proposed action and of the charges against the respondent. The notice shall state the reasons, specifically and in detail, for the proposed action. The notice shall also state that the respondent has the right to answer this notice in writing. If the respondent is an employee, the notice shall further state that the employee may also make an oral answer, as specified in § 731.303(a). The notice shall further inform the respondent of the time limits for response as well as the address to which such response should be made.

(b) The notice of proposed action shall be served upon the respondent by being mailed or hand delivered to the respondent's last known residence, and/or duty station, no less than 30 days prior to the effective date of the proposed action. If the respondent is employed in the competitive service on the date the notice is served, the respondent shall be entitled to be retained in a pay status during the notice period.

(c) In an OPM action, OPM shall send a copy of this notice to any employing agency that is involved.

§ 731.303 Answer.

(a) *Respondent's answer.* A respondent may answer the charges in writing and furnish documentation and/or affidavits in support of the response. A respondent who is an employee may also answer orally. The respondent may be represented by a representative of the respondent's choice, and such representative shall be designated in writing. To be timely, a written answer shall be made no more than 30 days after the date of the notice of proposed action. In the event an employee requests to make an oral answer, the request must be made within this 30 day time frame, and OPM shall determine the time and place thereof, and shall consider any answer the respondent makes in reaching a decision.

(b) *Agency's answer.* In actions proposed by OPM, the agency may also answer the notice of proposed action. The time limit for filing an answer is 30 days from the date of the notice. OPM shall consider any answer the agency makes in reaching a decision.

§ 731.304 Decision.

The decision shall be in writing, dated, and inform the respondent of the reasons for the decision. In an OPM directed removal, the employing agency shall remove the appointee or employee from the rolls within 5 work days of receipt of OPM's final decision; removals taken by an agency under this part should be effected within 5 work days of their final decision to remove. The respondent shall also be informed that an adverse decision can be appealed in accordance with subpart D of this part. In OPM actions, OPM shall also notify the respondent's employing agency of its decision.

Subpart D—Appeal to the Merit Systems Protection Board

§ 731.401 Appeal to the Merit Systems Protection Board.

(a) *Appeal to the Merit Systems Protection Board.* An individual who has been found unsuitable for employment may appeal the decision to the Merit Systems Protection Board (the Board). However, the Board may not modify a debarment period. If the Board finds that fewer than all of the charges are supported by a preponderance of the evidence, and affirms the determination of unsuitability, it shall remand the case to OPM or the agency to determine whether the debarment period is still appropriate based on the sustained charges. This subsequent determination by OPM or the agency shall be final without any further appeal to the Board.

(b) *Appeal procedures.* The procedures for filing an appeal with the Board are found at part 1201 of Chapter II of this chapter.

Subpart E—Savings Provision

§ 731.501 Savings provision.

No provision of the regulations in this part shall be applied in such a way as to affect any administrative proceeding pending on (THE EFFECTIVE DATE OF THE FINAL RULE). An administrative proceeding is deemed to be pending from the date of the "notice of proposed action" described in § 731.302.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 47

[Docket Number FV98–358]

Amendments to Rules of Practice Under the Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) is proposing to amend the Rules of Practice under the Perishable Agricultural Commodities Act (other than formal disciplinary proceedings). In addition to bringing several sections of the Rules of Practice into compliance with the PACA Amendments of 1995, USDA is proposing numerous additional changes in an effort to enhance customer service.

DATES: Comments must be received by March 1, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to Charles W. Parrott, Assistant Chief, PACA Branch, Fruit and Vegetable Division, AMS, USDA, Room 2095-So. Bldg., P.O. Box 96456, Washington, DC 20090–6456. Email—charles_w_parrott@usda.gov. All comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be made available for public inspection in the PACA Branch during regular business hours and posted on the internet at www.ams.usda.gov/fv/paca.htm.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Assistant Chief, PACA Branch, Room 2095-So. Bldg., Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 720–4180.

