

FEDERAL REGISTER

THE NATIONAL ARCHIVES
 LITTERA
 SCRIPTA
 MANET
 1934
 OF THE UNITED STATES
 VOLUME 10
 NUMBER 41

Washington, Tuesday, February 27, 1945

Regulations

TITLE 7—AGRICULTURE

Chapter I—War Food Administration (Standards, Inspections, Marketing Practices)

Subchapter B—Marketing of Perishable Agricultural Products

PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

Pursuant to the provisions of the Perishable Agricultural Commodities Act, 1930, as amended (46 Stat. 531, 7 U.S.C., 499a et seq., and Sup. III, 499b), the rules of practice issued thereunder (7 CFR, Cum. Supp., 47.1 et seq.), are amended to read as follows:

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- 47.3 Institution of proceedings.
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- 47.40 Argument before Administrator.
- 47.41 Consideration and issuance of order.
- 47.42 Rehearing, reargument, reconsideration of orders, and reopening of hearings.
- 47.43 Filing; extensions of time; effective date of filing; and computation of time.

AUTHORITY: §§ 47.1 to 47.43, inclusive, issued under 46 Stat. 531, as amended, 7 U.S.C., 499a et seq., and Sup. III, 499b; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9392, 8 F.R. 14783.

GENERAL PROVISIONS

§ 47.1 *Meaning of words.* Words in the regulations in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 47.2 *Definitions.* As used in the regulations in this part, the terms as defined in section 1 of the act shall apply with equal force and effect. Unless otherwise defined, the following terms whether used in the regulations in this part, in the act, or in the trade shall be construed as follows:

(a) "Act" means the Perishable Agricultural Commodities Act, 1930, approved June 10, 1930, as amended (46 Stat. 531, 7 U.S.C., 499a et seq., and Sup. III, 499b), and legislation supplementary thereto and mandatory thereof.

(b) "Department" means the United States Department of Agriculture.

(c) "Administration" means the War Food Administration.

(d) "Administrator" means the War Food Administrator or any person to

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Published daily, except Sundays, Mondays, and days following legal holidays, by the Division of the Federal Register, the National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

The regulatory material appearing herein is keyed to the Code of Federal Regulations, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended June 19, 1937.

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whom authority has heretofore lawfully been delegated or to whom authority may hereafter lawfully be delegated to act in his stead.

(e) "Director" means the Director of Marketing Services of the Administration, or any officer or employee of the Administration to whom the Director has heretofore delegated or may hereafter delegate the authority to act in his stead.

(f) "Solicitor" means the Solicitor of the Department or any employee of the Office of the Solicitor to whom the authority to act in his stead has heretofore been or may hereafter be delegated.

(g) "Branch" means the Fruit and Vegetable Branch of the Office of Marketing Services of the Administration.

(h) "Chief of Branch" means the Chief of the Fruit and Vegetable Branch or any officer or employee of the Branch to whom has heretofore or may hereafter be delegated the authority to act in his stead.

(i) "Examiner" means any employee of the Administration or of the Department duly designated to conduct hearings, and to perform all duties incident thereto under the act.

(j) "Examiner's report" means the examiner's analysis of the proceeding, proposed findings of fact, proposed conclusions, and proposed order.

(k) "Hearing" means that part of the proceeding which involves the submission of evidence and may or may not include an oral hearing.

(l) "Hearing clerk" means the hearing clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C.

(m) "Disciplinary proceeding" means any proceeding (other than a reparation proceeding) arising under the act, in which proceeding it is required by law

that the order or other determination duly issued shall be made only after an opportunity for a hearing, and, if a hearing be held, only upon the basis of a record made in the course of such hearing.

(n) "Reparation proceeding" means a proceeding in which money damages are claimed and in which the Administration is not a party.

(o) "Party" includes the Administration in those instances in which the proceeding is instituted upon moving papers filed in an official capacity by an official or employee of the Department.

(p) "Complainant" means the party upon whose moving paper the proceeding is instituted.

(q) "Respondent" means the party proceeded against, whether the proceeding is instituted by the Administration or by a private person.

(r) "Moving paper" means any formal complaint, petition, or order to show cause, by virtue of which a proceeding under the act is instituted.

§ 47.3 *Institution of proceedings*—(a) *Informal complaints*—(1) *Filing*. Any interested person (including any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory, and any employee of the Administration or of the Department) desiring to complain of any violation of any provision of the act by any commission merchant, dealer, or broker may file with the Chief of Branch an informal complaint. Informal complaints may be made the basis of either a disciplinary complaint, or a claim for damages, or both. If the informal complaint is to be made the basis of a claim for damages, it must be filed within 9 months after the cause of action accrues; if the informal complaint is not to be made the basis of a claim for damages, it may be filed at any time within 2 years after the violation of the act occurred: *Provided*, That the 2-year limitation herein prescribed shall not apply to complaints charging flagrant or repeated violations of the act.

(2) *Form and contents*. Informal complaints may be made by telegram, by letter, or by a preliminary statement of facts, setting forth the essential details of the transaction complained of. So far as practicable, every such informal complaint shall state such of the following items as may be applicable:

(i) The name and address of each person and of the agent, if any, representing him in the transaction involved;

(ii) Quantity and quality or grade of each kind of produce shipped;

(iii) Date of shipment;

(iv) Car initial and number, if carlot;

(v) Shipping and destination points;

(vi) If a sale, the date, sale price, and amount actually received;

(vii) If a consignment, the date, reported proceeds, gross, net;

(viii) Amount of damages claimed, if any; and

(ix) Statement of other material facts, including terms of contract.

(3) *Attachments*. The informal complaint should, so far as practicable, be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accounts sales, and any special contracts or agreements.

(b) *Investigation and disposition of informal complaints*. (1) Upon receipt of all the information and supporting evidence submitted by the person filing the informal complaint, the Chief of Branch shall cause such investigation to be made as, in his opinion, is justified by the facts. If such investigation discloses that no violation of the act has occurred, no further action shall be taken and the person filing the informal complaint shall be so informed.

(2) If the statements in the informal complaint seem to warrant such action, the Chief of Branch shall call upon the person complained against to state his side of the controversy in an effort to effect an amicable or informal adjustment of the matter. Should such adjustment not be made and the information secured by correspondence or investigation indicate the probability of a violation of the act, further proceedings shall be based either upon a formal complaint for damages filed by the person aggrieved or upon a formal complaint for disciplinary action filed by the Director.

(c) *Status of person filing informal complaint*. The person filing an informal reparation complaint shall not be a party to any disciplinary proceeding which may be instituted as a result of the informal complaint, and such person shall have no legal status in any such proceeding, except as he may be subpoenaed as a witness or his deposition taken without expense to him.

§ 47.4 *Service; proof of service*. Service of all papers and documents required to be served on the parties in any proceeding under these rules shall be made by the Branch, unless otherwise provided herein or directed by the examiner or the Administrator, and shall be made either (a) by registering and mailing a copy of the document or paper, addressed to the individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office or place of business; or (b) if such registered matter is refused by the addressee and is returned undelivered, by mailing by regular mail a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal place of business; or (c) by leaving a copy of the document or paper at the principal office, or place of business or residence, of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record; or (d) by delivering a copy of the document or paper to the individual to be served, or to a member

of the partnership to be served, or to the president, secretary, or other executive officer or any director of the corporation, organization, or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association. Proof of service hereunder by a person other than an employee of the Administration or the Department or a United States Marshal or his deputy shall be made by the affidavit of the person who actually made the service. Proof of service hereunder by an employee of the Department or a United States Marshal or his deputy shall be made by the certificate of the person who actually made the service: *Provided*, That if the service be made by registered mail, as outlined in (a) above, proof of service shall be made by the return post-office receipt, except that, if the registered matter is refused and returned undelivered, proof of service may be made by the certificate of the person who thereafter mailed the same matter by regular mail. The affidavit, certificate, or post-office receipt contemplated herein shall be filed with the hearing clerk, and the fact of filing thereof shall be noted on the docket of the proceeding.

