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with the Fruit and Vegetable Programs. A copy of the reply shall be served upon the respondent by the Fruit and Vegetable Programs as provided in §47.4.

(b) *Contents*. The reply shall be confined strictly to the matters alleged in the counterclaim or set-off in the answer. It shall contain a precise statement of the facts which constitute the grounds of defense to the counterclaim or set-off, and shall specifically admit, deny, or explain each of the allegations of the counterclaim or set-off, unless the complainant is without knowledge, in which case the reply shall so state; or a statement that the complainant admits all of the allegations of the counterclaim or set-off; or a statement containing an admission of liability in an amount less than that alleged in the counterclaim or set-off and a denial of liability for the remaining amount.

(c) *Failure to file reply*. Failure to file a reply shall be deemed a waiver of hearing on the counterclaim or set-off and an admission of the allegations contained in the counterclaim or set-off. If no reply is filed, the allegations of the counterclaim or set-off shall be deemed admitted.

[10 FR 2209, Feb. 27, 1945, as amended at 56 FR 174, Jan. 3, 1991; 64 FR 38106, July 15, 1999]

§47.10 Docketing of proceeding.

Immediately following the expiration of the period of time heretofore prescribed for the filing of the answer or reply, the Fruit and Vegetable Programs shall transmit all of the papers which have been filed in the proceeding to the Hearing Clerk, who shall assign a docket number to the proceeding. Thereafter the proceeding may be identified by such number.

§47.11 Examiners.

(a) *Disqualification*. No person who (1) has any pecuniary interest in any matter of business involved in the proceeding, or (2) is related within the third degree by blood or marriage to any of the persons involved in the proceeding shall serve as examiner in such proceeding.

(b) *Request for disqualification of examiner*. Any party may file with the Hearing Clerk a timely request, in affidavit form, for the disqualification of the examiner, which request shall set forth with particularity the grounds of alleged disqualification. After such investigation or hearing as the Secretary may deem necessary, the Secretary shall either deny or grant the request. If the request is granted, another examiner shall be assigned to the proceeding. If the request is denied, the request, any record made thereon, and the finding and order of the Secretary thereon shall be made a part of the record.

(c) *Powers*. Subject to review by the Secretary, as provided in this Part, the examiner who is an attorney employed in the Office of the General Counsel of the Department, in any proceeding assigned to him or her, shall have power to:

(1) Rule upon motions and requests;

(2) Set the time, place, and manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

(3) Administer oaths and affirmations and take affidavits;

(4) Issue subpoenas over the facsimile signature of the Secretary requiring the attendance and testimony of witnesses and the production of books, contracts, papers, and other documentary evidence;

(5) Summon and examine witnesses and receive evidence;

(6) Take, or order (over the facsimile signature of the Secretary) the taking of, depositions;

(7) Admit or exclude evidence;

(8) Hear oral argument on facts or law;

(9) Require each party, prior to any hearing, to provide all other parties and the examiner with a copy of any exhibit that the party intends to introduce into evidence;

(10) Require each party, prior to any deposition, to provide all other parties and the examiner with a copy of any document that the party intends to use to examine a deponent;

(11) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the examiner are able to transmit and receive documents during the hearing;

(12) Require that any deposition to be conducted by telephone or audio-visual

telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition;

(13) Do all acts and take all measures necessary for the maintenance of order and for the efficient conduct of the proceeding.

(d) *Who may act in absence of examiner*. In case of the absence, illness, resignation, or death of the examiner who has been assigned to a proceeding, or, in case the General Counsel determines that, for other good cause, such examiner should not act, the powers and duties to be performed by the examiner under these rules of practice in connection with such proceeding may, subject to the provisions of paragraph (a) of this section, be assigned to another examiner.

[10 FR 2212, Feb. 27, 1945; 11 FR 224, Jan. 4, 1946, as amended at 24 FR 10055, Dec. 12, 1959; 38 FR 30445, Nov. 5, 1973; 60 FR 8459, Feb. 14, 1995; 64 FR 38106, July 15, 1999]

§ 47.12 Intervention.

At any time after the institution of a proceeding and before it has been submitted to the Secretary for final consideration, the Secretary or the examiner as defined in § 47.2(i)(1) may, upon petition in writing and for good cause show, permit any person to intervene therein. The petition shall state with preciseness and particularity:

(a) The petitioner's relationship to the matters involved in the proceeding; (b) the nature of the material the petitioner intends to present in evidence; (c) the nature of the argument the petitioner intends to make; and (d) any other reason that the petitioner should be allowed to intervene.

[10 FR 2209, Feb. 27, 1945, as amended at 60 FR 8459, Feb. 14, 1995; 64 FR 38107, July 15, 1999]

§ 47.13 Motions and requests.

(a) *General*. (1) All motions and requests made after the formal filing of the proceeding with the Hearing Clerk shall be filed with the Hearing Clerk, except that those made during an oral hearing may be stated orally and made a part of the transcript or recording.

(2) The examiner may rule upon all motions and requests filed or made prior to the transmittal of the record to the Secretary as hereinafter provided. The Secretary shall rule upon all motions and requests filed after that time.

(b) *Certification to the Secretary*. The submission or certification of any motion, request, objection, or other question to the Secretary prior to transmittal of the record to the Secretary as provided in this part shall be made by and in the discretion of the examiner. The examiner may either rule upon or certify the motion, request, objection, or other question to the Secretary, but not both.

[10 FR 2209, Feb. 27, 1945; 11 FR 224, Jan. 4, 1946, as amended at 38 FR 30445, Nov. 5, 1973; 60 FR 8459, Feb. 14, 1995]

§ 47.14 Prehearing conferences.

(a) In any proceeding in which it appears that a conference will expedite the proceeding, the examiner, at any time prior to or during the course of the oral hearing, may request the parties or their counsel to appear at a conference before the examiner to consider:

(1) The simplification of the issues;

(2) The necessity or the desirability of amendments to the pleadings;

(3) The possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert or other witnesses; or

(5) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) No transcript or recording of the conference shall be made. If the conference is conducted by correspondence, the examiner shall forward copies of letters and documents to the parties as circumstances require. The correspondence in connection with a conference shall not be part of the record. The examiner shall prepare and file for the record a written summary of the action agreed upon or taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference.

(c) *Manner of the Conference*. (1) The conference shall be conducted by telephone or correspondence unless the examiner determines that conducting the