowed 15(A) petition .....	1045
milk marketing order .....	37
potatoes .....	1095
preponderance of the evidence .....	82, 1095
Rainier cherries	
minimum size requirements .....	117, 1045
minimum sugar content and maturity .....	1045
no parity price .....	1045
raisin marketing order	
failure to deliver raisons to RAC .....	1661
failure to have raisins inspected .....	82, 1661
failure to pay assessments .....	82
reporting requirements .....	82, 1661
reserve requirements .....	82, 1661
regulation .....	1045
rulemaking .....	37, 117
sanctions	
cease and desist order .....	1661
civil penalties .....	82, 1095, 1661

tolling .....	102
sanction policy .....	82, 1095
Secretary not arbitrary and capricious .....	1045
standing .....	102
underpayment notice .....	37

## **ANIMAL QUARANTINE AND RELATED LAWS**

failure to appear at hearing .....	1228
failure to file an answer .....	1664, 1666, 1668, 1669
importation of	
dried beef jerky and cured pork sausage from Thailand	1669
or Vietnam .....	1664
ham, liverwurst, bacon and salami from Germany .....	1666
horses from Mexico .....	1666
inspection at port of entry .....	1666
movement interstate of	
test-eligible cattle .....	1228
Equine Infectious Anemia reactor mule .....	1668
quarantine of horses .....	1666
sanctions	
civil penalty .....	1228, 1664, 1666, 1668, 1669
veterinary certificate .....	1666

## **ANIMAL WELFARE ACT**

abuse .....	1373
adequate defined .....	1242
admission of material allegations .....	1672
age of respondent	
not a defense .....	301
answer, failure to file .....	1400
anticipation of litigation .....	1242
appeal	
untimely .....	373
Brady Doctrine .....	1242
commerce .....	1419
complaint	
adequacy of .....	1242, 1373
consideration of whole record .....	269
correction dates .....	166, 1242

<b>correction of violations</b>	
not a defense .....	322, 350
<b>credibility</b> .....	396
<b>default</b> .....	301, 322, 350, 373, 1400, 1675
<b>disability, not a mitigating factor</b> .....	1400
<b>disposal of regulated animals</b>	
not a defense .....	301, 322
<b>employees</b>	
maintaining sufficient .....	433
<b>evidence</b>	
inspection reports .....	166
preponderance of .....	166, 433, 1242, 1419
substantial .....	166, 433
<b>exhibitors</b> .....	158, 166
<b>exercise program</b> .....	1672
<b>facilities</b> .....	166, 1242
cleanliness of primary enclosures .....	158, 1391
cleanliness and condition of premises .....	1391
elimination of excess water .....	158
food storage .....	396, 1391
housekeeping requirements .....	396, 1672
lighting .....	433
maintenance .....	158, 279
perimeter fence .....	396, 416
primary enclosures .....	416, 1419
sanitariness .....	416, 433
separation of animal housing from other business .....	433
shelter from inclement weather .....	158, 396
space requirements .....	396, 1391
structural soundness .....	279, 396, 433, 1391
surfaces impervious to moisture .....	433
temperature .....	1391
transport enclosures .....	279
ventilation .....	433
<b>failure to file an answer</b> .....	1675
<b>food and water</b>	
provision .....	1672
sanitization of receptacles .....	1391
storage .....	1391, 1419

handling	1675
so as to minimize risk of harm to animal and public	433
without unnecessary trauma	1373
harassment	279
health certificates	1242
hearsay	279
holding period	279, 433, 1672
identification of animals	279, 433, 1672
inspection	279, 396, 1419
denial of access	1242
Jencks Act	396, 1419
jurisdiction	
license	1373
application	158
exhibition without	322
intention to give up not a defense	1373
licensed person	
nonhuman primates	416
environmental enhancement	166
failure to maintain appropriate plan	1242
outdated drugs	1391, 1392
pest and insect control	269, 370
petition for reconsideration	158
potable water	
sanitization of water receptacles	158, 416, 433
preponderance of the evidence	1242, 1419
recordkeeping	166, 279, 396, 433, 1242, 1391, 1419, 1672
sanctions	
cease and desist order	158, 166, 279, 301, 322, 350, 396, 416, 433
1235, 1242, 1391, 1400, 1419, 1458, 1672, 1675	
civil penalty	158, 166, 279, 301, 322, 350, 396, 416, 433
1235, 1242, 1391, 1419, 1458, 1672, 1675	
inability to pay not a mitigating factor	1400
license disqualification	158, 322, 1391, 1400, 1672, 1675
license revocation	166, 279, 1235
license suspension	301, 350, 416, 433, 1242, 1419, 1458
proportionality	166
sanction policy	166, 269, 350, 433, 1235, 1242, 1391, 1419, 1458
selective prosecution	1242

storage of food and bedding .....	1391, 1419
tape recordings .....	1242
vague recollections .....	1242
veterinary care .....	166, 279, 416, 433, 1242, 1391, 1419, 1672
storage of food and bedding .....	433
substantial evidence .....	1242
trivial violations .....	1242
warrantless searches .....	1242
waste	
proper drainage and disposal .....	433, 1391, 1672
removal and disposal of dead animals .....	156
willfulness .....	166, 279, 416, 433, 1242, 1419