§ 47.5 *Scope and applicability of rules of practice.* Sections 47.6 to 47.25 shall be applicable to the procedure governing the filing and disposition of formal complaints in reparation proceedings. Sections 47.26 to 47.43 shall be applicable to the procedure governing the filing and disposition of formal complaints and other moving papers instituting disciplinary proceedings. Sections 47.1 to 47.5 and § 47.44 shall be applicable to all proceedings under the regulations in this part.

RULES APPLICABLE TO REPARATION PROCEEDINGS

§ 47.6 *Formal complaints—(a) Filing; contents; number of copies.* If the procedure provided in § 47.3 (b) fails to effect an amicable or informal adjustment and indicates the probability of a violation of the act, the person filing the informal complaint may, if further proceedings are desired, file with the Branch a formal complaint setting forth the information and 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 non-resident.* If formal complaint for reparation is filed by a non-resident 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 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 Administrator against the complainant on any counterclaim asserted by respondent: *Provided*, That the furnishing of a bond shall be waived if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

(c) *Service upon respondent; proof of service.* If, upon receipt by the Branch of the formal complaint, the complaint is found to be in proper form, a copy thereof shall be served by the Branch upon the respondent in accordance with § 47.4. If the complaint is not in the proper form, the Branch 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.

§ 47.7 *Service of report of investigation.* At the same time that it serves upon the respondent a copy of the formal complaint, the Branch shall serve upon each of the parties a copy of the report made by the Branch in connection with its investigation of the informal complaint, and a copy of the report of such investigation as the Branch deems necessary to make in connection with the formal complaint. Whenever the Chief of Branch, or the examiner, or the Administrator deem it necessary, a supplemental investigation shall be made by the Branch and a copy of the report thereon shall also be served upon the parties. Any such information 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 evidence in general.

§ 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 Branch, an answer, in triplicate, signed by the respondent or his attorney. A copy of the answer shall be served upon the complainant by the Branch as provided in § 47.4.

(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 (1) of this paragraph, 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.

§ 47.9 *The reply—(a) Filing and service.* If the answer asserts a counterclaim or a set-off, the complaining party, within 10 days after receipt of the answer, may file a reply with the Branch. A copy of the reply shall be served upon the respondent by the Branch 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, unless the complainant is without knowledge, in which case the reply shall so state.

(c) *Failure to file reply.* Failure to file a reply shall not be deemed a waiver of hearing or an admission of the allegations contained in the answer. If no reply is filed, the allegations of the answer shall be regarded as denied.

§ 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 Branch 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) Designation and assignment.* The Administrator shall designate employees of the Department to serve as examiners, and the Solicitor shall assign the proceedings under the act to the designated examiners. 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.* (1) 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 Administrator may deem necessary, he 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

Administrator thereon shall be made a part of the record.

(c) *Powers.* Subject to review by the Administrator, as provided elsewhere in the regulations in this part, the examiner, in any proceeding assigned to him, shall have power to

(1) Rule upon motions and requests;
(2) Set the time and place of hearing, adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations and take affidavits;

(4) Issue subpoenas 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 Administrator) the taking of, depositions;

(7) Admit or exclude evidence;

(8) Hear oral argument on facts or law;

(9) Do all acts and take all measures necessary for the maintenance of order at the hearing 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 Solicitor determines that, for other good cause, such examiner should not act, the powers and duties to be performed by him under these rules of practice in connection with such proceeding may, subject to the provisions of paragraph (a) of this section, be assigned to any other employee of the Department whom the Administrator shall have designated to serve as an examiner.

§ 47.12 *Intervention.* At any time after the institution of a proceeding and before it has been submitted to the Administrator for final consideration, the Administrator or the examiner may, upon petition in writing and for good cause shown, permit any person to intervene therein. The petition shall state with preciseness and particularity: (a) The petitioner's relationship to the matters involved in the proceeding; (b) the nature of the material he intends to present in evidence; (c) the nature of the argument he intends to make; and (d) any other reason that he should be allowed to intervene.

§ 47.13 *Motions and requests—(a) General.* (1) All motions and requests made after the formal filing of the proceeding with the hearing clerk shall be filed with the hearing clerk, except that those made during an oral hearing may be stated orally and made a part of the transcript.

(2) The examiner may rule upon all motions and requests filed or made prior to the transmittal of the record to the Administrator as hereinafter provided. The Administrator shall rule upon all motions and requests filed after that time.

(b) *Certification to Administrator.* The submission or certification of any motion, request, objection, or other question to the Administrator prior to the

transmittal of the record to the Administrator as hereinafter provided shall be in the discretion of the examiner.

§ 47.14 *Prehearing conferences.* In any proceeding in which it appears that such procedure will expedite the proceeding, the examiner, at any time prior to or during the course of the oral hearing, may request the parties or their counsel to appear at a conference before him to consider (a) the simplification of issues; (b) the necessity or desirability of amendments to pleadings; (c) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (d) the limitation of the number of expert or other witnesses; or (e) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but the examiner shall prepare and file for the record a written summary of the action agreed upon or taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the examiner may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The examiner shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the examiner shall submit a written summary for the record if any agreement is reached or action is taken.

§ 47.15 *Oral hearing before the examiner—(a) When permissible.* (1) Where the amount of damages claimed does not exceed \$500, an oral hearing shall not be held, unless deemed necessary or desirable by the Branch or unless granted by the examiner upon application of complainant or respondent setting forth the peculiar circumstances making an oral hearing necessary for a proper presentation of the case. In lieu of an oral hearing in any proceeding where the amount of damages claimed does not exceed \$500, the proceeding shall be decided upon a record formed under the shortened procedure provided in § 47.20.

(2) Where the amount of damages claimed is in excess of \$500, the procedure provided in this section (except as provided in § 47.20 (b) (2)) shall be applicable.

(b) *Request for hearing.* Any party may request an oral hearing on the facts by including such request in the complaint, answer, or reply, or by a separate request filed with the Branch. Failure to request an oral hearing within the time allowed for filing of the reply, or (if no reply is allowed) within 10 days after the expiration of the time allowed for filing an answer, shall constitute a waiver of such hearing, and any party so failing to request an oral hearing will be deemed to have agreed that the proceeding may be decided upon a record formed under the shortened procedure provided in § 47.20.

(c) *Time and place.* If and when the proceeding has reached the stage of oral hearing, the Solicitor or the ex-

aminer, giving careful consideration to the convenience of the parties, shall set a time for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. Unless the parties otherwise agree, the place of hearing shall be the place in which the respondent is engaged in business. If any change in the time or place of the hearing becomes necessary, it shall be made by the examiner, who, in such event, shall file with the hearing clerk a notice of the change. Such notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

(d) *Appearances—(1) Representation.* In any proceeding under the act, the parties may appear in person or by counsel or other representative. Nothing contained in this paragraph shall be construed to require the complainant to appear either in person or by counsel or other representative; instead, he may be permitted to submit his evidence in the form of depositions, taken in the manner provided in § 47.16.

(2) *Failure to appear.* If any party to the proceeding, after being duly notified, fails to appear at the hearing, he shall be deemed to have waived the right to an oral hearing in the proceeding. In the event that a party appears at the hearing and no party appears for the opposing side, the examiner may determine whether the party who is present shall present his evidence, in whole or in part, in the form of affidavits or by oral testimony.

(3) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before him, the examiner finds that a person acting as counsel or representative for any party to the proceeding is guilty of unethical or unprofessional conduct, the examiner may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Administrator may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the examiner may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(ii) In case the examiner has issued an order precluding a person from further acting as counsel or representative in the proceeding, the examiner, within a reasonable time thereafter, shall submit to the Administrator a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Administrator should take respecting the appearance of such person as counsel or representative in other proceedings before the Administrator. Thereafter, the Administrator may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Administrator as the Administrator finds to be appropriate.

