

App. (1988)), to perform the function involved (§2.35(a) of this chapter), or the Secretary if he or she exercises the authority so delegated.

Respondent means the cooperative associations, or association, against whom a complaint has been issued.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8457, Feb. 14, 1995]

§ 1.162 Institution of proceedings.

(a) *Filing of information.* Any person having information that any agricultural association, as defined in the Capper-Volstead Act, is engaged in any practice which monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, may submit such information to the Secretary. Such information shall be in writing and shall contain a complete statement of facts detailing the price enhancement and the practices alleged.

(b) *Consideration of information.* The Secretary shall consider all information filed under paragraph (a) of this section, and any other information which the Secretary may obtain relating to a violation of section 2 of the Act. If the Secretary finds that there is reason to believe that any association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby the Secretary shall cause a complaint to be filed, requiring the association to show cause why an order should not be made directing the association to cease and desist from such monopolization or restraint of trade. The complaint shall be filed with the Hearing Clerk, who shall assign to the proceeding a docket number and effect service upon respondent.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8457, Feb. 14, 1995]

§ 1.163 The complaint.

The complaint shall state briefly all allegations of fact which constitute a basis for the proceeding, and shall designate a time and place for the hearing in the matter, which shall be at least 30 days after the service of the complaint upon the respondent.

§ 1.164 Answer.

(a) *Filing and service.* Within 20 days after service of the complaint, or such other time as may be specified therein, the respondent shall file with the Hearing Clerk, an answer, signed by the respondent or the respondent's attorney. The answer shall be served upon the complainant by the Hearing Clerk.

(b) *Contents.* The answer shall clearly admit, deny, or offer an explanation in response to each of the allegations of the complaint, and shall clearly set forth any affirmative defense.

(c) *Default.* Failure to file an answer shall constitute an admission of the allegations in the complaint, and may be the basis for a decision upon the presentation of a *prima facie* case by the complainant.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8457, Feb. 14, 1995]

§ 1.165 Amendments.

Amendments to the complaint may be made prior to the filing of an answer in which case the time for filing the answer shall be extended 20 days or for other time agreed to by the parties. After the answer is filed, amendments to the complaint, or to the answer or other pleading, may be made by agreement of the parties or allowed at the discretion of the Judge. In case of an amendment which significantly changes the issues, the hearing shall, on the request of a party, be postponed or adjourned for a reasonable period, if the Judge determines that such action is necessary to avoid prejudice to the party.

§ 1.166 Consent order.

At any time, complainant and respondent may agree to the entry of a consent order. Such order shall be entered by the Judge (prior to a decision) or the Judicial Officer (after a decision by the Judge), and become effective on the date specified therein.

§ 1.167 Conference.

(a) *Purpose.* Upon motion of a party or upon the Judge's own motion, the Judge may direct the parties to attend a conference when the Judge finds that the proceeding would be expedited by discussions on matters of procedure