

Frequently Asked Questions Regarding Petitions, Appeals & Oral Hearings

PETITIONS:

Q. What is a Petition to Reopen after Default?

Q. What is a Petition for Reconsideration?

Q. I missed the due date to answer the formal complaint. The field office told me that they have sent the file to Washington, D.C. Is it too late to respond to the formal complaint?

Q. How do I file a Petition for Reconsideration?

Q. Does the Petition for Reconsideration need to be sworn to and notarized?

Q. I'm running short of time, can I get an extension to file a Petition for Reconsideration?

Q. I noticed that the deadline to file the Petition for Reconsideration falls on the weekend of a federal holiday; will you accept it the day after the holiday?

Q. I just discovered that the Petition for Reconsideration is due today. Is there any way to get it filed on time?

Q. I was just served with copy of a Petition for Reconsideration. What happens now?

Q. I just received a copy of a Default Order. I am disputing the complaint, can I still file an answer and make my case?

APPEALS:

Q. Today I received an Order on Reconsideration denying my Petition for Reconsideration and reissuing the previous Order. What are my options now?

Q. I noticed the appeal date falls on a weekend/holiday. Can I get an extension to file my appeal to the following business day?

Q. How do I file an appeal in U.S. District Court?

Q. What exactly is an appeal and how does it relate to my case?

Q. Can I get an extension from PACA to file an appeal in U.S. District Court?

WHAT'S NEXT WHEN AN ORDER IS NOT PAID?

Q. I just received a copy of an Order where the Judicial Officer ruled in my favor. So does this mean that it's over and I get my money?

Q. The time for filing a petition with the Department or an appeal in U.S. District Court has expired and Respondent still has not paid the Order. What happens now?

Q. Respondent's license is suspended and they continue to operate. What is the PACA going to do now?

Q. Is there anything else I can do to get my money?

ORAL HEARINGS:

Q. I just found out that the company who filed a complaint against me has now asked for an Oral Hearing, can they do that?

Q. Where can I find the procedures for the Oral Hearing?

Q. Where will the Oral Hearing take place?

Q. Attorneys are expensive; do I have to get one?

Q. If I do hire an attorney can I recover this additional expense?

Q. What is the procedure for Deposition?

Q. Can I subpoena a witness for the Oral Hearing?

PETITIONS:

Q. What is a Petition to Reopen after Default?

A. If you fail to file an answer to a formal Complaint within the designated time, you are in default and a Default Order could be issued against you. If a Default Order is issued against you, you may file a petition to reopen, explaining why you failed to respond to the formal Complaint. You should be as detailed as possible.

Q. What is a Petition for Reconsideration?

A. You are basically asking the Department to go back and take another look at the case to make sure it is correct. **It is not an opportunity to introduce new evidence or new legal theories that you failed to present when the matter was being disputed.**

Q. I missed the due date to answer the formal complaint. The field office told me that they have sent the file to Washington, D.C. Is it too late to respond to the formal complaint?

A. No. As long as the Judge has not signed the Default Order you can request an extension to answer the formal complaint. If a Default Order has already been issued, you can file a Petition to Reopen after Default.

Q. How do I file a Petition for Reconsideration?

A. Title the document "Petition for Reconsideration." State what you think was overlooked or not properly addressed in the Decision. Send the petition to PACA in Washington, D.C., within 20 days of receiving the Order. To ensure timely delivery of your petition, we encourage you to send the document by e-mail to PACADispute@ams.usda.gov or by fax to 202-260-8575, or use overnight commercial delivery. U.S. Postal Service is also a delivery option, but you need to ensure that the petition will arrive timely at the following address: USDA-PACA, 1400 Independence Ave SW, Room 2507-S, Stop 0242, Washington, DC 20250.

Q. Does the Petition for Reconsideration need to be sworn to and notarized?

A. No.

Q. I'm running short on time, can I get an extension to file a Petition for Reconsideration?

A. Yes, if there were circumstances that prevented you from submitting the petition on time and it is within 35 days of the issuance of the Order. After 35 days, the Order becomes final and effective.

Q. I noticed that the deadline to file the Petition for Reconsideration falls on the weekend or a federal holiday. Will you accept it the next business day?

A. Yes. The [Rules of Practice](#) allow the petition to be filed the next business day following a weekend or holiday.

Q. I just discovered that the Petition for Reconsideration is due today. Is there any way to get it filed on time?

A. Yes. The petition can be faxed to 202-260-8575 or e-mailed to PACADispute@ams.usda.gov. This is the preferred method of service when a petition is filed to ensure it is received by USDA within 20 days from the date you received the petition.

Q. I was just served with copy of a Petition for Reconsideration. What happens now?

A. You have an opportunity to file a response to the petition within 20 days from when you received it. Once we receive your response, the file will be reviewed and an Order on the petition will be issued.