(e) *Order of proceeding.* The complainant shall proceed first at the hearing and shall have the burden of proof, except that a party asserting a set-off

or counterclaim shall have the burden of proof on such issue.

(f) *Evidence*—(1) *In general.* (i) The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination.

(ii) Any witness may, in the discretion of the examiner, be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(iii) The examiner shall exclude, insofar as practicable, evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* (i) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, he shall state briefly the grounds of such objections, whereupon an automatic exception will follow if the objection is overruled by the examiner. The transcript shall not include argument or debate thereon except as ordered by the examiner. The ruling of the examiner on any objection shall be a part of the transcript.

(ii) Only objections made before the examiner may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness shall be admitted in the manner provided in and subject to the provisions of § 47.16.

(4) *Affidavits.* Except as is otherwise provided in these rules, affidavits may be admitted only if the evidence is otherwise admissible and the parties agree (which may be determined by their failure to make timely objections) that affidavits may be used.

(5) *Proof and authentication of official records or documents.* An official record or document, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same. Such record or document shall be evidenced by an official publication thereof or by a copy attested by the person having legal authority to make such attestation. The person attesting the copy shall make a certificate showing such authority.

(6) *Exhibits.* (i) All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the admissibility of the contents thereof, be numbered as exhibits, received in evidence, and made a part of the record. Unless the examiner finds that the furnishing of copies is impracticable, a copy of each exhibit shall be filed with the examiner for the use of each other party to the proceeding. The examiner shall advise the parties as to the exact number of copies which will be required to be filed.

(ii) If the testimony of a witness refers to a statute, a report, document, or transcript, the examiner, after inquiry relating to the identification of such statute, report, document, or transcript, shall determine whether the same shall be produced at the hearing and phys-

ically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report, document, or transcript containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall, insofar as practicable, be designated by the party and segregated and excluded.

(7) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character.

(8) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Administrator decides that the examiner's ruling in excluding the evidence was erroneous. The examiner shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Administrator decides that the examiner erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

(g) *Oral argument before examiner.* The examiner may permit the parties or their counsel to argue orally at the hearing or at some other time prior to the transmittal of the report to the Administrator as hereinafter provided. Such argument may be limited by the examiner to any extent that he finds necessary for the expeditious or proper disposition of the proceeding.

(h) *Transcript.* The Department will secure bids and thereafter employ a reporter to take and transcribe testimony at the place where the hearing is to be held. Bids will be submitted on the basis of furnishing an original and one carbon copy to the Department and such additional copies as the parties may require. The reporter will deliver the original transcript, with exhibits thereto attached, to the examiner, who will retain the original for use in preparing his report, and shall forward the extra copy to the hearing clerk. Parties to the proceeding who desire a transcript of the hearing may place orders at the close of the hearing with the reporter who will furnish and deliver such copies direct to the purchaser upon payment of the rate per page covered by the contract for such reporting service.

§ 47.16 *Depositions*—(a) *Application for taking deposition.* Upon the application of a party to the proceeding, the examiner may, at any time after the filing of the moving papers, order, over the facsimile signature of the Administrator, the taking of testimony by deposition. The application shall be in writing, shall be filed with the hearing clerk, and shall set forth: (1) The name and address of

the proposed deponent; (2) the name and address of the person (referred to hereinafter in this section as the "officer"), qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made; (3) the proposed time which, unless otherwise agreed, shall be at least 15 days after the date of the mailing of the application and place of the examination; and (4) the reasons why such deposition should be taken.

(b) *Examiner's order for taking deposition.* If, after examination of the application, the examiner is of the opinion that the deposition should be taken, he shall order its taking. The order shall be filed with the hearing clerk, shall be served by the hearing clerk upon the parties in accordance with § 47.4, and shall state: (1) The time (which unless otherwise agreed shall not be less than 7 days after the filing of the order) and place of the examination; (2) the name of the officer before whom the examination is to be made; (3) the name of the deponent. The officer and the time and place need not be the same as those suggested in the application.

(c) *Qualification of officer.* The deposition shall be made before the examiner or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Administrator to administer oaths.

(d) *Procedure on examination.* (1) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. In lieu of oral examination, parties may transmit written questions to the officer prior to the examination and the officer shall propound such questions to the deponent.

(2) The applicant shall arrange for the examination of the witness either by oral examination or by written questions. If the place of business of the opposing party is more than 100 miles from the place of the examination, the applicant will be required to conduct the examination by means of written questions, unless the parties otherwise agree or the examiner otherwise orders. If the examination is conducted by means of written questions, copies of the questions shall be served upon the other party to the proceeding at least 10 days prior to the date set for the examination, unless otherwise agreed, and the other party shall be afforded an opportunity to file with the officer cross-questions at any time prior to the time of the examination.

(e) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with one copy thereof (unless there are more than two parties to a proceeding, in which case there should be another copy for each additional party), in an envelope and mail the same by registered mail to the hearing clerk.

(f) *Use of depositions.* A deposition taken in accord with this section or in

accord with the provisions of the Rules of Civil Procedure of the Courts of the United States, may be used in a proceeding under the act if the examiner finds that the evidence is otherwise admissible. If a deposition has been taken, and the party upon whose application it was taken refuses to offer it in evidence, the other party may offer the deposition, or any part thereof, in evidence.

§ 47.17 *Subpoenas*—(a) *Issuance of subpoenas*. The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpoena, be required at any designated place of hearing. Subpoenas may be issued by the Administrator, or by the examiner, over the facsimile signature of the Administrator, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) *Application for subpoena duces tecum*. Subpoenas for the production of documentary evidence shall be issued only upon a verified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, materiality, and the necessity for their production.

(c) *Service of subpoenas*. Subpoenas may be served (1) by a United States Marshal or his deputy, or (2) by any other person who is not less than 18 years of age, or (3) by registering and mailing a copy of the subpoena addressed to the person to be served at his or its last known principal place of business or residence. Proof of service may be made by the return of service on the subpoena by the United States Marshal or his deputy; or, if served by an employee of the Department, by a certificate stating that he personally served the subpoena upon the person named therein; or, if served by another person, by an affidavit of such person stating that he personally served the subpoena upon the person named therein; or, if service was by registered mail, by an affidavit made by the person mailing the subpoena that it was mailed as provided herein and by the signed return post-office receipt: *Provided*, That, where the subpoena is issued on behalf of the Administrator, the return receipt without an affidavit or certificate of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpoena with the person subpoenaed, or, if such person is not immediately available, with any other responsible person residing or employed at the place of residence or business of the person subpoenaed. The original of the subpoena, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same.

§ 47.18 *Fees and mileage*. Witnesses who are subpoenaed and who appear in the proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons taking depositions shall be entitled to the same fees as are paid for like services in the courts of the

United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor shall be presented to such party.

§ 47.19 *Post-hearing procedure before the examiner*—(a) *Filing the transcript of evidence*. (1) As soon as practicable after the close of the hearing, the examiner shall transmit to the hearing clerk the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. The examiner shall attach to the original transcript of the testimony his certificate stating that, to the best of his knowledge and belief, the transcript is a true, correct, and complete transcript of the testimony given at the hearing, except in such particulars as he shall specify, and that the exhibits transmitted are all the exhibits received in evidence at the hearing, with such exceptions as he shall specify. A copy of such certificate shall be attached to each copy of the transcript of testimony. In accordance with such certificate the examiner shall note on the original transcript, and the hearing clerk shall note upon each copy of the transcript, each correction detailed in such certificate by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate places any words necessary to make the text conform to the correct meaning, as certified by the examiner. If a copy of the transcript is sent direct to the parties by the reporter the examiner shall make on the original transcript any corrections, and will notify the parties of such corrections.

(2) Immediately following the filing of the transcript, the hearing clerk shall advise each party to the proceeding as to the date of such filing.

