

§ 12.209

held in Washington, DC, under the circumstances set forth in §12.209(c).

[49 FR 6621, Feb. 22, 1984, as amended at 59 FR 9637, Mar. 1, 1994]

§ 12.209 Oral testimony.

(a) *Generally.* When the Judgment Officer determines that an oral hearing is necessary and appropriate, such oral hearing will be held either by telephone or in person in Washington, DC, as set forth below. The Judgment Officer, in his or her discretion with consideration for the convenience of the parties and their witnesses, will determine the time and date of such hearing. During an oral hearing, in his or her discretion, the Judgment Officer may regulate appropriately the course and sequence of testimony and examination of the parties and their witnesses and limit the issues.

(b) *Telephonic hearings.* When a Judgment Officer has determined to hold an oral hearing by telephone, an order to that effect will be issued at least 15 days prior to the hearing notifying the parties of the date and time of the hearing. The order will direct the parties to confirm, at least 48 hours in advance of the hearing, that the correct telephone numbers for the parties and their witnesses are on file with the Office of Proceedings, and warn that failure to provide correct telephone numbers may be deemed waiver of that party's right to participate in the hearing, to present evidence, or to cross-examine other witnesses. If a party is unavailable by telephone at the appointed time, any other party in attendance may present testimony, and the Judgment Officer also may impose any appropriate sanction listed in §12.35. All telephonic hearings will be recorded electronically but will be transcribed only upon direction of the Judgment Officer (if necessary) or in the event of Commission review. The parties may secure a copy of the recording of the hearing from the Proceedings Clerk upon written request and payment of the cost of the recording.

(c) *Washington, DC hearings.* In exceptional circumstances and when an in-person hearing is determined to be necessary in resolving the issues, the Judgment Officer may order an in-person hearing in Washington, DC upon

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written request by a party and the agreement of at least one opposing party. The Judgment Officer will issue notice of the time, date, and location of an in-person hearing to the parties at least 30 days in advance of the hearing. Except as otherwise provided herein, an in-person hearing will be held and recorded in the manner prescribed in §12.312(c) through (f) of these rules. A party not agreeing to appear at the hearing in Washington, DC, may be ordered to participate by telephone. Any party not appearing in person or by telephone will be deemed to have waived the right to participate in the hearing, to present evidence, or to cross-examine other witnesses; further, that party may be subject to such action under §12.35 as the Judgment Officer may find appropriate. The Judgment Officer may order any party who requests or agrees to appear at a hearing in Washington, DC and fails to appear without good cause, to pay any reasonable costs unnecessarily incurred by parties appearing at such a hearing.

(d) *Compulsory process.* An application for a subpoena requiring a non-party to participate in a telephonic hearing or to appear at an in-person hearing in Washington, DC, may be made in writing to the Judgment Officer without notice to the other parties. The standards for issuance or denial of an application for a subpoena, the service and travel fee requirements, and the method for enforcing such subpoenas are set forth at §12.313 of these rules.

[59 FR 9637, Mar. 1, 1994]

§ 12.210 Initial decision.

(a) *In general.* Proposed findings of fact and conclusions of law briefs shall not be allowed. As soon as practicable after all submissions of proof have been received, the Judgment Officer shall make the initial decision, which he shall forthwith file with the Proceedings Clerk. Upon filing of an initial decision, the Proceedings Clerk shall immediately serve upon the parties a copy of the initial decision and a notification of the effect of a party's failure timely to appeal the initial decision to the Commission, as provided in paragraphs (d) and (e) of this section, as well as the effect of a failure by a

party who has been ordered to pay a reparation award timely to file the documents required by §12.407(c).

(b) *Content of initial decision.* In the initial decision in a summary decisional proceeding, the Judgment Officer shall:

(1) Include a brief statement of his findings as to the facts, with references to those portions of the record which support his findings;

(2) Make a determination whether or not the respondent has violated any provision of the Commodity Exchange Act, or rule, regulation or order thereunder;

(3) Make a determination whether the complainant is liable to any respondent who has made a counterclaim in the proceeding;

(4) Determine the amount of damages, if any, that the complainant has sustained as a result of respondent's violations, the amount of punitive damages, if any, for which respondent is liable to complainant, which shall not exceed \$30,000, exclusive of interest and costs; and the amount, if any, for which complainant is liable to respondents based on counterclaims, which, in aggregate, shall not exceed \$30,000, exclusive of interest and costs; and

(5) Include an order directing either the respondent or the complainant, depending upon whose liability is greater, to pay an amount based on the difference in the amounts determined pursuant to paragraph (b)(4) of this section, on or before a date fixed in the order.

(c) *Costs; prejudgment interest.* The Judgment Officer may, in the initial decision, award costs (including the costs of instituting the proceeding, and if appropriate, reasonable attorneys' fees) and, if warranted as a matter of law under the circumstances of the particular case, prejudgment interest to the party in whose favor a judgment is entered.

(d) *Effect of initial decision.* The initial decision shall become the final decision and order of the Commission thirty (30) days after service thereof, except:

(1) The initial decision shall not become the final decision as to a party who shall have timely filed and perfected an appeal thereof to the Com-

mission in accordance with §12.401 of these rules; and

(2) The initial decision shall not become final as to any party to the proceeding if, within thirty (30) days after service of the initial decision, the Commission itself shall have placed the case on its own docket for review or stayed the effective date of the initial decision.

(e) *Effect of failure to file and perfect an appeal to the Commission.* Unless the Commission takes review on its own motion, the timely filing and perfection of an appeal to the Commission of the initial decision is mandatory as a prerequisite to appellate judicial review of a final decision and order entered pursuant to these rules.

[49 FR 6621, Feb. 22, 1984, as amended at 59 FR 9638, Mar. 1, 1994]

Subpart E—Rules Applicable to Formal Decisional Proceedings

§ 12.300 Scope and applicability of rules.

The rules set forth in this subpart are applicable to proceedings forwarded pursuant to §12.26(c) of the Reparation Rules. The rules in subpart B permitting discovery are applicable in a formal decisional proceeding, as supplemented by §12.301. Unless specifically made applicable, the rules prescribed in subparts C and D shall not apply to formal decisional proceedings. Parties to a proceeding forwarded pursuant to §12.26(c) may, by written agreement filed at any time prior to the issuance of an initial decision, or of any other order disposing of all issues in the proceeding, elect to have all issues in the proceeding decided pursuant to the voluntary decisional procedure. Upon receiving a timely filed stipulation signed by all parties evidencing such an election, the Administrative Law Judge shall conduct the proceeding and render a decision pursuant to subpart C of these rules.

§§ 12.301–12.302 [Reserved]

§ 12.303 Pre-decision conferences.

During the time period permitted for discovery pursuant to §12.30(d), and thereafter, the Administrative Law Judge may, in his discretion, conduct