SUPPLEMENTARY INFORMATION:

Background

The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trading practices for the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The Act requires that parties fulfill their contractual obligations, and provides a forum where firms that buy and sell fruits and vegetables can settle commercial disputes outside of the civil court system. Under the PACA, these disputes, or reparation complaints, are handled first on an informal basis in an attempt to achieve an amicable settlement between the disputing parties. About 75 percent of all reparation complaints are resolved informally, generally within eight weeks. However, if an informal settlement is not reached, there is a formal complaint procedure available under which USDA's Judicial Officer issues a binding decision in the case. The Rules of Practice applicable to reparation proceedings inform the industry of USDA's procedures and requirements for the handling of informal and formal complaints under the PACA.

Agricultural Marketing Service (AMS) believes that amending the Rules of Practice will enhance customer service by expediting the handling of

documents in PACA reparation proceedings. For example, the Rules of Practice applicable to reparation proceedings presently require that the initial attempt to serve formal reparation documents must be made by certified or registered mail. The amendments will expand the options for the service of certain documents to include private or commercial mail delivery.

The amendments would also clarify certain regulations and definitions. The Rules of Practice are being amended throughout Part 47 to replace the term "shortened procedure" with "documentary procedure". This more accurately reflects a formal reparation process that does not involve an oral hearing.

A number of definitions have been amended in the Rules of Practice. Due to the reorganization of AMS, a definition of the "Fruit and Vegetable Programs" would be substituted for the definition of "Division," a definition of "Associate Administrator" would be substituted for the definition of "Deputy Administrator," and a definition of "Deputy Administrator" would be substituted for the definition of "Director." Additionally, the words "Program" and "Deputy Administrator" would be substituted for "Division" and "Director" respectively, wherever they appear in Part 47. The term "examiner", § 47.2(i)(1) has been expanded to indicate that senior marketing specialists may also prepare decisions in shortened or "documentary procedure" cases under the review of USDA's Office of the General Counsel (OGC). The definition of "examiner's report" in § 47.2(j) has been shortened to eliminate the references to Administrative Law Judges because they do not participate in reparation cases and do not write examiner's reports. As already indicated, the definitions of "mail" and "re-mail" have been expanded to allow for additional methods of service to include commercial or private mail delivery services. The section regarding informal complaints, § 47.3, would be revised to require that the complaint be in writing and would allow for the filing of an informal complaint by facsimile transmission. The required information to be contained in an informal complaint would be slightly revised for clarification purposes. The revision changes "car initial and number, if carlot;" to read "carrier identification;" and corrects a typographical error in § 47.3(a) (2) (vii) by inserting the word "and" between the words "gross net." A statement regarding the required filing fee of $60.00 would be added to the text. Without the required accompanying fee, a reparation case file will not be opened and the statute of limitations would not be tolled. Additionally, paragraph (c) of that section regarding the "Status of person filing informal complaint" would be eliminated because it is not pertinent to these regulations.

In section 47.4, which addresses service matters, revisions would permit the commercial or the private delivery of certain documents and describe when service is perfected under the various mailing options. By expanding ways to "mail" and "re-mail", service options will be more flexible and accommodating. Additionally, the reference to the service of the Chief's determination that a person was responsibly connected with a licensee will be deleted from paragraph (b)(1) because this issue is addressed in § 47.49 of the regulations (7 CFR 47.49).

The section that delineates formal complaints in the Rules of Practice would be changed to include a requirement that a formal complaint be filed within nine months of notification that complainant may proceed formally or complainant will lose the opportunity to proceed with a formal complaint. Additionally, the rules would now require that a $300.00 handling fee must accompany the filing of a formal complaint in order for the complaint to be served upon the respondent. If respondent files a counterclaim as part of its answer, it must also include the $300.00 handling fee. The handling fee for formal complaints is required by the Act and including it in the rules is a change to conform with the 1995 Amendments.

Significant changes would be made to section 47.9, which addresses the reply to a counterclaim or set-off, in order to require the same information in the reply that is now required in the answer. The counterclaim or set-off would be treated as a formal complaint filed by the respondent, and therefore, failure to reply would be a default on complainant's part as to the counterclaim or the set-off. In the current rules, a failure to file a reply is treated as a denial of the allegations of the counterclaim or set-off; the proposed changes will create a parallel between the filing of a complaint and the filing of a counterclaim or set-off.