APPEALS:

Q. Today I received an Order on Reconsideration denying my Petition for Reconsideration and reissuing the previous Order. What are my options now?

A. Your only options now are to pay the amount in the Order or appeal the case to U.S. District Court no later than 30 days from the Order date.

Q. I noticed the appeal date falls on a weekend/holiday. Can I get an extension to file my appeal to the following business day?

A. You must check with the U.S. District Court where the appeal will be filed to determine its policy.

Q. How do I file an appeal in U.S. District Court?

A. The specific instructions are located in the [Statute 7 U.S.C. 499g \(c.\) APPEAL FROM REPARATION ORDER; PROCEEDINGS](#). You can find the statute by visiting the PACA website located at www.ams.usda.gov/paca and selecting the link to the PACA statute. **You should consider using legal counsel to handle the appeal.**

Q. What exactly is an appeal and how does it relate to my case?

A. You are asking the U.S. District Court to review the decision issued by the Secretary. It is a trial “de novo” or new case, except that the finding of facts and Order of the Secretary are considered prima-facie evidence. There are costs involved such as obtaining a bond and attorney’s fees.

Q. Can I get an extension from PACA to file an appeal in U.S. District Court?

A. No. The statute allows 30 days from the date of a reparation order to appeal to U.S. District Court.

WHAT’S NEXT WHEN AN ORDER IS NOT PAID?

Q. I just received a copy of an Order where the Judicial Officer ruled in my favor. So does this mean that it’s over and I will get my money?

A. Respondent has 35 days from receipt of the Order to pay you or have its license suspended. However, due process allows both parties the right to Petition for Reconsideration if they feel the Department has ruled incorrectly. Moreover, after the petition has been ruled upon, either party has the right to appeal to U.S. District Court if they feel they have been adversely affected by the reparation order.

Q. The time for filing a petition with the Department or an appeal in U.S. District Court has expired and Respondent still has not paid the Order. What happens now?

A. When a Respondent fails to pay an Order, the USDA automatically suspends its license and the firm is prohibited from operating in the produce business until the award is paid in accordance with the reparation Order.

Q. Respondent’s license is suspended and they continue to operate. What is the PACA going to do now?

A. We monitor the activities of suspended licensees. We may pursue civil action through the Department of Justice if they continue to operate in violation of the PACA.

Q. Is there anything else I can do to get my money?

A. You may also pursue the matter by filing a civil action in U.S. District Court to have the USDA award reduced to a court judgment. With the judgment you would then be able to attach a lien to Respondent’s assets based on the USDA Order.

Given the complexity of some of the issues that arise from the above proceedings, we recommend you seek legal counsel.

ORAL HEARINGS:

Q. I found out that the company who filed a complaint against me has now asked for an Oral Hearing. Can they do that?

A. Yes. If the claimed amount is over \$30,000, either party has the right to request an Oral Hearing. Any party may request an oral hearing by filing the request for an oral hearing with the PACA Division within 10 days after the expiration of the time allowed for filing an answer or within the time allowed for filing a reply to a counterclaim or counterclaim set-off.

Q. Where can I find the procedures for the Oral Hearing?

A. They are found in the [Rules of Practice](#) for reparation complaints (7 CFR § 47.15).

Q. Where will the Oral Hearing take place?

A. It will take place near the Respondent or if the Presiding Officer deems it appropriate, it may be held by audio visual teleconference, or at another location.

Q. Attorneys are expensive; do I have to get one?

A. No. You can represent yourself if you so choose. However, given the complexity of the process you should consider hiring an attorney. Other options would be to hire a consultant or advisor who is not an attorney but familiar with PACA proceedings.

Q. If I hire an attorney to represent me at an oral hearing, can I recover this additional expense?

A. Yes. If the Department rules in your favor you can request that you also be awarded reasonable attorney fees.

Q. What is the procedure for requesting an Order be issued for the taking of a deposition?

A. Section 47.16 of the [Rules of Practice](#) explains how to request that an Order be issued for the taking of a deposition. There is no special form to make the request, however, Section 47.16 outlines specific information that should be provided to the Presiding Officer. The Presiding Officer will determine if it is necessary to depose someone before the hearing.

Q. Can I subpoena a witness for the Oral Hearing?

A. Section 47.17 of the [Rules of Practice](#) explains how to request that a subpoena be issued. There is no special form to make the request, however Section 47.17 outlines specific information that should be provided to the Presiding Officer. The Presiding Officer will determine if it is necessary to subpoena a witness.

Please visit our website www.ams.usda.gov/paca for more information.

Given the complexity of some of the issues that arise from the above proceedings, we recommend you seek legal counsel.

*The above is provided for informational purposes and to assist members of the produce industry involved in or contemplating a reparation proceeding. The above is not intended to replace a thorough review of the Rules of Practice or the PACA statute. The frequently asked questions and the corresponding responses do not constitute legal advice.

