

## § 47.10

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

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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