With the new expanded definition of examiner in section 47.2(i), section 47.11 is amended to clarify that only OGC attorneys, and not other USDA employees, would be granted certain powers under this section of the regulations because only OGC attorneys may conduct oral hearings. The examiner's powers would be amended to include the ability to require parties to provide copies of exhibits prior to hearings and depositions in any type of hearing. Currently, this power is limited to audio-visual and telephone hearings, but it is appropriate to expand the examiner's powers in this way in order to promote efficiency. In addition, only OGC attorneys may permit intervention of a party for good cause shown. While the definition of examiner has been expanded for documentary procedures, any non-attorney examiner's powers would be specified and reviewed in order to ensure that legally sound and consistent reparation decisions are prepared. The Rules of Practice would be changed throughout to reflect this assignment of responsibilities.

The proposed amendments update the Rules of Practice to comply with the 1995 PACA Amendments which raised the minimum claim for damages required for an oral hearing from $15,000 to $30,000. Another correction that would be made in sections 47.11 and 47.16 is the clarification that any subpoenas or orders for depositions would be made over the facsimile signature of the Secretary. In addition, the regulations regarding oral hearings would no longer permit complainant to submit evidence in the form of depositions in lieu of appearing in person or by counsel. Instead, all parties would be required to appear in person or through a representative.

The section which discusses the deposition process would be expanded to include references to the possibility of depositions in a case that is converted from an oral hearing case to a documentary procedure case. Currently, the section does not refer to this type of deposition; the regulations only refer to depositions linked to oral hearings.

In order to ensure sufficient opportunity for review by the examiner and sufficient notice to the individual who is subpoenaed, section 47.17 would be amended to require that applications for subpoena be received at least thirty days prior to the hearing or deposition date, and that the subpoena be issued at least twenty days before the date of appearance. An exception may be made for good cause shown.

All filings with regard to claims for fees and expenses in oral hearing cases and the resultant objections would be filed with the Hearing Clerk instead of the examiner in order to ensure that the documents are properly filed into the official record kept by the Hearing Clerk. The Hearing Clerk's Office would also be the appropriate place to file petitions for rehearing, reargument, reconsideration of orders, reopening of hearings and reopening after a default. Anywhere in the regulations that the

words "hearing clerk" appears would be replaced by the words "Hearing Clerk".

As already discussed, the term "shortened procedure" would be changed to "documentary procedure". In the documentary procedure section, the rule regarding verification of pleadings or statements would be expanded to note that certification by a notary public alone is not sufficient, rather, a signed verifying statement must be appended to the document.

Procedures for requesting a reopening after a default would be removed from the provision that covers filing, extensions of time, effective date of filing, computations of time, and official notice and moved to the more appropriate section that deals with rehearing, reargument, reconsideration of orders, and reopening of hearings. In addition, the provision for reopening after a default would be revised to permit a petition to reopen the proceedings to be filed before the expiration of 30 days from the date of issuance of the default order. This revision would eliminate any confusion that exists in the current regulation because it does not provide a time certain for filing. The amendment clarifies that the filing must be made before the Default Order becomes final. For all filings, the provision for computation of time would be corrected to include Saturdays as well as Sundays and holidays.

Executive Orders 12866 and 12988

This proposed rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et. seq.*), as amended, has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et. seq.*), USDA has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121) as those whose with less than 500 employees. The PACA requires all businesses that operate subject to its provisions maintain a license issued by USDA. There are approximately 15,700 PACA licensees, a majority of which may be classified as small entities.

The proposed revisions to the PACA Rules of Practice would streamline USDA procedures and requirements for handling of informal and formal complaints under the PACA. In Fiscal Year 1998, there were 2198 informal reparation claims, 21 counterclaims, and 563 formal reparation cases filed with USDA under the PACA. The proposed revisions to the reparation Rules of Practice would apply only to firms that utilize USDA's service for resolving commercial disputes under the PACA. AMS believes that the revisions to the Rules of Practice will enhance customer service to the industry by expediting the handling of documents in PACA reparation proceedings. Most of the proposed revisions provide notice to claimants of the procedure that AMS will follow in adjudicating claims. For example, the proposed revision that provides for additional methods of service of formal documents by AMS will not produce any economic effect on licensees initially. But, if the use of commercial and/or express delivery services take the place of certified mail, licensees may be required to absorb the additional costs through marginally higher fees.