## BEEF PROMOTION AND RESEARCH INFORMATION ACT

assessments .....	1470
Beef Order .....	1470
equal protection .....	1470
collecting person .....	1470
First Amendment .....	1470
interstate commerce .....	1470
late payment charge .....	1470
reports	
failure to submit .....	1470
sanctions	
civil penalty .....	1470
taxation .....	1470

## CONSTITUTIONAL ISSUES

Article II .....	82
Article III .....	82
due process .....	857, 82, 1045
equal protection .....	1470, 1567
Fifth Amendment .....	1045, 1567
First Amendment .....	1, 1158, 1470, 1567
generic advertising .....	1
jury trial .....	82
warrantless searches .....	1242

## DEFAULT DECISIONS

..... 301, 322, 350, 373, 504, 517, 617, 766-828, 834, 840-50, 880, 1033-42  
1400, 1543, 1661-99, 1704, 1731, 1757, 1769-87, 1865, 1997-2012

## EVIDENCE

documents prepared in anticipation of litigation .....	1017
hearsay .....	82, 1242
past recollection recorded .....	529
inspection reports	
not documents prepared in anticipation of litigation .....	166
preponderance standard .....	82, 166, 433, 529, 1242, 1419
prior misdeeds .....	854
rebuttable presumption	
of responsible connection .....	865
sanction evidence .....	942
substantial evidence .....	166, 433, 1017, 1790
tape recordings .....	1242
vague recollections .....	1242

## FEDERAL CROP INSURANCE ACT

admission of material allegations .....	1680
collateral estoppel .....	1640
conviction .....	1640
failure to file an answer .....	1678, 1679, 1681, 1682
no genuine issue of material fact .....	1640
willful and intentional submission of false information ..	1640, 1678, 1679
1680, 1681, 1682	
sanctions	
disqualification .....	1640, 1678, 1679, 1680, 1681, 1682

## FEDERAL MEAT INSPECTION ACT

admission of material allegations .....	1684
correction of deficiencies .....	1684
required level of sanitation .....	1684
sanctions	
withdrawal of inspection services .....	1684

## FEDERAL RESOURCES CONSERVATION AND SHORTAGE RELIEF ACT

consideration of the record .....	480
-----------------------------------	-----

manufacturing facilities .....	480
modification of the rules of practice .....	480
sourcing area application .....	480
transfer of proceeding .....	480
violation of FRCSRA irrelevant .....	480

## **FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION ACT**

appeal .....	1529
dismissal .....	1529
flowers and greens .....	1529
petition for reconsideration .....	1529

## **HORSE PROTECTION ACT**

absolute guarantor .....	529
admissions .....	617, 1543
answer	
complainant's counsel not obligated to file .....	504
failure to file .....	504, 517, 617, 1543
unsuccessful attempts to reach hearing clerk .....	517
default .....	504, 517, 617, 1543
entering a sore horse .....	529
estoppel .....	1543
hearsay admissible	
past recollection recorded .....	529
palpation .....	529
preponderance of the evidence .....	529
rules of civil procedure .....	1543
sanctions	
civil penalty .....	504, 517, 529, 617, 1543
disqualification from showing or exhibiting .....	517, 529, 617, 1543
violation of disqualification period .....	504
scar rule .....	529
soring .....	529
statutory presumption .....	529

## **JUDICIAL REVIEW**

standard of review .....	873, 1790
--------------------------	-----------

## **MUSHROOM PROMOTION, RESEARCH AND CONSUMER INFORMATION ACT**

burden of proof .....	1567
dismissal of petition .....	1567
Fifth Amendment, equal protection .....	1567
First Amendment, freedom of speech .....	1567
mushrooms .....	1567

## **NATIONAL DAIRY PROMOTION AND REVIEW BOARD**

administrative expenses .....	629
limitation on .....	629
authority of board to establish corporation .....	629
burden of proof .....	629
conflict of interest .....	629
dairy order .....	629
delegation of authority .....	629
Federal Advisory Committee Act .....	629
Freedom of Information Act .....	629
mental processes privilege .....	629
notice and comment rulemaking .....	629
sense of the congress provisions .....	629
standing .....	629

