

## Federal Trade Commission

## § 3.51

two versions of the proposals in accordance with the procedures set forth in § 3.45(e).

(b) *Exhibit Index*. The first statement of proposed findings of fact and conclusions of law filed by a party shall include an index listing for each exhibit offered by the party and received in evidence:

- (1) The exhibit number, followed by
- (2) The exhibit's title or a brief description if the exhibit is untitled;
- (3) The transcript page at which the Administrative Law Judge ruled on the exhibit's admissibility or a citation to any written order in which such ruling was made;
- (4) The transcript pages at which the exhibit is discussed;
- (5) An identification of any other exhibit which summarizes the contents of the listed exhibit, or of any other exhibit of which the listed exhibit is a summary;
- (6) A cross-reference, by exhibit number, to any other portions of that document admitted as a separate exhibit on motion by any other party; and
- (7) A statement whether the exhibit has been accorded *in camera* treatment, and a citation to the *in camera* ruling.

(c) *Witness Index*. The first statement of proposed findings of fact and conclusions of law filed by a party shall also include an index to the witnesses called by that party, to include for each witness:

- (1) The name of the witness;
- (2) A brief identification of the witness;
- (3) The transcript pages at which any testimony of the witness appears; and
- (4) A statement whether the exhibit has been accorded *in camera* treatment, and a citation to the *in camera* ruling.

(d) *Stipulated indices*. As an alternative to the filing of separate indices, the parties are encouraged to stipulate to joint exhibit and witness indices at the time the first statement of proposed findings of fact and conclusions of law is due to be filed.

(e) *Rulings*. The record shall show the Administrative Law Judge's ruling on each proposed finding and conclusion, except when the order disposing of the

proceeding otherwise informs the parties of the action taken.

[48 FR 56945, Dec. 27, 1983, as amended at 52 FR 22294, June 11, 1987; 61 FR 50650, Sept. 26, 1996; 66 FR 17631, Apr. 3, 2001]

### Subpart F—Decision

#### § 3.51 Initial decision.

(a) *When filed and when effective*. The Administrative Law Judge shall file an initial decision within ninety (90) days after closing the hearing record pursuant to § 3.44(c), or within thirty (30) days after a default or the granting of a motion for summary decision or waiver by the parties of the filing of proposed findings of fact, conclusions of law and order, or within such further time as the Commission may by order allow upon written request from the Administrative Law Judge. In no event shall the initial decision be filed any later than one (1) year after the issuance of the administrative complaint, except that the Administrative Law Judge may, upon a finding of extraordinary circumstances, extend the one-year deadline for a period of up to sixty (60) days. Such extension, upon its expiration, may be continued for additional consecutive periods of up to sixty (60) days, provided that each additional period is based upon a finding by the Administrative Law Judge that extraordinary circumstances are still present. The pendency of any collateral federal court proceeding that relates to the administrative adjudication shall toll the one-year deadline for filing the initial decision. The ALJ may stay the administrative proceeding until resolution of the collateral federal court proceeding. Once issued, the initial decision shall become the decision of the Commission thirty (30) days after service thereof upon the parties or thirty (30) days after the filing of a timely notice of appeal, whichever shall be later, unless a party filing such a notice shall have perfected an appeal by the timely filing of an appeal brief or the Commission shall have issued an order placing the case on its own docket for review or staying the effective date of the decision.

(b) *Exhaustion of administrative remedies*. An initial decision shall not be considered final agency action subject

### §3.52

### 16 CFR Ch. I (1-1-04 Edition)

to judicial review under 5 U.S.C. 704. Any objection to a ruling by the Administrative Law Judge, or to a finding, conclusion or a provision of the order in the initial decision, which is not made a part of an appeal to the Commission shall be deemed to have been waived.

(c) *Content.* (1) An initial decision shall be based on a consideration of the whole record relevant to the issues decided, and shall be supported by reliable and probative evidence. The initial decision shall include a statement of findings (with specific page references to principal supporting items of evidence in the record) and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record (or those designated under paragraph (c)(2) of this section) and an appropriate rule or order. Rulings containing information granted *in camera* status pursuant to §3.45 shall be filed in accordance with §3.45(f).

(2) When more than one claim for relief is presented in an action, or when multiple parties are involved, the Administrative Law Judge may direct the entry of an initial decision as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of initial decision.

(d) *By whom made.* The initial decision shall be made and filed by the Administrative Law Judge who presided over the hearings, except when he shall have become unavailable to the Commission.

(e) *Reopening of proceeding by Administrative Law Judge; termination of jurisdiction.* (1) At any time prior to the filing of his initial decision, an Administrative Law Judge may reopen the proceeding for the reception of further evidence.

(2) Except for the correction of clerical errors or pursuant to an order of remand from the Commission, the jurisdiction of the Administrative Law Judge is terminated upon the filing of his initial decision with respect to

those issues decided pursuant to paragraph (c)(1) of this section.

[32 FR 8449, June 13, 1967, as amended at 35 FR 10656, July 1, 1970; 44 FR 62887, Nov. 1, 1979; 48 FR 52576, Nov. 21, 1983; 48 FR 54810, Dec. 7, 1983; 52 FR 22294, June 11, 1987; 61 FR 50650, Sept. 26, 1996; 66 FR 17631, Apr. 3, 2001]

#### §3.52 Appeal from initial decision.

(a) *Who may file; notice of intention.* Any party to a proceeding may appeal an initial decision to the Commission by filing a notice of appeal with the Secretary within ten (10) days after service of the initial decision. The notice shall specify the party or parties against whom the appeal is taken and shall designate the initial decision and order or part thereof appealed from. If a timely notice of appeal is filed by a party, any other party may thereafter file a notice of appeal within five (5) days after service of the first notice, or within ten (10) days after service of the initial decision, whichever period expires last.

(b) *Appeal brief.* (1) The appeal shall be in the form of a brief, filed within thirty (30) days after service of the initial decision, and shall contain, in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(ii) A concise statement of the case, which includes a statement of facts relevant to the issues submitted for review, and a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(iii) A specification of the questions intended to be urged;

(iv) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and the legal or other material relied upon; and

(v) A proposed form of order for the Commission's consideration instead of the order contained in the initial decision.