There are some proposed revisions, however, that would affect the rights and obligations of claimants. For example, claimants must be certain to adhere to the filing requirements for both informal and formal complaints, which require the payment of statutorily mandated filing and handling fees, respectively. If the required fees do not accompany a filing, a claimant may lose access to the reparation forum. These revisions, and others, may affect a claimant's due process rights, which are difficult to quantify. However, since the reparation forum is but one available means to resolve contract disputes concerning perishable agricultural products in interstate commerce, AMS has determined that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR, Part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and record keeping requirements covered by this proposed rule were approved by OMB on April 1, 1998, and expire on April 30, 2001.

List of Subjects in 7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Brokers.

For the reasons set forth in the preamble, 7 CFR Part 47 is proposed to be amended as follows:

PART 47—[AMENDED]

1. The authority citation for part 47 is revised to read as follows:

Authority: 7 U.S.C. 499o; 7 CFR 2.22(a)(1)(viii)(L), 2.79(a)(8)(xiii).

2. Section 47.2 is amended by removing paragraph (j)(2) and redesignating paragraph (j)(1) as paragraph (j) and revising paragraphs (e), (g), (h), (i), (s), and (t) to read as follows:

§ 47.2 Definitions.

* * * * *

(e) *Associate Administrator* means the Associate Administrator of the Service, or any officer or employee of the Service to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his or her stead.

* * * * *

(g) *Fruit and Vegetable Programs* means the Fruit and Vegetable Programs of the Agricultural Marketing Service.

(h) *Deputy Administrator* means the Deputy Administrator of the Fruit and Vegetable Programs or any officer or employee of the Fruit and Vegetable Programs to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated by the Deputy Administrator, to act in his stead.

(i) *Examiner.* In connection with reparation proceedings, the term "examiner" is synonymous with "presiding officer" and means any attorney employed in the Office of the General Counsel of the Department, or in connection with reparation proceedings conducted pursuant to the documentary procedure in § 47.20, the term "examiner" may mean any other employee of the PACA Branch whose work is reviewed by an attorney employed in the Office of the General Counsel of the Department.

* * * * *

(s) *Mail* means to deposit an item in the United State Mail with postage affixed and addressed as necessary to cause it to be delivered to the address

shown by ordinary mail, or by certified mail or registered mail if specified, or to cause a properly addressed item to be delivered by a commercial or private mail delivery service to the address shown.

(t) *Re-mail* means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail or by a commercial or private mail delivery service.

5. In § 47.3, the first sentence in paragraph (a)(2) and paragraph (a)(2)(iv) are revised, in paragraph (a)(2)(vii) the word "and" is added between the words "gross" and "net", paragraph (c) is removed, and a new paragraph (a)(4) is added to read as follows:

§ 47.3 Institution of proceedings.

(a) * * *

(1) * * *

(2) Informal complaints may be made in writing by telegram, by letter, or by facsimile transmission, setting forth the essential details of the transaction complained of. * * *

* * * * *

(iv) Carrier identification;

* * * * *

(4) The informal complaint shall be accompanied by a filing fee of $60 as required by the Act.

* * * * *

7. Section 47.4 is amended by revising the section heading and paragraphs (b)(1), (b)(3), (c)(1), and (d)(1) to read as follows:

§ 47.4 Service and proof of service.

* * * * *

(b) *Service on party.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, a final order, or other document specifically ordered by the presiding officer or Judicial Officer to be served by certified or registered mail, or commercial or private mail delivery service, shall be deemed to be received by any party to a proceeding on the date of delivery by certified or registered mail, or commercial or private mail delivery service to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, last known residence of such party if an individual: Provided, That, if any such document or paper is sent by certified, registered, commercial, or private mail, but is returned, it shall be deemed to be received by such party on the date of the re-mailing by ordinary mail to the same address.

