

§ 356.17

is not requested, to submit documentary evidence to the Deputy Under Secretary and an explanation of the method for submitting evidence and the date by which it must be received; and

(6) A statement that the charged or affected party has a right to retain counsel at the party's own expense for purposes of representation.

(b) *Settlement and amendment of the charging letter.* The Deputy Under Secretary may amend, supplement, or withdraw the charging letter at any time with the approval of an administrative law judge if the interests of justice would thereby be served. If a hearing has not been requested, the Deputy Under Secretary will ask the Under Secretary to appoint an administrative law judge to make this determination. If a charging letter is withdrawn after a request for a hearing, the administrative law judge will determine whether the withdrawal will bar the Deputy Under Secretary from seeking sanctions at a later date for the same alleged violation. If there has been no request for a hearing, or if supporting information has not been submitted under § 356.28, the withdrawal will not bar future actions on the same alleged violation. The Deputy Under Secretary and a charged or affected party may settle a charge brought under this subpart by mutual agreement at any time after service of the charging letter; approval of the administrative law judge or the APO Sanctions Board is not necessary.

(c) *Service of charging letter on a resident of the United States.* (1) Service of a charging letter on a United States resident will be made by:

(i) Mailing a copy by registered or certified mail addressed to the charged or affected party at the party's last known address;

(ii) Leaving a copy with the charged or affected party or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for the party; or

(iii) Leaving a copy with a person of suitable age and discretion who resides at the party's last known dwelling.

(2) Service made in the manner described in paragraph (c)(1) (ii) or (iii) of this section shall be evidenced by a

certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left.

(d) *Service of charging letter on a non-resident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (c) of this section inappropriate or ineffective, service of the charging letter on a person who is not a resident of the United States may be made by any method that is permitted by the country in which the person resides and that, in the opinion of the Deputy Under Secretary, satisfies due process requirements under United States law with respect to notice in administrative proceedings.

§ 356.17 Request to charge.

Upon deciding to initiate a proceeding pursuant to § 356.15, the Deputy Under Secretary will request the authorized agency of the involved FTA country to initiate a proceeding for imposing sanctions for violation of a protective order or a disclosure undertaking by issuing a letter of request to charge that includes a statement of the allegation that a protective order or a disclosure undertaking has been violated and the basis thereof.

§ 356.18 Interim sanctions.

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under § 356.16 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department, an authorized agency of the involved FTA country, or others, including the protection of proprietary information, the Deputy Under Secretary may petition an administrative law judge to impose such sanctions.

(b) The administrative law judge may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of a protective order or a disclosure undertaking and the Department is likely to prevail in obtaining sanctions under this subpart;

(2) The Department, authorized agency of the involved FTA country, or others are likely to suffer irreparable harm if the interim sanctions are not imposed; and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department, authorized agency of the involved FTA country, or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed.

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department, authorized agency of the involved FTA country, or others, including, but not limited to:

(1) Denying a person further access to proprietary information;

(2) Barring a person from representing another person before the Department;

(3) Barring a person from appearing before the Department; and

(4) Requiring the person to return material previously provided by the Department or the investigating authority of the involved FTA country, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or disclosure undertaking.

(d) The Deputy Under Secretary will notify the person against whom interim sanctions are sought of the request for interim sanctions and provide to that person the material submitted to the administrative law judge to support the request. The notice will include a reference to the procedures of this section.

(e) A person against whom interim sanctions are proposed has a right to oppose the request through submission of material to the administrative law judge. The administrative law judge has discretion to permit oral presentations and to allow further submissions.

(f) The administrative law judge will notify the parties of the decision on interim sanctions and the basis therefor within five days of the conclusion of oral presentations or the date of final written submissions.

(g) If interim sanctions have been imposed, the investigation and any proceedings under this subpart will be conducted on an expedited basis.

(h) An order imposing interim sanctions may be revoked at any time by the administrative law judge and expires automatically upon the issuance of a final order.

(i) The administrative law judge may reconsider imposition of interim sanctions on the basis of new and material evidence or other good cause shown. The Deputy Under Secretary or a person against whom interim sanctions have been imposed may appeal a decision on interim sanctions to the APO Sanctions Board, if such an appeal is certified by the administrative law judge as necessary to prevent undue harm to the Department or authorized agency of the involved FTA country, a person against whom interim sanctions have been imposed or others, or is otherwise in the interests of justice. Interim sanctions which have been imposed remain in effect while an appeal is pending, unless the administrative law judge determines otherwise.

(j) The Deputy Under Secretary may request an administrative law judge to impose emergency interim sanctions to preserve the status quo. Emergency interim sanctions may last no longer than 48 hours, excluding weekends and holidays. The person against whom such emergency interim sanctions are proposed need not be given prior notice or an opportunity to oppose the request for sanctions. The administrative law judge may impose emergency interim sanctions upon determining that the Department or authorized agency of the involved FTA country is, or others are, likely to suffer irreparable harm if such sanctions are not imposed and that the interests of justice would thereby be served. The administrative law judge will promptly notify a person against whom emergency sanctions have been imposed of the sanctions and their duration.

(k) If a hearing has not been requested, the Deputy Under Secretary will request that the Under Secretary appoint an administrative law judge for making determinations under this section.

§ 356.19

(1) The Deputy Under Secretary will notify the Secretariat concerning the imposition or revocation of interim sanctions or emergency interim sanctions.

§ 356.19 Request for a hearing.

(a) Any party may request a hearing by submitting a written request to the Under Secretary within 30 days after the date of service of the charging letter. However, the Deputy Under Secretary may request a hearing only if the interests of justice would thereby be served.

(b) Upon timely receipt of a request for a hearing, the Under Secretary will appoint an administrative law judge to conduct the hearing and render an initial decision.

§ 356.20 Discovery.

(a) *Voluntary discovery.* All parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending sanctions proceeding.

(b) *Limitations on discovery.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitations set forth in this Part.

(c) *Interrogatories and requests for admissions or production of documents.* A party may serve on any other party interrogatories, requests for admissions, or requests for production of documents for inspection and copying, and the party may then apply to the administrative law judge for such enforcement or protective order as that party deems warranted concerning such discovery. The party will serve a discovery request at least 20 days before the scheduled date of a hearing, if a hearing has been requested and scheduled, unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admissions, and requests for production of documents and responses thereto will be served on all parties. Matters of fact or law of which admission is requested will be deemed admitted unless, within a period designated in the request (at least 10 days after

19 CFR Ch. III (4-1-02 Edition)

the date of service of the request, or within such further time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either admitting or denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny such matters.

(d) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person who is a party, or under the control or authority of a party, by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(e) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the party's response to include information thereafter acquired, except as follows:

(1) A party is under a duty to seasonably supplement the party's response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at a hearing, the subject matter on which the witness is expected to testify, and the substance of the testimony.

(2) A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which the party:

(i) Knows the response was incorrect when made; or

(ii) Knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the administrative law judge, agreement of the