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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, or a signed receipt returned by a private or commercial mail delivery service;

(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 an employee of the Hearing Clerk in the ordinary course of business;

(4) A certificate of service, which need not be separate from and may be incorporated in the document or paper of which it certifies service, showing the method, place and date of service in writing and signed by an individual with personal knowledge thereof, *Provided*, That such certificate must be verified by oath or declaration under penalty of perjury if the individual certifying service is not a party to the proceeding in which such document or paper is served, an attorney or representative of record for such a party, or an official or employee of the United States or of a State or political subdivision thereof.

[56 FR 174, Jan. 3, 1991; 56 FR 5151, Feb. 8, 1991, as amended at 60 FR 8459, Feb. 14, 1995; 64 FR 38106, July 15, 1999]

§ 47.5 Scope and applicability of rules of practice.

Sections 47.6 through 47.25 shall be applicable to the procedure governing the filing and disposition of formal complaints in reparation proceedings. Sections 47.47 through 47.68 shall be applicable to the proceedings for determining whether a person is responsibly connected with a licensee under the Perishable Agricultural Commodities

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Act. Sections 47.1 through 47.5 and § 47.46 shall be applicable to all proceedings under §§ 47.6 through 47.25. Sections 47.1 and 47.2, except for § 47.2 (i) through (r), shall be applicable to all proceedings under §§ 47.47 through 47.68. In addition, except to the extent that they are inconsistent with §§ 1.130 through 1.151 of this chapter, §§ 47.1 through 47.5 and 47.46 are also applicable to procedures governing the filing and disposition of formal complaints and other moving papers relating to administrative proceedings to enforce the Act pursuant to §§ 1.130 through 1.151 of this chapter.

[43 FR 30787, July 18, 1978, as amended at 60 FR 8459, Feb. 14, 1995]

RULES APPLICABLE TO REPARATION PROCEEDINGS

§ 47.6 Formal complaints.

(a) *Filing; contents; number of copies.* (1) If the procedure provided in § 47.3(b) fails to effect an amicable or informal settlement, the person who filed the informal complaint may, if further proceedings are desired, file a formal complaint with the Fruit and Vegetable Programs. The formal complaint shall be filed within ninety days of notification of the opportunity to proceed formally. Failure to file a formal reparation complaint within the time prescribed shall result in the waiver of further proceedings on the claim alleged in the informal complaint.

(2) The formal complaint shall set forth the information and be accompanied by the papers indicated in § 47.3(a)(2) and (3), including a statement of the amount of damages claimed, with the basis therefor, and the method of determination. The original and three copies shall be furnished for filing, and service on the respondent. If there is more than one respondent, a further copy shall be furnished for each additional respondent.

(b) *Bond Required if Complainant is Nonresident.* If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of

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whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including reasonable attorney's fees, for the respondent if the respondent shall prevail, and of any reparation award that may be issued by the Secretary against the complainant on any counterclaim asserted by respondent: *Provided*, That the furnishing of a bond may be waived at the discretion of the Secretary if the complainant is a resident of a country which permits the filing of a complaint in an administrative forum or its equivalent which is substantially similar to that provided under the Perishable Agricultural Commodities Act by a resident of the United States against a citizen of that country without the furnishing of a bond. Nothing in this section shall limit the discretion of the Secretary to deny such a waiver in order to effectuate the purposes of the Act or to protect the interests of the businesses concerned.

(c) Service upon respondent; proof of service. Upon receipt by the Fruit and Vegetable Programs of the formal complaint, the accompanying papers and the \$500 handling fee authorized by the Act, a copy thereof shall be served by the Fruit and Vegetable Programs upon the respondent in accordance with § 47.4 of this part. If the complaint is not in the proper form, the Fruit and Vegetable Programs shall return it and inform the complainant of the deficiencies therein.

(d) *Amendments*. At any time prior to the close of the hearing, the complaint may be amended; but, in case of an amendment adding new provisions, the hearing shall, if the respondent so requests, be adjourned for a reasonable time to be determined by the examiner: *Provided*, That, if the amendment introduces a new or different cause of action, it must be filed within 9 months after the cause of action accrued. Amendments subsequent to the first amendment or subsequent to the filing of an answer by the respondent may be made only with leave of the examiner

or with the written consent of the adverse party.

[10 FR 2209, Feb. 27, 1945, as amended at 56 FR 176, Jan. 3, 1991; 64 FR 38106, July 15, 1999; 73 FR 31017, May 30, 2008]

§ 47.7 Report of investigation.

Where the facts and circumstances are deemed by the Deputy Administrator to warrant such action, the Fruit and Vegetable Programs shall serve upon each of the parties a copy of the report made by the Fruit and Vegetable Programs in connection with its investigation of the informal or formal complaint. Whenever the Secretary, or the Deputy Administrator, or the examiner deems it necessary, a supplemental investigation shall be made by the Fruit and Vegetable Programs and a copy of the report thereon shall be served upon the parties. If an answer is filed by respondent, a copy of any report or reports of investigation served upon the parties shall be filed with the Hearing Clerk and shall be considered as part of the evidence in the proceeding: *Provided*, That either party shall be permitted to submit evidence in rebuttal in the same manner as is provided in the regulations in this part for the submission of other evidence in the proceeding.

[24 FR 10055, Dec. 12, 1959]

§ 47.8 The answer.

(a) *Filing and service*. Within 20 days after service of the formal complaint, unless extension of time has been requested and granted, the respondent may file with the Fruit and Vegetable Programs, an answer, in triplicate, signed by the respondent or his attorney. A copy of the answer shall be served upon the complainant by the Fruit and Vegetable Programs as provided in § 47.4. If the answer includes a counterclaim, the answer shall be accompanied by the \$300 handling fee required by the Act for formal complaints.

(b) *Contents*. Such answer shall contain (1) a precise statement of the facts which constitute the grounds of defense, including any set-off or counterclaim, and shall specifically admit, deny, or explain each of the allegations of the complaint, unless respondent is