* * * * *

(3) Any document or paper served other than by certified, registered, commercial, or private mail on any party to a proceeding shall be deemed to be received by such party on the date of:

* * * * *

(c) * * *

(1) Delivery by certified, registered, commercial, private or mail to the last known principal address of such person, last know principal place of business of the attorney or representative of record of such person, or last known residence of such person if an individual;

* * * * *

(d) * * *

(1) A certified or registered mail receipt returned by the postal service with a signature, or a signed receipt returned by a private or commercial mail delivery service;

* * * * *

8. In § 47.6, paragraphs (a) and (c) are revised to read as follows:

§ 47.6 Formal Complaints.

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

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

* * * * *

(c) *Service upon respondent; proof of service.* Upon receipt by the Fruit and Vegetable Programs of the formal complaint, the accompanying papers and the $300 handling fee required by the Act, a copy thereof shall be served by the Fruit and Vegetable Programs upon the respondent in accordance with § 47.4. If the complaint is not in the proper form, the Fruit and Vegetable Programs shall return it and inform the complainant of the deficiencies therein.

* * * * *

9. In § 47.8, paragraph (a) is amended by adding a sentence at the end of the section to read as follows:

§ 47.8 The answer.

(a) * * * If the answer includes a counterclaim, the answer shall be accompanied by the $300 handling fee required by the Act for formal complaints.

* * * * *

10. In § 47.9, paragraphs (b) and (c) are revised to read as follows:

§ 47.9 The reply.

* * * * *

(b) *Contents.* The reply shall be confined strictly to the matters alleged in the counterclaim or set-off in the answer. It shall contain a precise statement of the facts which constitute the grounds of defense to the counterclaim or set-off, and shall specifically admit, deny, or explain each of the allegations of the counterclaim or set-off, unless the complainant is without knowledge, in which case the reply shall so state; or a statement that the complainant admits all of the allegations of the counterclaim or set-off; or a statement containing an admission of liability in an amount less than that alleged in the counterclaim or set-off and a denial of liability for the remaining amount.

(c) *Failure to file reply.* Failure to file a reply shall be deemed a waiver of hearing on the counterclaim or set-off and an admission of the allegations contained in the counterclaim or set-off. If no reply is filed, the allegations of the counterclaim or set-off shall be deemed admitted.

11. In § 47.11, the introductory text of paragraph (c), and paragraphs (c)(4), (c)(9), (c)(10) and (c)(13) are revised to read as follows:

§ 47.11 Examiners.

* * * * *

(c) *Powers.* Subject to review by the Secretary, as provided in this Part, the examiner who is an attorney employed in the Office of the General Counsel of the Department, in any proceeding assigned to him or her, shall have power to:

* * * * *

(4) Issue subpoenas over the facsimile signature of the Secretary requiring the attendance and testimony of witnesses and the production of books, contracts, papers, and other documentary evidence;

* * * * *

(9) Require each party, prior to any hearing, to provide all other parties and the examiner with a copy of any exhibit that the party intends to introduce into evidence;

(10) Require each party, prior to any deposition, to provide all other parties and the examiner with a copy of any document that the party intends to use to examine a deponent;

* * * * *

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

* * * * *

12. In § 47.12, the introductory text is revised to read as follows:

§ 47.12 Intervention.

At any time after the institution of a proceeding and before it has been submitted to the Secretary for final consideration, the Secretary or the examiner as defined in § 47.2(i)(1) may, upon petition in writing and for good cause show, permit any person to intervene therein. The peition shall state with preciseness and particularity:

* * * * *

13. In § 47.15, paragraphs (a)(1), (a)(2), (b) and (d)(1) are revised to read as follows:

§ 47.15 Oral hearing before the examiner.

(a) *When permissible.* (1) Where the amount of the damages claimed, either in the complaint or in the counterclaim, does not exceed $30,000, an oral hearing shall not be held, unless deemed necessary or desirable by the Fruit and Vegetable Programs or unless granted by the examiner as defined in § 47.2(i)(1), upon application of complainant or respondent setting forth the peculiar circumstances making an oral hearing necessary for a proper presentation of the case.