(b) *Suggested findings of fact, conclusions, and order*. The examiner shall decide and shall announce at the hearing whether suggested findings of fact, conclusions, and order may be filed by the parties. If allowed by the examiner, such findings of fact, conclusions, and order shall be filed within 10 days (unless the examiner shall have announced at the hearing a shorter or longer period of time) after the filing of the transcript with the hearing clerk, as provided in paragraph (a) of this section. Such findings of facts, conclusions, and order shall be based solely upon the evidence of record. They may be accompanied by supporting briefs and by a statement of objections made to the rulings of the examiner at the hearing.

(c) *Briefs*. If the examiner does not allow suggested findings of fact, conclusions, and order to be filed, the parties will be given 10 days (unless the examiner shall have announced at the hearing a shorter or longer period of time) after the filing of the transcript with the hearing clerk, as provided in paragraph (a) of this section, to file a brief.

(d) *The examiner's report*. The examiner, with the assistance and collaboration of such employees of the De-

partment as may be assigned for the purpose, and within a reasonable time after the filing of the transcript with the hearing clerk, as provided in paragraph (a) of this section or, within a reasonable time after the termination of the period allowed for the filing of suggested findings of fact, conclusions, and orders or briefs, shall prepare, upon the basis of the evidence received at the hearing, and shall file with the hearing clerk, his report. Such report shall be prepared in the form of a final order for the signature of the Administrator, but shall not be served upon the parties, unless and until it shall have been signed by the Administrator, as hereinafter provided.

§ 47.20 *Shortened procedure*—(a) *Definition*. The shortened or informal procedure described in this section shall, whenever it is applicable as provided in paragraph (b) of this section, take the place and serve in lieu of the formal or oral hearing procedure hereinbefore provided. Under the shortened procedure, parties will be permitted to submit written or documentary proof in support of the complaint, answer, or reply, as the case may be, in the form of verified statements of fact. Exhibits to the statements of fact may include records comprising the file made by the Branch in connection with its investigation of the informal complaint.

(b) *When applicable*—(1) *Where damages claimed do not exceed \$500*. The shortened or informal procedure provided for in this section shall (except as provided in § 47.15 (a)) be used in all reparation proceedings in which the amount of damages claimed (either in a complaint or in a counterclaim) does not exceed \$500.

(2) *Where damages claimed exceed \$500*. In any proceeding in which the amount of damages claimed (either in the complaint or in the counterclaim) is greater than \$500, the examiner, whenever he is of the opinion that proof may be fairly and adequately presented by use of the informal procedure provided for in this section, shall suggest to the parties that they consent to the use of such procedure. Except where oral hearing has been waived by failure to request it in proper time or otherwise, parties are free to consent to such procedure if they choose; declination of consent will not affect or prejudice the rights or interests of any party. A party, if he has not waived oral hearing, may consent to the use of the shortened procedure on the condition that the statements of fact be submitted in the form of depositions rather than affidavits, as provided in paragraph (f) of this section. In such case, if the other party agrees, depositions shall be required to be filed in lieu of affidavits. If any party who has not waived oral hearing does not consent to the use of the shortened procedure, the proceeding will be set for oral hearing. The request that the shortened procedure be used need not originate with the examiner; any party may address a request to the examiner asking that the shortened procedure be used. The examiner, in his suggestion to the parties, shall set a period of time (not to exceed 15 days) in which the parties may

indicate their consent to the shortened procedure; at the end of such period the examiner shall notify the parties that the shortened procedure will or will not be used. All requests, suggestions, and notices mentioned in this section shall be filed with the hearing clerk.

(c) *Complainant's opening statement.* The complainant may file, in triplicate and in the form of an affidavit, an opening statement of facts within 20 days after receipt of notice that the shortened procedure will be used. If the complainant so chooses and indicates in writing to the examiner, however, he may, subject to the provisions of paragraphs (f) and (h) of this section, have the complaint and the papers filed in connection therewith considered as his opening statement. The hearing clerk shall serve promptly a copy of the opening statement upon the respondent or, in case the complaint and supporting papers are to be considered as the opening statement, shall so notify the respondent.

(d) *Respondent's answering statement.* The respondent may file, in triplicate and in the form of an affidavit, an answering statement of facts within 20 days after receipt of the complainant's opening statement or of notification by the hearing clerk that the complaint will be considered as the opening statement. If the respondent so chooses and indicates in writing to the examiner, however, he may, subject to the provisions of paragraphs (f) and (h) of this section, have the answer and the papers filed in connection therewith considered as his answering statement. The hearing clerk shall serve promptly a copy of the answering statement upon the complainant or, in case the answer and supporting papers are to be considered as the answering statement, shall so notify the complainant.

(e) *Complainant's statement in reply.* The complainant may file in triplicate and in the form of an affidavit, a statement in reply within 10 days after receipt of the respondent's answering statement or of notification by the hearing clerk that the answer will be considered as the answering statement. Such statement shall be confined strictly to replying to the facts and arguments set forth in the answering statement and a copy thereof shall be served promptly by the hearing clerk upon the respondent.

(f) *Contents of statements.* As used in this section, the term "statement" includes (1) statements of fact, signed and sworn to by persons having knowledge of those facts; (2) any documents filed as a part of the proof of the alleged facts (which documents shall be properly identified by verified statements in the statement filed or otherwise authenticated in such a manner that they would be admissible in evidence at an oral hearing under the regulations in this part); and (3) briefs containing argument to sustain the contentions of the party submitting the statement. When practicable, the documents which constitute the record of any transaction in dispute should be made a part of the statement. Documents (other than briefs) accompanying statements in dep-

osition form must have been offered as proof at the time of the taking of the deposition.

(g) *Time allowed for statements in deposition form.* If, as provided in paragraph (b) (2) of this section, the statements referred to in this section are to be submitted in the form of depositions, rather than affidavits, the time stated in paragraphs (c) and (d) of this section shall be 30 days, instead of 20 days, and the time stated in paragraph (e) of this section shall be 20 days, instead of 10, with respect to each such statement.

(h) *Verification.* Any facts set forth in a statement in affidavit form must be sworn to (before a person legally authorized to administer oaths or before a person designated by the Administrator for the purpose) by a person who states in the affidavit that he has actual knowledge of the facts. Except under unusual circumstances, which shall be set forth in the affidavit, any such person shall be one who would appear as a witness if an oral hearing were held. The original of each document must show the signature, capacity, and impression seal (if the officer is required by law to have a seal) of the officer administering the oath and the date thereof. Copies must indicate that the original shows the data required in this respect.

(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 shall be filed with the hearing clerk and shall become a part of the record.

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

(k) *The examiner's report.* Within a reasonable time after the time allowed for filing of the complainant's statement in reply, the examiner shall prepare, in the manner prescribed in § 47.19 (d), and shall file with the hearing clerk, his report. In shortened procedure proceedings, no opportunity shall be given to the parties to file suggested findings of fact, conclusions, or orders, except that, in proceedings in which the damages claimed exceed \$500, the examiner may give an opportunity for the filing of such documents.

(l) *Assignment for oral hearing.* Wherever it is deemed desirable or necessary for the proper disposition of the proceeding, the examiner, upon his own or any party's motion, may order the proceeding set down for oral hearing at any stage of the proceeding prior to the expiration of the time allowed for the submission of evidence.

§ 47.21 *Transmittal of record.* The hearing clerk, immediately after the filing of the examiner's report, shall transmit to the Administrator 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 Branch; the transcript of the testimony taken at the hearing, together with the exhibits filed therein; any statements or

stipulations filed under the shortened procedure; any documents or papers filed in connection with prehearing conferences; such suggested 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.

§ 47.22 *Argument before Administrator—(a) Oral argument.* There shall be no right to oral argument other than as provided in § 47.15 (g).

(b) *Briefs.* The Administrator will consider any suggested 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 Administrator.

