

## § 47.21

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]

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## § 47.22 Argument before Secretary.

(a) *Oral argument.* There shall be no right to oral argument other than as provided in § 47.15(h).

(b) *Briefs.* The Secretary will consider any proposed findings of fact, conclusions, and orders, statements of objections, and briefs filed as provided in § 47.19(b). Briefs filed in accordance with § 47.19(c) and those filed in support of statements of fact will also be considered by the Secretary.

[10 FR 2209, Feb. 27, 1945, as amended at 12 FR 1026, Feb. 13, 1947; 60 FR 8462, Feb. 14, 1995]

## § 47.23 Issuance of order.

As soon as practicable after the receipt of the record from the Hearing Clerk, the Secretary, upon the basis of and after due consideration of the record, shall issue his or her order in the proceeding. Unless the Secretary disagrees with the order as drafted for his or her signature by the examiner, as provided in § 47.19(d), the Secretary shall issue as his or her order the order so prepared by the examiner. If the Secretary deems it advisable to do so, the Secretary may direct that the order be served upon the parties as a tentative order and that the parties be allowed such period of time, not to exceed 20 days, as the Secretary may specify, within which to file exceptions thereto and written argument or briefs in support of such exceptions.

[10 FR 2209, Feb. 27, 1945, as amended at 60 FR 8462, Feb. 14, 1995]

## § 47.24 Rehearing, reargument, reconsideration of orders, reopening of hearings, reopening after default.

(a) *Petitions to rehear, reargue, and reconsider.* A petition for rehearing or reargument of the proceeding, or for reconsideration of the order, shall be made by petition to the Secretary filed with the Hearing Clerk within 20 days after the date of service of the order. Every such petition shall state specifically the matters claimed to have been erroneously decided and the alleged errors. If the Secretary concludes that the questions raised by the petition have been sufficiently considered in the issuance of the order, the Secretary

shall dismiss the petition without service on the other party. Otherwise, the Secretary shall direct that a copy of the petition be served upon such party by the Hearing Clerk. The filing of a petition to rehear or reargue a proceeding, or to reconsider an order, shall automatically operate to set aside the order pending final action on the petition. Only one petition to rehear, reargue, or reconsider will be accepted from each party, except when a mathematical or typographical error appears in either the original decision and order or in the decision on reconsideration.

(b) *Petition to reopen.* A petition to reopen the hearing to take further evidence may be filed with the examiner at any time prior to the issuance of the final order. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing. Every such petition shall be served by the Hearing Clerk on the other party in the proceeding.

(c) *Procedure for disposition of petitions.* Within 20 days following the service of any petition provided for in this section, the other party to the proceeding may file with the Hearing Clerk an answer thereto. In the event that any such petition is granted the applicable rules of practice shall be followed.

(d) *Reopening after default.* The party in default in the filing of an answer or reply required or authorized under this part may petition to reopen the proceeding at any time prior to the expiration of 20 days from the date of service of the default order. If, in the judgment of the examiner, after notice to and consideration of the views of the other party(ies), there is good reason for granting such relief, the party in default will be allowed 20 days from the date of the order reopening the proceeding to file an answer.

[10 FR 2209, Feb. 27, 1945, as amended at 56 FR 175, Jan. 3, 1991; 60 FR 8462, Feb. 14, 1995; 64 FR 38108, July 15, 1999; 65 FR 29941, May 10, 2000]

**§ 47.25 Filing; extensions of time; effective date of filing; computations of time; official notice.**

(a) *Filing, number of copies.* Except as is provided otherwise herein, all documents or papers required or authorized by these rules to be filed with the Hearing Clerk shall be filed in triplicate: *Provided*, That, where there are more than two parties to the proceeding, a sufficient number of copies shall be filed so as to provide for service upon all the parties to the proceeding. Any document or paper required or authorized by the regulations in this part to be filed with the Hearing Clerk shall, during the course of an oral hearing, be filed with the examiner.

(b) *Extensions of time.* The time for the filing of any document or paper (except an informal complaint) required or authorized under the regulations in this part to be filed may be extended by the examiner (before the transmittal of the record to the Secretary) or by the Secretary (after such transmittal), if, in the judgment of the examiner or the Secretary, as the case may be, there is good reason for the extension.

(c) *Effective date of filing.* Any document or paper required or authorized under the regulations in this part to be filed shall be deemed to be filed when it reaches the Department in Washington, DC; or, if filed with any officer or employee of the Regulatory Branch of the Fruit and Vegetable Programs at any place outside the District of Columbia, it shall be deemed to be filed at the time when it is received by such officer or employee.

(d) *Computations of time.* Saturdays, Sundays and holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Saturday, Sunday or Federal holiday, such period shall be extended to include the next following business day.

(e) *Official notice.* In any proceeding official notice may be taken of (1) such matters as are judicially noticed by the courts of the United States; (2) any other matter of technical, scientific, or