(2) Where the amount of damages claimed, either in the complaint or in the counterclaim, is in excess of $30,000, 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. Failure to request an oral hearing within the time allowed for filing of the reply, or 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 documentary procedure provided in § 47.20.

* * * * *

(d) *Appearances*—(1) *Representation.* In any proceeding under the Act, the parties may appear in person or by counsel or other representative.

* * * * *

14. In § 47.16, the introductory text of paragraph (a), and paragraph (b)(1) are revised to read as follows:

§ 47.16 Depositions.

(a) *Application for taking deposition.* Upon the application of a party to the proceeding, the examiner as defined in § 47.2(i)(1) may, except as provided in paragraph (b), at any time after the filing of the moving papers, order, over the facsimile signature of the Secretary, the taking of testimony by deposition. The application shall be in writing, shall be filed with the Hearing Clerk, and shall set forth:

* * * * *

(b) *Examiner's order for taking deposition.* (1) If, after examination of the application, the examiner is of the opinion that the deposition should be taken, or if the parties are using depositions in lieu of affidavits pursuant to § 47.20(b)(2), the examiner shall order the taking of the deposition. In no case, except for good cause shown, may the examiner order the taking of a deposition less than 10 days prior to the designated date of deposition. The order shall be filed with the Hearing Clerk upon the parties in accordance with § 47.4.

* * * * *

15. In § 47.17, a sentence is added at the end of paragraph (a) to read as follows:

§ 47.17 Subpoenas.

(a) *Issuance of subpoenas.* * * * Except for good cause shown, applications for subpoenas shall be filed with the Hearing Clerk at least 30 days prior to the designated date of hearing or deposition. Except for good cause shown, the examiner shall not issue subpoenas less than 20 days prior to the designated date of hearing or deposition.

* * * * *

16. In § 47.19, paragraphs (d)(1), (d)(4), (d)(5) and (d)(6) are revised to read as follows:

§ 47.19 Post-hearing procedure before the examiner.

* * * * *

(d) *Claim for award of fees and expenses*—(1) *Filing.* Prior to the close of the hearing, or within 20 days thereafter, each party may file with the Hearing Clerk a claim for the award of the fees and expenses which he incurred in connection with the oral hearing. No award of fees and expenses to the prevailing party and against the losing party shall be made unless a claim therefor has been filed, and failure to file a claim within the time allowed shall constitute a waiver thereof.

* * * * *

(4) *Service of claim.* A copy of each such claim filed shall be served by the Hearing Clerk on the other party or parties to the proceeding.

(5) *Objections to claim.* Within 20 days after being served with a copy of a claim for fees and expenses, the party so served may file with the Hearing Clerk written objections to the allowance of any or all of the items claimed. If evidence is offered in support of an objection, it must be in affidavit form. A copy of any such objections shall be served by the Hearing Clerk on the other party or parties.

(6) *Reply to objections to claim.* A claimant who is served with a copy of objections to his or her claim may, within 20 days after such service, file with the Hearing Clerk a reply to such objection. If evidence is offered in support of a reply, it must be in affidavit form. A copy of any such reply shall be served by the Hearing Clerk on the other party or parties.

* * * * *

17. In § 47.20, the section heading, the first sentence of paragraph (a), paragraphs (b)(1), (b)(2), and the introductory text of paragraph (h) are revised to read as follows:

§ 47.20 Documentary procedure.

(a) *In general.* The documentary 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 oral hearing procedure hereinbefore provided. Under the documentary procedure, the pleadings of the parties, if verified in accordance with paragraph (h) of this section, and any report of investigation filed with the hearing clerk pursuant to § 47.7 will be considered as evidence in the proceeding. * * *

(b) *When applicable*—(1) *Where damages claimed do not exceed $30,000.* The documentary 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 the complaint or in the counterclaim, does not exceed $30,000.