§ 47.23 *Issuance of order.* As soon as practicable after the receipt of the record from the hearing clerk, the Administrator, upon the basis of and after due consideration of the record, shall issue his order in the proceeding. Unless he disagrees with the order as drafted for his signature by the examiner, as provided in § 47.19 (d), the Administrator shall issue as his order the order so prepared by the examiner. If the Administrator deems it advisable to do so, he 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 he may specify, within which to file exceptions thereto and written argument or briefs in support of such exceptions.

§ 47.24 *Rehearing, reargument, reconsideration of orders, and reopening of hearings—(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 Administrator filed with the Branch within 10 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 Administrator concludes that the questions raised by the petition have been sufficiently considered in the issuance of the order, he shall dismiss the petition without service on the other party. Otherwise he shall direct that a copy of the petition be served upon such party. 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.

(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 10 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.

§ 47.25 *Filing; extensions of time; effective date of filing; computation of time; and reopening after default—(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 Administrator) or by the Administrator (after such transmittal), if, in the judgment of the examiner or the Administrator, 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, D. C.; or, if filed with any officer or employee of the Regulatory Division of the Branch 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) *Computation of time.* 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 Sunday or Federal holiday, such period shall be extended to include the next following business day.

(e) *Reopening after default.* A default in the filing of an answer required or authorized under the regulations in this part to be filed may be set aside and the party in default allowed 10 days within which to file an answer by the examiner (before the record is transmitted to the Administrator) or by the Administrator (after the record is transmitted to him) upon motion made within a reasonable time after the time for filing the answer has expired if, in the judgment of the examiner or the Administrator, as the case may be, after notice to and consideration of the views of the other party, there is good reason for granting such relief.

RULES APPLICABLE TO DISCIPLINARY PROCEEDINGS

§ 47.26 *Stipulations and consent orders.* (a) At any time prior to the issuance of the moving paper, the Director may enter into a stipulation with the

prospective respondent, whereby the latter admits the material facts and agrees to discontinue the acts or practices which are intended to be set up as violative of the act. Such stipulations shall be admissible as evidence of such acts and practices in any subsequent proceeding against such person before the Administrator.

(b) At any time after the issuance of the moving paper and prior to the hearing in any proceeding, the Administrator may allow the respondent to consent to an order. Upon a record composed of the complaint and the stipulation or agreement consenting to the order, the Administrator may enter the order consented to by the respondent, which shall have the same force and effect as an order made after oral hearing.

§ 47.27 *Formal complaints and other moving papers—(a) Filing; service; and number of copies.* If the procedure described in § 47.3 (b) fails to effect an amicable or informal adjustment of the matters complained of and indicates the probability of a violation of the act, and a stipulation has not been entered into in accordance with § 47.26 (a), a formal complaint or other form of moving papers shall be filed, in triplicate, with the hearing clerk, who shall promptly serve a true copy thereof upon the respondent, in the manner provided in § 47.4.

(b) *Who may file.* Disciplinary proceedings may be instituted only upon moving papers filed by the Director acting either as a result of the informal-complaint procedure hereinbefore provided or on his own motion.

(c) *Contents.* A moving paper shall state briefly and clearly the allegations of fact which constitute a basis for the proceeding and shall specify with particularity the matters or things in issue. Moving papers shall not include charges, implied charges, or requirements phrased generally in the words of the act, but the words of the act may be identified and quoted or used in preliminary recitals. Moving papers which propose to deny applications, petitions, or requests shall specify the reason for denial and shall, so far as practicable, contain suggestions as to further procedures or alternatives available to the persons involved.

(d) *Amendments.* At any time prior to the close of the hearing, the moving paper may be amended; but, in case of an amendment adding new provisions, the hearing shall, at the request of the respondent, be adjourned for a reasonable time to be determined by the examiner. 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.

§ 47.28 *Docket number.* Each proceeding, immediately following the institution, shall be assigned a docket number by the hearing clerk, and thereafter the proceeding may be identified by such number.

§ 47.29 *Examiners—(a) Designation and assignment.* The Administrator

shall designate employees of the Department to serve as examiners, and the Solicitor shall assign the proceedings under the act to the designated examiners. No person shall serve as an examiner in any proceeding if he (1) has any pecuniary interest in the outcome of the proceeding, (2) is related within the third degree by blood or marriage to any of the persons involved in the proceeding, or (3) has participated in the investigation prior to the institution of the proceeding, or in the determination that it should be instituted, or in the preparation of the moving paper, or in the development of the evidence to be introduced therein.

(b) *Request for disqualification of examiner.* (1) 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 Administrator may deem necessary, he 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 Administrator thereon shall be made a part of the record.

(2) An examiner shall ask to be withdrawn from any proceeding in which he deems himself disqualified for any reason.

(c) *Status and conduct.* In the discharge of his duties in connection with the proceeding to which he has been assigned, the examiner shall be subject to the direction and control of the Administrator only, although the examiner may avail himself of the advice of the Solicitor on questions of law or procedure. He shall conduct the proceeding in a fair and impartial manner and shall not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding in an advocative or investigative capacity.

(d) *Powers.* Subject to review by the Administrator, as provided elsewhere in the regulations in this part, the examiner, in any proceeding assigned to him, shall have power to:

(1) Rule upon motions and requests;
(2) Set the time and place of hearing, adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations and take affidavits;

(4) Issue subpoenas 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 Administrator) the taking, of depositions;

(7) Admit or exclude evidence;

(8) Hear oral argument on facts or law;

(9) Do all acts and take all measures necessary for the maintenance of order at the hearing and for the efficient conduct of the proceeding.

(e) *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 Solicitor determines that, for other good cause, such examiner should not act, the powers and duties to be performed by him under the regulations in this part in connection with such proceeding may, subject to the provisions of paragraph (a) of this section, be assigned to any other employee of the Department whom the Administrator shall have designated to serve as an examiner.

§ 47.30 The answer—(a) Filing and service. Within 20 days after service of the moving paper, the respondent may file, in triplicate, with the hearing clerk, an answer, signed by the respondent or his attorney; *Provided*, That the Administrator or the examiner may order that the hearing be held without answer or other pleading. The answer shall be served upon the complainant, and any other party of record, in the manner provided in § 47.4.

(b) *Contents.* Such answer shall (1) contain a precise statement of the facts which constitute the grounds of defense, and shall specifically admit, deny, or explain each of the allegations of the moving paper, unless the respondent is without knowledge, in which case the answer shall so state; or (2) state that the respondent admits all of the allegations of the moving paper. The answer may contain a waiver of hearing.

(c) *Procedure upon admission of facts.* An answer admitting all of the material allegations of fact contained in the moving paper shall constitute a waiver of hearing. Upon such admission of facts, the examiner, without further investigation or hearing, shall prepare his report, in which he shall adopt as his proposed findings of fact the material facts alleged in the moving paper. Unless the parties have waived service of the examiner's report, it shall be served upon them in the manner provided in § 47.4. The parties shall be given 20 days in which to file exceptions, and to request oral argument thereon before the Administrator. Any request to make oral argument to the Administrator must be filed in the manner and within the time provided in § 47.40.

§ 47.31 Motions and requests—(a) General. (1) All motions and requests shall be filed with the hearing clerk, except that those made during an oral hearing may be stated orally and made a part of the transcript.

(2) The examiner is authorized to rule upon all motions and requests filed or made prior to the transmittal of the record to the Administrator as hereinafter provided. The Administrator shall rule upon all motions and requests filed after that time.

(b) *Certification to Administrator.* The submission or certification of any motion, request, objection, or other question to the Administrator prior to the transmittal of the record to the Administrator, as hereinafter provided, shall be in the discretion of the examiner.

§ 47.32 Oral hearing before examiner—(a) Request for oral hearing. (1) Any party may request an oral hearing on the facts by including such request in the moving paper or answer or by a separate request in writing filed with the hearing clerk. Failure by the respondent to request an oral hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing, and any respondent so failing to request an oral hearing will be deemed to have agreed that the proceeding may be decided upon a record formed under the shortened procedure provided for in § 47.38.