## **NONPROCUREMENT DEBARMENT AND SUSPENSION**

acceptance of responsibility .....	1610
arbitrary, capricious, abuse of discretion .....	722, 1610, 1621
authority to debar .....	1621
bidrigging .....	703, 713, 1610
compliance programs .....	1610
conviction .....	703
imputation of .....	703
cooperation with authorities .....	1610
debarring official's decision .....	703, 713, 744
affirmed .....	703, 713, 744
vacated .....	722, 731, 738, 1610, 1621
dismissal of appeal .....	728
Forest Service .....	1621
fundamental fairness .....	731, 738
imputed conduct .....	

reason to know defined .....	722
no duty of inquiry .....	722
mitigating factors .....	1610
notice and opportunity to be heard .....	731, 738
not in accordance with law .....	1621
ownership rights	
not affected by debarment .....	728
passage of time .....	1610
period of debarment .....	731, 738, 744
present responsibility .....	703, 713, 1610
punishment .....	1610
settlement agreement .....	744
submission of false claims and reports to ASCS and FCIC .....	744
successful performance of contracts .....	1610
timber purchasers .....	1621
time requirements	
reasonableness .....	731, 738
<b>PACKERS AND STOCKYARDS ACT, 1921</b>	
admission of material allegations .....	843, 1757, 1774
allegations in complaint .....	834
alter ego .....	843
bond	
engaging in business without securing .....	847, 1757, 1774
consigned livestock sold on a commission basis	
failure to remit proceeds due from sale .....	1781
custodial account for shippers' proceeds .....	843, 1781
failure to appear at hearing .....	1757
failure to file an answer .....	834, 841, 847, 1704, 1731, 1769, 1772, 1779 1781, 1785
failure to pay	
when due the full purchase price of livestock .....	841, 843, 844, 1704 1731, 1772, 1779, 1785
the full purchase price of livestock .....	847, 1704, 1731, 1757, 1769 1772, 1779, 1785
the full purchase price of meat .....	1757
failure to remit funds	
to the National Pork Board .....	1769
financial condition .....	1704, 1731

<b>injury</b> .....	<b>834</b>
issuing checks without sufficient funds on deposit .....	841, 843, 1757
1769, 1772, 1779, 1785	
<b>jurisdiction</b> .....	<b>834</b>
<b>predatory intent</b> .....	<b>834</b>
<b>sanctions</b>	
<b>cease and desist order</b> .....	<b>841, 843, 1704, 1757, 1769, 1772, 1774</b>
1779, 1781, 1785	
<b>civil penalty</b> .....	<b>847, 1704, 1774</b>
<b>suspension of registration</b> .....	<b>841, 843, 1769, 1772, 1774, 1781, 1785</b>
<b>trust assets</b>	
<b>failure to hold and maintain</b> .....	<b>1779</b>
<b>trust waiver</b>	
<b>failure to obtain</b> .....	<b>1704, 1731</b>
<b>unfair and unreasonable practices</b> .....	<b>834</b>
<b>using funds for improper purposes</b> .....	<b>843</b>
<b>violation of cease and desist order</b> .....	<b>1779</b>
<b>willfulness</b> .....	<b>847</b>

#### **PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930**

<b>admissions</b> .....	<b>880, 898, 1865, 1999</b>
<b>bankruptcy petition</b>	
<b>official notice</b> .....	<b>880, 898</b>
<b>burden of proof</b> .....	<b>1017</b>
<b>burden of persuasion</b> .....	<b>1017</b>
<b>commercial bribery</b> .....	<b>1800</b>
<b>consideration of whole record</b> .....	<b>1017</b>
<b>evidence of prior misdeeds admissible</b> .....	<b>853</b>
<b>failure to file an answer</b> .....	<b>1997, 2001, 2003, 2005, 2007, 2009, 2010</b>
<b>hearsay evidence</b>	
<b>documents prepared in anticipation of litigation</b> .....	<b>1017</b>
<b>industry payment practices</b> .....	<b>1884</b>
<b>judicial review</b> .....	<b>1790</b>
<b>license</b>	
<b>providing false and misleading information on application</b> .....	<b>853</b>
<b>revocation</b> .....	<b>858, 917, 942</b>
<b>mitigating circumstances</b> .....	<b>1885</b>
<b>payment</b>	

failure to make full payment promptly .....	853, 917, 942, 1790, 1837
1884, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2010	
partial payment .....	917
slow pay/no pay .....	942
preponderance of the evidence .....	1884
promissory notes .....	1865
renewal fee, failure to pay .....	2003, 2005
reparation award, failure to pay .....	2003, 2005, 2010
reparation proceedings	
acceptance arrival .....	1969
adequacy of accounting .....	992
agency .....	959
consignment .....	992
contracts	
breach of .....	959, 1011
cancellation .....	1958
impossibility of performance .....	997
installment .....	1958
right to adequate assurance of performance .....	997
cover	
contract to purchase in the future .....	997
justified demand for assurance .....	997
evidence	
proof of mailing .....	966
fiduciary duty	
breach of .....	959
f.o.b. inspection .....	1969

