

§47.21

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that the documentary procedure be used need not originate with the examiner. Any party may address a request to the examiner asking that the documentary procedure be used.

(c) *Complainant's opening statement.* Within twenty (20) days after service of respondent's answer, complainant may file a verified opening statement, accompanied by any pertinent documents, which documents must be identified in the statement. If the answer is verified, complainant's evidence concerning the allegations of the answer should be included in the opening statement.

(d) *Respondent's answering statement.* Within twenty (20) days after service of complainants' opening statement or service of notice by the examiner that complainant has not filed an opening statement, respondent may file a verified answering statement, accompanied by any pertinent documents, which documents must be identified in the statement.

(e) *Complainant's statement in reply.* If respondent files an answering statement, complainant may, within twenty (20) days after service thereof upon complainant, file a verified statement in reply, accompanied by any pertinent documents, which documents must be identified in the statement.

(f) *Use of depositions in lieu of verified statements.* Depositions may be used in lieu of verified statements under paragraphs (c), (d), and (e) of this section.

(g) *Briefs.* Promptly after the conclusion of the presentation of evidence, the examiner shall notify the parties that they may file briefs within twenty (20) days after the receipt of such notice.

(h) *Verification.* Verification shall be made under oath of any facts set forth in the pleading or statement, by the person who signs the pleading or statement. Certification by a notary public is insufficient. The form of verification may be as follows:

\_\_\_\_\_, being first duly sworn, says that he (or she) has read the foregoing document and knows the contents thereof and that the facts set forth therein are true, except as to matters therein stated on information and belief, and as to such matters he believes them to be true, and that he (or she) is duly authorized to sign the document.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Notary Public)

(i) *Stipulations.* In addition to or in lieu of the statements referred to in this section, the parties may file with the Hearing Clerk stipulations of fact signed by the parties or their representatives. Such stipulations filed with the Hearing Clerk shall become a part of the record.

(j) *Waiver of right to file.* Failure to file, within the time prescribed, any document authorized by this section shall constitute a waiver of the right to file such document.

(k) *The examiner's report.* Within a reasonable time after the time allowed for filing briefs, the examiner shall prepare his or her report in the manner prescribed in §47.19(d).

(l) *Assignment for oral hearing.* Whenever it is deemed desirable or necessary for the proper disposition of the proceeding, the examiner, upon his or her own or any party's motion, may order the proceeding set down for oral hearing at any stage of the proceeding.

[27 FR 12398, Dec. 14, 1962, as amended at 47 FR 21234, May 18, 1982; 56 FR 175, Jan. 3, 1991; 60 FR 8462, Feb. 14, 1995; 64 FR 38107, July 15, 1999]

§47.21 Transmittal of record.

The Hearing Clerk, immediately after the filing of the examiners' report, shall transmit to the Secretary the record of the proceeding. Such record shall include: The pleadings; motions and requests filed, and rulings thereon; the report of investigation conducted by the Fruit and Vegetable Programs; the transcript or record of the testimony taken at the hearing, together with the exhibits filed therein; any statements or stipulations filed under the documentary procedure; any documents or papers filed in connection with conferences; such proposed findings of fact, conclusions, and orders and briefs as may have been permitted to be filed in connection with the hearing as provided in §47.19(b) and (c); such statements of objections, and briefs in support thereof, as may have been filed in the proceeding; and the examiner's report.

[64 FR 38108, July 15, 1999]