(2) Waiver of oral hearing shall not be deemed to be a waiver of the right to make oral argument before the Administrator upon exceptions to the examiner's report. Such argument will be allowed in accordance with the provisions of § 47.40.

(b) *Time and place.* If and when the proceeding has reached the stage of oral hearing, the examiner, giving careful consideration to the convenience of the parties, shall set a time for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. Unless the parties otherwise agree, the place of the hearing shall be the place in which the respondent is engaged in business. If any change in the time or place of the hearing becomes necessary, it shall be made by the examiner, who, in such event, shall file with the hearing clerk a notice of the change. Such notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

(c) *Appearances—(1) Representation.* In any proceeding under the act, the parties may appear in person or by counsel or other representative. The Administrator, if represented by counsel, shall be represented by an attorney assigned by the Solicitor.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before him, the examiner finds that a person acting as counsel or representative for any party to the proceeding is guilty of unethical or unprofessional conduct, the examiner may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Administrator may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided*, That the examiner may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(ii) In case the examiner has issued an order precluding a person from further acting as counsel or representative in the proceeding, the examiner, within a reasonable time thereafter, shall submit to the Administrator a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Administrator should take respecting the appearance of

such person as counsel or representative in other proceedings before the Administrator. Thereafter, the Administrator may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Administrator as the Administrator finds to be appropriate.

(3) *Failure to appear.* (i) If any party to the proceeding, after being duly notified, fails to appear at the hearing, he shall be deemed to have waived the right to an oral hearing in the proceeding. In the event that a party appears at the hearing and no party appears for the opposing side, the examiner may determine whether the party who is present shall present his evidence, in whole or in part, in the form of affidavits or by oral testimony before the examiner.

(ii) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the examiner's report, to file exceptions, and to make oral argument before the Administrator with respect thereto, in the manner provide hereinafter.

(d) *Order of proceeding.* Except as may be determined otherwise by the examiner, the moving party shall proceed first at the hearing.

(e) *Evidence—(1) In general.* (i) The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination.

(ii) Any witness may, in the discretion of the examiner, be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(iii) The examiner shall exclude, insofar as practicable, evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* (i) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, he shall state briefly the grounds of such objections, whereupon an automatic exception will follow if the objection is overruled by the examiner. The transcript shall not include argument or debate thereon except as ordered by the examiner. The ruling of the examiner on any objection shall be a part of the transcript.

(ii) Only objections made before the examiner may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness shall be admitted, in the manner provided in and subject to the provisions of § 47.33.

(4) *Affidavits.* Except as is otherwise provided in the regulations in this part, affidavits may be admitted only if the evidence is otherwise admissible and the parties agree (which may be determined by their failure to make timely objections) that affidavits may be used.

(5) *Proof and authentication of official records or documents.* An official record

or document, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same. Such record or document shall be evidenced by an official publication thereof or by a copy attested by the person having legal authority to make such attestation. The person attesting the copy shall make a certificate showing such authority.

(6) *Exhibits.* (i) All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the admissibility of the contents thereof, be numbered as exhibits, received in evidence, and made a part of the record. Unless the examiner finds that the furnishing of copies is impracticable, a copy of each exhibit shall be filed with the examiner for the use of each other party to the proceeding. The examiner shall advise the parties as to the exact number of copies which will be required to be filed and shall make and have noted on the record the proper distribution of the copies.

(ii) If the testimony of a witness refers to a statute, a report, document, or transcript, the examiner, after inquiry relating to the identification of such statute, report, document, or transcript, shall determine whether a copy of the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report, document, or transcript containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall, insofar as practicable, be designated by the party and segregated and excluded.

(7) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided*, That the parties shall be given adequate notice of matters so noticed, and (except where official notice is taken, for the first time in the proceeding, in the final order) shall be given adequate opportunity to show that such facts are erroneously noticed.

(8) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Administrator decides that the examiner's ruling in excluding the evidence was erroneous. The examiner shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Administrator decides that the examiner erred in excluding the evidence, and that such error was substantial, the hearing will be

reopened to permit the taking of such evidence.

(f) *Oral argument before examiner.* In disciplinary proceedings, oral argument before the examiner shall not be allowed unless the examiner finds that the denial of such argument will be likely to deprive the parties of an adequate opportunity for oral argument subsequently in the proceeding. Such argument, which shall be reduced to writing and made part of the transcript, may be limited by the examiner to any extent that he finds necessary for the expeditious disposition of the proceeding.

(g) *Transcript.* The Department will secure bids and thereafter will employ a reporter to take and transcribe testimony at the place where the hearing is to be held. Bids will be submitted on the basis of furnishing an original and one carbon copy to the Department and such additional copies as the parties may require. The reporter will deliver the original transcript, with exhibits thereto attached, to the examiner who will retain the original for use in preparing his report and shall forward the extra copy to the hearing clerk. Parties to the proceeding who desire a transcript of the hearing may place orders at the close of the hearing with the reporter who will furnish and deliver such copies direct to the purchaser upon payment of the rate per page covered by the contract for such reporting service.

§ 47.33 *Depositions.*—(a) *Procedure in lieu of deposition.* Before taking testimony by deposition, a party may execute and submit to the other party an affidavit which shall set forth the facts to which the witness would testify, if the deposition should be taken. If, after examination of such affidavit, the other party agrees to the use of the affidavit in lieu of a deposition, the examiner shall admit the affidavit in evidence and shall not order the deposition to be taken.

(b) *Application for taking deposition.* Upon the application of a party to the proceeding, the examiner may, at any time after the filing of the moving papers, order, over the facsimile signature of the Administrator, the taking of testimony by deposition. The application shall be in writing, shall be filed with the hearing clerk, and shall set forth: (1) The name and address of the proposed deponent; (2) the name and address of the person (referred to herein after in this section as the "officer"), qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made; (3) the proposed time and place of the examination, which shall be at least 15 days after the date of the mailing of the application; and (4) the reasons why such deposition should be taken.

(c) *Examiner's order for taking deposition.* If, after examination of the application, the examiner is of the opinion that the deposition should be taken, he shall order its taking. The order shall be filed with the hearing clerk, shall be served upon the parties, and shall state: (1) The time and place of the examination (which shall not be less than 7 days

after the filing of the order); (2) the name of the officer before whom the examination is to be made; (3) the name of the deponent. The officer and the time and place need not be the same as those suggested in the application.

(d) *Qualifications of officer.* The deposition shall be made before the examiner or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Administrator to administer oaths.

(e) *Procedure on examination.* (1) deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. In lieu of oral examination, parties may transmit written questions to the officer prior to the examination and the officer shall propound such questions to the deponent.

(2) The applicant shall arrange for the examination of the witness either by oral examination or by written questions. If the place of business of the opposing party is more than 100 miles from the place of the examination, the applicant will be required to conduct the examination by means of written questions, unless the parties otherwise agree or the examiner otherwise orders. If the examination is conducted by means of written questions, copies of the questions shall be served upon the other party to the proceeding at least 10 days prior to the date set for the examination unless otherwise agreed, and the other party shall be afforded an opportunity to file with the officer cross-questions at any time prior to the time of the examination.

(f) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the depositions, together with one copy thereof (unless there are more than two parties in a proceeding, in which case there should be another copy for each additional party), in an envelope and mail the same by registered mail to the hearing clerk.

(g) *Use of depositions.* A deposition ordered and taken in accordance with the provisions of this section may be used in a proceeding under the act if the examiner finds that the evidence is otherwise admissible and (1) that the witness is dead; or (2) that the witness is at a distance greater than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has endeavored to procure the attendance of the witness by subpoena, but has been unable to do so; or (5) that such excep-

tional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If a deposition has been taken and the party upon whose application it was taken refuses to offer it in evidence, the other party may offer the deposition or any part thereof in evidence.

