

## Agricultural Marketing Service, USDA

## § 47.9

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

without knowledge, in which case the answer shall so state; or (2) a statement that the respondent admits all of the allegations of the complaint; or (3) a statement containing an admission of liability in an amount less than that alleged in the complaint (in which event, an order may be made, pursuant to section 7(a) of the Act, directing payment of the undisputed amount), and a denial, as in paragraph (b)(1) of this section, of liability for the remaining amount. The answer may contain a waiver of hearing.

(c) *Failure to file answer; effect of*. Failure to file an answer within the time prescribed shall constitute a waiver of hearing and an admission of the facts alleged in the complaint. If the facts deemed admitted are considered insufficient to support the amount of reparation sought, the proceeding shall continue on the question of damages only.

(d) *Procedure upon admission of facts*. Upon the admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint, an order may be issued without further procedure, official notice being taken of the license status of the respondent and the date of filing of the informal complaint, as disclosed by the records of the Department.

[10 FR 2212, Feb. 27, 1945, as amended at 24 FR 10055, Dec. 12, 1959; 64 FR 38106, July 15, 1999]

### § 47.9 The reply.

(a) *Filing and service*. If the answer asserts a counterclaim or a set-off, the complaining party, within 20 days after service of the answer, may file a reply 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,

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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