

cause, by virtue of which a proceeding under the Act is instituted.

(s) *Mail* means to deposit an item in the United States Mail with postage affixed and addressed as necessary to cause it to be delivered to the address shown by ordinary mail, or by certified or registered mail if specified.

(t) *Re-mail* means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail.

[10 FR 2209, Feb. 27, 1945; 10 FR 8685, July 13, 1945, as amended at 11 FR 224, Jan. 4, 1946; 12 FR 5483, Aug. 13, 1947; 19 FR 57, Jan. 6, 1954; 38 FR 30445, Nov. 5, 1973; 56 FR 174, Jan. 3, 1991; 60 FR 8459, Feb. 14, 1995]

§ 47.3 Institution of proceedings.

(a) *Informal complaints.* (1) Any interested person (including any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory, and any employee of the Department) desiring to complain of any violation of any provision of the Act by any commission merchant, dealer, or broker may file with the Director an informal complaint. Informal complaints may be made the basis of either a disciplinary complaint, or a claim for damages, or both. If the informal complaint is to be made the basis of a claim for damages, it must be received by the Director within 9 months after the cause of action accrues; if the informal complaint is not to be made the basis of a claim for damages, it may be filed at any time within 2 years after the violation of the act occurred: *Provided*, That the 2-year limitation herein prescribed shall not apply to complaints charging flagrant or repeated violations of the act.

(2) Informal complaints may be made by telegram, by letter, or by a preliminary statement of facts, setting forth the essential details of the transaction complained of. So far as practicable, every such informal complaint shall state such of the following items as may be applicable:

(i) The name and address of each person and of the agent, if any, representing him in the transaction involved;

(ii) Quantity and quality or grade of each kind of produce shipped;

(iii) Date of shipment;

(iv) Car initial and number, if carlot;

(v) Shipping and destination points;

(vi) If a sale, the date, sale price, and amount actually received;

(vii) If a consignment, the date, reported proceeds, gross net;

(viii) Amount of damages claimed, if any; and

(ix) Statement of other material facts including terms of contract.

(3) The informal complaint should, so far as practicable, be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accounts sales, and any special contracts or agreements.

(b) *Investigations and disposition of informal complaints.* (1) Upon receipt of all the information and supporting evidence submitted by the person filing the informal complaint, the Director shall cause such investigation to be made as, in the Director's opinion, is justified by the facts. If such investigation discloses that no violation of the Act has occurred, no further action shall be taken and the person filing the informal complaint shall be so informed.

(2) If the statements in the informal complaint and the investigation thereunder seem to warrant such action, and, in any case except one of wilfulness or one in which public health, interest or safety otherwise requires, which may result in the suspension or revocation of a license, the Director, in an effort to effect an amicable or informal adjustment of the matter, shall give written notice to the person complained against of the facts or conduct concerning which complaint is made, and shall afford such person an opportunity, within a reasonable time fixed by the Director, to demonstrate or achieve compliance with the applicable requirements of the Act and regulations promulgated thereunder.

(c) *Status of person filing informal complaint.* The person filing an informal reparation complaint shall not be a party to any disciplinary proceeding which may be instituted as a result of the informal reparation complaint. The

person filing an informal reparation complaint shall have no legal status in the reparation proceeding, except as he or she may be subpoenaed as a witness or deposed without expense to him or her.

[10 FR 2211, Feb. 27, 1945, as amended at 12 FR 1025, Feb. 13, 1947; 56 FR 174, Jan. 3, 1991; 60 FR 8459, Feb. 14, 1995]

§ 47.4 Filing; service; extensions of time; and computation of time.

(a) *Who shall make service.* Copies of all documents or papers required or authorized by the rules in this part to be filed with the Division shall be served on the parties by the Division, and copies of all documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be served on the parties by the Hearing Clerk, unless any such document or paper is served by some other employee of the Department, or by a U.S. Marshal or deputy marshal, or as otherwise provided herein, or as otherwise directed by the presiding officer or Judicial Officer.

(b) *Service on Party.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, a determination that a person was responsibly connected with a licensee, a final order, or other document specifically ordered by the presiding officer or Judicial Officer to be served by certified or registered mail, shall be deemed to be received by any party to a proceeding on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual: *Provided*, That, if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of re-mailing by ordinary mail to the same address.

(2) Any document or paper, other than one specified in paragraph (b)(1) of this section or written questions for a deposition as provided in § 47.16(d)(2), shall be deemed to be received by any

party to a proceeding on the date of mailing by ordinary mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual.

(3) Any document or paper served other than by mail on any party to a proceeding shall be deemed to be received by such party on the date of:

(i) Delivery to any responsible individual at, or leaving in a conspicuous place at, the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, or

(ii) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(c) *Service on another.* Any subpoena or other document or paper served on any person other than a party to a proceeding shall be deemed to be received by such person on the date of:

(1) Delivery by certified mail or registered mail to the last known principal place of business of such person, last known principal place of business of the attorney or representative of record of such person, or last known residence of such person if an individual;

(2) Delivery other than by mail to any responsible individual at, or leaving in a conspicuous place at, any such location; or

(3) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(d) *Proof of service.* Any of the following, in the possession of the Department, showing such service, shall be deemed to be accurate:

(1) A certified or registered mail receipt returned by the postal service with a signature;

(2) An official record of the postal service;

(3) An entry on a docket record or a copy placed in a docket filed by the Hearing Clerk of the Department or by