§ 47.34 *Subpoenas*—(a) *Issuance of subpoenas*. The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpoena, be required at any designated place of hearing. Subpoenas may be issued by the Administrator or by the examiner, over the facsimile signature of the Administrator, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) *Application for subpoena duces tecum*. Subpoenas for the production of documentary evidence shall be issued only upon a verified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production.

(c) *Service of subpoenas*. Subpoenas may be served (1) by a United States Marshal or his deputy, or (2) by any other person who is not less than 18 years of age, or (3) by registering and mailing a copy of the subpoena addressed to the person to be served at his or its last known principal place of business or residence. Proof of service may be made by the return of service on the subpoena by the United States Marshal or his deputy; or, if served by an employee of the Department, by a certificate stating that he personally served the subpoena upon the person named therein; or, if served by another person, by an affidavit of such person stating that he personally served the subpoena upon the person named therein; or, if service was by registered mail, by an affidavit made by the person mailing the subpoena that it was mailed as provided herein and by the signed return post-office receipt: *Provided*, That, where the subpoena is issued on behalf of the Administration, the return receipt without an affidavit or certificate of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpoena with the person subpoenaed, or, if such person is not immediately available, with any other responsible person residing or employed at the place of residence or business of the person subpoenaed. The original of the subpoena, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same.

§ 47.35 *Fees and mileage*. Witnesses who are subpoenaed and who appear in the proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are

paid witnesses in the courts of the United States, and persons taking depositions shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor, as to witnesses subpoenaed on behalf of the Administration, shall be proved before the person issuing the subpoena, and, as to witnesses subpoenaed on behalf of any other party, shall be presented to such party.

§ 47.36 *Prehearing conferences*. In any proceeding in which it appears that such procedure will expedite the proceeding, the examiner, at any time prior to or during the course of the oral hearing, may request the parties or their counsel to appear at a conference before him to consider (a) the simplification of issues; (b) the necessity or desirability of amendments to pleadings; (c) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (d) the limitation of the number of expert or other witnesses; and (e) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but the examiner shall prepare and file for the record a written summary of the action agreed upon or taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the examiner may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The examiner shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the examiner shall submit a written summary for the record if any agreement is reached or action is taken.

§ 47.37 *Post-hearing procedure before the examiner*—(a) *Filing the transcript of evidence*. (1) As soon as practicable after the close of the hearing, the examiner shall transmit to the hearing clerk the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. The examiner shall attach to the original transcript of testimony his certificate stating that, to the best of his knowledge and belief, the transcript is a true, correct, and complete transcript of the testimony given at the hearing, except in such particulars as he shall specify, and that the exhibits are all the exhibits transmitted or are all the exhibits received in evidence at the hearing, with such exceptions as he shall specify. A copy of such certificate shall be attached to each copy of the transcript of testimony. In accordance with such certificate the ex-

aminer shall note on the original transcript, and the hearing clerk shall note upon each copy of the transcript, each correction detailed in such certificate by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate places any words necessary to make the text conform to the correct meaning, as certified by the examiner. If a copy of the transcript is sent direct to the parties by the reporter the examiner shall make on the original transcript any corrections and will notify the parties of such corrections.

(2) Immediately following the filing of the transcript, the hearing clerk shall advise each party to the proceeding as to the date of such filing.

(b) *Suggested findings of fact, conclusions, and orders*. It will be in the discretion of the examiner whether suggested findings of fact, conclusions, and order, and briefs in support thereof, may be filed by the parties. If allowed by the examiner, the parties will be either notified at the hearing or in writing, and such findings of fact, conclusions, and order, and briefs shall be filed within 10 days (unless the examiner shall give a shorter or longer period of time) after the transcript has been filed with the hearing clerk, as provided in paragraph (a) of this section. Such findings of fact, conclusions, and order shall be based solely upon the evidence of record.

(c) *Examiner's report*. The examiner, within a reasonable time after the filing of the transcript with the hearing clerk, as provided in paragraph (a) of this section, or, if the filing of suggested findings of fact, conclusions, and order, and briefs in support thereof, has been allowed, within a reasonable time after the termination of the period allowed for such filing, shall prepare, upon the basis of the evidence received at the hearing, and shall file with the hearing clerk, his report, a copy of which (together with notification of the date fixed by the examiner for the filing of exceptions thereto) shall be served by the hearing clerk upon each of the parties.

(d) *Exceptions*. Within a period of time (to be fixed by the examiner, but not to exceed 20 days) after receipt of the examiner's report, the parties may file exceptions to the report. Any party who desires to take exception to any matter set out in the report shall transmit his exceptions in writing to the hearing clerk, referring, where practicable, to the relevant pages of the transcript, and suggesting a corrected finding of fact, conclusion, or order. Within the same period of time, each party shall transmit to the hearing clerk a brief statement in writing concerning each of the objections taken to the action of the examiner, as provided in § 47.32, upon which the party wishes to rely, referring, where practicable, to the pertinent pages of the transcript. A party, if he files exceptions or a statement of objections, may file a brief in support

thereof, and shall state in writing at the time of such filing whether he desires to make an oral argument thereon before the Administrator; otherwise, it shall be considered that he does not desire to make such oral argument.

(e) *Revision of examiner's report.* If exceptions are filed to the examiner's report, as provided in paragraph (d) of this section, the examiner, after consideration of such exceptions, shall within 20 days file with the hearing clerk a supplemental report which shall include such revision of his original report as he deems to be appropriate in view of such exception. If the examiner determines that a revision of his original report is unnecessary the examiner shall so state in his supplemental report.

§ 47.38 *Shortened procedure—(a) Consent of parties.* Whenever it appears to the examiner who is assigned to a proceeding that the proof may be fairly and adequately presented by use of the informal procedure provided for in this section, he shall suggest to the parties that they consent to the use of such procedure. The parties are free to consent to such procedure if they choose; and declination of consent will not affect or prejudice the rights or interests of any party. Unless the parties agree to the use of affidavits, as provided in paragraph (e) of this section, proof in the shortened procedure shall, subject to the provisions of § 47.33 (a), be submitted by depositions. Depositions filed under the shortened procedure shall conform to the provisions set forth in § 47.33. If any party who has not waived oral hearing does not consent to the use of the shortened procedure, the proceeding will be set for oral hearing. The request that the shortened procedure be used need not originate with the examiner; any party may address a request to the examiner asking that the shortened procedure be used. The examiner, in his suggestion to the parties, will set a period of time (not to exceed 15 days) in which the parties may indicate their consent to the shortened procedure; at the end of such period the examiner will notify the parties that the shortened procedure will or will not be used. All requests, suggestions, and notices mentioned in this section shall be filed with the hearing clerk.

(b) *Complainant's opening statement.* Within 10 days after receipt of notice that the shortened procedure will be used, complainant may apply for an order to take depositions in lieu of an opening statement of facts, or in addition thereto. If the parties have so agreed as provided in (a) of this section, the complainant may file, in triplicate, in support of the complaint, an opening statement of facts within 15 days after receipt of notice that the shortened procedure will be used. A copy of the opening statement shall be served promptly by the hearing clerk upon the respondent.

(c) *Respondent's answering statement.* Within 10 days after service of

the opening statement or deposition in lieu thereof, respondent may apply for an order to take depositions in lieu of an answering statement of facts, or in addition thereto. The respondent may file, in triplicate, in support of his answer, an answering statement of facts within 15 days after receipt of the complainant's opening statement. A copy of the answering statement shall be served promptly by the hearing clerk upon the complainant.

(d) *Complainant's statement in reply.* Within 10 days after service of the answering statement or deposition in lieu thereof, complainant may apply for an order to take depositions in lieu of a statement in reply or in addition thereto. The complainant may file, in triplicate, a statement in reply within 15 days after receipt of the respondent's answering statement. Such statement shall be confined strictly to replying to the facts and arguments set forth in the answering statement and a copy thereof shall be served promptly by the hearing clerk upon the respondent.