(2) *Where damages claimed exceed $30,000.* In any proceeding in which the amount of damages claimed, either in the complaint or in the counterclaim, is greater than $30,000, the examiner,

whenever he or she is of the opinion that proof may be fairly and adequately presented by use of the documentary procedure provided for in this section, shall suggest to the parties that they consent to the use of such procedure. 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. A party, if he or she has not waived oral hearing, may consent to the use of the documentary procedure on the condition that depositions rather than affidavits be used. In such case, if the other party agrees, depositions shall be required to be filed in lieu of verified statements. If any party who has not waived oral hearing does not consent to the use of the documentary procedure, the proceeding will be set for oral hearing. The suggestion that the documentary procedure be used need not originate with the examiner. Any party may address a request to the examiner asking that the documentary procedure be used.

* * * * *

(h) *Verification.* Verification shall be made under oath of any facts set forth in the pleading or statement, by the person who signs the pleading or statement. Certification by a notary public is insufficient. The form of verification may be as follows:

* * * * *

18. Section 47.21 is revised to read as follows:

§ 47.21 Transmittal of record.

The hearing clerk, immediately after the filing of the examiners' report, shall transmit to the Secretary the record of the proceeding. Such record shall include: The pleadings; motions and requests filed, and rulings thereon; the report of investigation conducted by the Fruit and Vegetable Programs; the transcript or record of the testimony taken at the hearing, together with the exhibits filed therein; any statements or stipulations filed under the documentary procedure; any documents or papers filed in connection with conferences; such proposed findings of fact, conclusions, and orders and briefs as may have been permitted to be filed in connection with the hearing as provided in § 47.19(b) and (c); such statements of objections, and briefs in support thereof, as may have been filed in the proceeding; and the examiner's report.

* * * * *

19. In § 47.24, the section heading and paragraph (a) are revised and a new paragraph (d) is added to read as follows:

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

(a) *Petitions to rehear, reargue, and reconsider.* A petition for rehearing or reargument of the proceeding, or for reconsideration of the order, shall be made by petition to the Secretary filed with the Hearing Clerk within 20 days after the date of service of the order. Every such petition shall state specifically the matters claimed to have been erroneously decided and the alleged errors. If the Secretary concludes that the questions raised by the petition have been sufficiently considered in the issuance of the order, the Secretary shall dismiss the peition without service on the other party. Otherwise, the Secretary shall direct that a copy of the petition be served upon such party by the Hearing Clerk. The filing of a petition to rehear or reargue a proceeding, or to reconsider an order, shall automatically operate to set aside the order pending final action on the petition. Only one petition to rehear, reargue, or reconsider will be accepted from each party, except when a mathematical or typographical error appears in either the original decision and order or in the decision on reconsideration.

* * * * *

(d) *Reopening after default.* The party in default in the filing of an answer or reply required or authorized under this part may petition to reopen the proceeding at any time prior to the expiration of 30 days from the date of service of the default order. If, in the judgment of the examiner, after notice to and consideration of the views of the other party(ies), there is good reason for granting such relief, the party in default will be allowed 20 days from the date of the order reopening the proceeding to file an answer.

20. In § 47.25, the section heading and paragraph (d) are revised, paragraph (e) is removed and paragraph (f) is redesignated as paragraph (e) to read as follows:

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

* * * * *

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

* * * * *

21. Part 47 is amended by removing the words "hearing clerk" and adding in their place the words "Hearing Clerk", everywhere they appear.

22. Part 47 is amended by removing the word "Division" and adding in its place the words "Fruit and Vegetable Programs", everywhere they appear.

23. Part 47 is amended by removing the words "Director" and "Director's", and adding in their place the words "Deputy Administrator" and "Deputy Administrator's" respectively, everywhere they appear.

Dated: January 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–1968 Filed 1–27–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–021–1]

Cut Flowers

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the cut flowers regulations to provide that APHIS inspectors issue a written notice when pests are detected and action on the part of the importer is required. We are also proposing to amend the regulations to make it clear that the importer of cut flowers is responsible for all costs of destroying or otherwise disposing of pest-infested cut flowers should the importer choose not to treat or re-export them. These proposed changes would help reduce the risk of cut flowers introducing plant pests into the United States by ensuring that any necessary treatment or other required actions are completed.

DATES: Consideration will be given only to comments received on or before March 29, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–021–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–021–1. Comments may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to