<b>good delivery</b>	<b>969</b>
averaging lots to determine .....	969
<b>invoices</b>	<b>966</b>
strict proof of mailing required .....	966
<b>liability</b>	<b>959</b>
broker .....	1011
<b>no-grade delivered sale</b>	<b>959</b>
<b>principal</b>	<b>959</b>
undisclosed .....	959
<b>purchase after inspection</b>	<b>969</b>
defined .....	969, 1958
failure to use term in contract negotiations .....	969, 1958
<b>timely payment, failure to make</b>	<b>1958</b>
<b>responsible connection</b>	<b>1840, 1919</b>
active involvement .....	1840, 1919
alter ego .....	865, 1840, 1919
employment of a restricted individual .....	858, 870
constitutionality of employment bar .....	870
employment defined .....	870
nominal officer, director, or partner .....	1840, 1881
officer and shareholder .....	1919
rebuttable presumption .....	865, 1919
<b>roll over debt</b>	<b>917, 942, 1840, 1884</b>
<b>sanctions</b>	<b>902, 942</b>
civil penalties .....	1885
deterrent effect .....	942
evidence .....	858
financial standing not relevant .....	858
license revocation .....	917, 942, 1885
collateral effects of .....	917, 942, 1885
publication of violations .....	880, 898, 1837, 1865, 1997, 1999, 2003
2005, 2009, 2010 .....	902, 1790
sanction policy .....	1885
sanction witness .....	870, 902
suspension of license .....	942
uniformity .....	1017, 1790
<b>substantial evidence</b>	<b>969</b>
<b>transportation</b>	<b>969</b>
normality .....	969

willful, flagrant and repeated violations . . . . .	880, 917, 917, 942, 1790, 1800 1837, 1865, 1881, 1884, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2010 written notification . . . . .	1885
---	--	------

## **PLANT QUARANTINE ACT**

failure to file an answer . . . . .	1688, 1689, 1691, 1693, 1694, 1696, 1698
importation of	
dried beef from Vietnam . . . . .	1696
guavas from Mexico . . . . .	1698
mangoes	
from Guatemala . . . . .	1691
from Mexico . . . . .	1689, 1698
potatoes from Haiti . . . . .	1688
movement of	
untreated mangoes from Puerto Rico and Boston	
to Philadelphia . . . . .	1693, 1694
sanctions	
civil penalty . . . . .	1688, 1691, 1693, 1694, 1696, 1698

## **POULTRY PRODUCTS INSPECTION ACT**

admission of material allegation . . . . .	1684
correction of deficiencies . . . . .	1684
required level of sanitation . . . . .	1684
sanctions	
withdrawal of inspection services . . . . .	1684

## **RULES OF PRACTICE**

interoffice mail . . . . .	1987
motion concerning complaint . . . . .	1643
motion to dismiss . . . . .	1643
rules of practice binding . . . . .	1643
timeliness	
postmark controlling if mailed . . . . .	1631

## **SANCTIONS, GENERALLY**

ability to pay . . . . .	1400
cease and desist order . . . . .	158, 166, 279, 301, 322, 350, 396, 416, 433, 841 843, 1235, 1242, 1391, 1400, 1419, 1458, 1661, 1672, 1675, 1704, 1731 1757, 1769, 1772, 1774, 1779, 1781, 1785

civil penalty	82, 158, 166, 279, 301, 322, 350, 396, 416, 433, 504, 517 529, 617, 847, 902, 942, 1095, 1228, 1235, 1242, 1458, 1470, 1543, 1661 1664, 1666, 1668, 1669, 1672, 1675, 1688, 1691, 1693, 1694, 1696, 1698 1704, 1731, 1774	
collateral effects of license revocation	917, 942, 1885	
debarment	703, 713, 744	
deterr ent effect	1885	
disqualification from crop insurance programs	1640, 1678, 1679, 1680 1681, 1682	
disqualification from showing or exhibiting	517, 529, 617, 1543	
evidence	942	
financial standing	858	
flagrant and repeated violations	880, 917, 942	
license		
disqualification	158, 322, 1400, 1672, 1675, 1391	
revocation	166, 279, 858, 917, 942, 1235, 1790, 1800, 1837 1884, 2001	
suspension	301, 350, 416, 433, 870, 902, 1242, 1419, 1458	
proportionality	166	
publication of violations	880, 898, 1837, 1865, 1997, 1999, 2003 2005, 2009, 2010	
registration		
suspension	841, 843, 1769, 1772, 1774, 1781, 1785	
sanction policy	82, 166, 269, 350, 433, 902, 1095, 1235, 1242, 1391 1419, 1458, 1790	
sanction witness	1885	
tolling of civil penalty	102	
uniformity	942	
withdrawal of inspection services	1684	