(e) *Statements in affidavit form; verification.* If the parties agree, the statements referred to in this section may be submitted in the form of affidavits, rather than depositions. In such event the time stated in paragraphs (b), (c), and (d) of this section shall be 10 days, instead of 15 days, with respect to each such statement. If, pursuant to the agreement of the parties, the statements are submitted in affidavit form, any facts set forth in the statement must be sworn to (before a person legally authorized to administer oaths or before a person designated by the Administrator for the purpose) by a person who states in the affidavit that he has actual knowledge of the facts. Except under unusual circumstances, which shall be set forth in the affidavit, any such person shall be one who would appear as a witness if an oral hearing were held. The original of each document must show the signature, capacity, and impression seal (if the officer is required by law to have a seal) of the officer administering the oath and the date thereof. Copies must indicate that the original shows the data required in this respect.

(f) *Documents accompanying statements.* The statements referred to in this section shall be accompanied by any documents filed as a part of the proof of the alleged facts (which documents shall be identified in the statement or authenticated in such manner as to be admissible in evidence at an oral hearing under these rules of practice) and may be accompanied by briefs in support of the contentions of the party submitting the statement: *Provided*, That documents (other than briefs) accompanying statements in deposition form must have been offered as proof at the time of the taking of the deposition.

(g) *Stipulations.* In addition to or in lieu of such statements, the parties may

file with the hearing clerk stipulations of fact signed by the parties or their representatives. Such stipulations shall become a part of the record. The stipulations shall be filed with the hearing clerk within 20 days after notice that the shortened procedure will be used; or, if the complainant's opening statement is filed, within 20 days after the filing of such statement; or, if an answering statement is filed, within 20 days after the filing thereof; or, if a statement in reply is filed, within 20 days after the filing thereof.

(h) *Waiver of right to file.* Failure to file, within the time prescribed, any statement or stipulation required or authorized under this section shall constitute a waiver of the right to file such statement or stipulation: *Provided*, That, when a deposition is required, the examiner shall extend the time prescribed in this section to such period as is reasonably necessary in the circumstances.

(i) *Examiner's report under the shortened procedure.* Except as otherwise may be directed by the examiner, the filing of the complainant's statement in reply shall conclude the presentation of evidence. The examiner shall thereupon decide and notify the parties whether suggested findings of fact, conclusions, and order, with briefs in support thereof, may be filed by the parties. If requested by the examiner, such findings, conclusions, order, and briefs shall be filed within such time, not to exceed 20 days after notification, as the examiner shall prescribe. Within a reasonable time after the presentation of evidence has been concluded or, if the filing of suggested findings of fact, conclusions, and orders, and briefs in support thereof, has been allowed, within a reasonable time after the termination of the period allowed for such filing, the examiner shall prepare his report, and the same procedure shall be followed thereafter as in proceedings in which an oral hearing has been held.

(j) *Assignment for oral hearing.* Upon the examiner's own motion or within his discretion upon the request of any party, the proceeding may be set for oral hearing at any stage of the proceeding prior to the expiration of the time allowed for the submission of evidence.

§ 47.39 *Transmittal of record.* The hearing clerk, immediately following the filing of the revision of the examiner's report, or upon notification by the examiner that no revision will be made, shall transmit to the Administrator the record of the proceeding. Such record shall include: The pleadings; motions and requests and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed therein; any statements filed under the shortened procedure; any documents or papers filed in connection with prehearing conferences; such suggested findings of fact, conclusions, and orders, and briefs in support thereof, as may have been permitted to be filed in connection with the hearing; the examiner's report,

and such exceptions, statements of objections and briefs in support thereof, as may have been filed in the proceeding.

§ 47.40 *Argument before Administrator*—(a) *Oral argument*. Unless a party has included in his exceptions a request for oral argument or has filed a separate request for oral argument prior to the expiration of the last date for filing such exceptions, he shall be deemed to have waived oral argument.

(b) *Briefs*. Briefs filed in accordance with § 47.37 (d), and in support of statements of facts will be considered by the Administrator.

(c) *Scope of argument*. Except where the Administrator determines that argument on additional issues would be helpful, argument, whether oral or in a written brief, shall be limited to the issues raised by the exceptions and statement of objections, or to such issues as the Administrator may indicate. If the Administrator determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit the preparation of adequate argument on all the issues to be argued.

§ 47.41 *Consideration and issuance of order*—(a) *Consideration of order*. As soon as practicable after the receipt of the record from the hearing clerk, or, in case argument was had, as soon as practicable thereafter, the Administrator upon the basis of the record, shall begin his consideration of the final order to be issued in the proceeding. If such an oral argument was held, the order shall be considered by and shall be issued over the signature of the person who heard such oral argument, unless the parties shall consent to a different arrangement. At no stage of the proceeding between its institution and the issuance of the order shall the Administrator discuss ex parte the merits of the proceeding with any person who is connected with the proceeding in an advocative or an investigative capacity, or with any representative of such person: *Provided, however*, That the Administrator may discuss the merits of the proceeding with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. If, notwithstanding the foregoing provisions of this section, a memorandum or other communication from any party, or from any person acting on behalf of any party, which relates to the merits of the proceeding, receives the personal attention of the Administrator (or, if an official other than the Administrator is to issue the order, then of such other official), during the pendency of the proceeding, such memorandum or communication shall be regarded as argument made in the proceeding and shall be filed with the hearing clerk, who shall serve a copy thereof upon the opposite party to the proceeding, and opportunity shall be given the opposite party to file a reply thereto.

(b) *Issuance of order*. The order shall be issued and served upon the parties as the final order in the proceeding without

further procedure: *Provided*, That, if the terms of the order differ substantially from those proposed in the report of the examiner, the Administrator shall, if he deems it advisable to do so, direct that a copy of the order be served upon the parties as a tentative order; and, in such event, opportunity shall be given the parties within a period of time to be fixed by the Administrator but not to exceed 20 days to file exceptions thereto and written arguments or briefs in support of such exceptions. If exceptions are so filed, the Administrator shall give consideration to and shall make such changes in the tentative order as he deems to be appropriate in view of the exceptions; otherwise, the tentative order shall be issued and served as the final order in the proceeding.

§ 47.42 *Rehearing, reargument, reconsideration of orders, and reopening of hearings*—(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 Administrator filed with the hearing clerk within 10 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 Administrator concludes that the questions raised by the petition have been sufficiently considered in the issuance of the order, he shall dismiss the petition without service on the other party. Otherwise he shall direct that a copy of the petition be served upon such party. 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.

(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.

§ 47.43 *Filing; extensions of time; effective date of filing; computation of time*—(a) *Filing; number of copies*. Except as is provided otherwise herein, all documents or papers required or authorized by the regulations in this part 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 Administrator) or by the Administrator (after such transmittal) upon request, if, in the judgment of the examiner or the Administrator, 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 hearing clerk.

(d) *Computation of time*. 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 Sunday or Federal holiday, the period shall be extended to include the next following business day.

Effective date. These rules shall take effect on March 10, 1945. They shall govern all matters arising under the act after they take effect and also all matters then pending, except to the extent that their application would not be feasible or would work injustice, in which event the rules issued on July 16, 1941 (7 CFR, Cum. Supp., 47.1, et seq.) shall apply.

Done at Washington, D. C., this 24th day of February 1945.

ASHLEY SELLERS,
Assistant War Food Administrator.

[F. R. Doc. 45-3047; Filed, Feb. 24, 1945;
3:16 p. m.]

Chapter III—Bureau of Entomology and Plant Quarantine

[B. E. P. Q. 533, Revised]

PART 301—DOMESTIC QUARANTINE NOTICES

JAPANESE BEETLE QUARANTINE REGULATIONS; MODIFICATION

Introductory note. This revision of the administrative instructions (B.E.P.Q. 533) makes no change in the list of articles that are exempted from Japanese beetle certification. The revision is solely for the purpose of bringing the citation of authority into line with the appropriate proviso in the current revision of the quarantine.

§ 301.48d *Administrative instructions; articles exempt from certification*. Pursuant to the authority conferred upon