

shall be ruled upon by the administrative law judge.

(b) *Enforcement of a subpoena.* A motion for enforcement of a subpoena shall be made to the administrative law judge. Upon consideration of the motion and any response thereto, the administrative law judge shall recommend to the Commission in favor of or against enforcement. The administrative law judge's recommendation shall provide the basis therefor, and shall address each of the criteria necessary for enforcement of an administrative subpoena. After consideration of the administrative law judge's recommendation, the Commission shall determine whether initiation of enforcement proceedings is appropriate.

(c) *Application for subpoena grounded upon the Freedom of Information Act.* No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge or the Commission.

§ 207.111 Prehearing conference.

The administrative law judge may direct the attorney or other representatives for the parties to meet with him or her to consider any or all of the following:

- (a) Simplification and clarification of the issues;
- (b) Scope of the hearing;
- (c) Stipulations and admissions of either fact or the content and authenticity of documents;
- (d) Disclosure of the names of witnesses and the exchange of documents or other physical evidence that will be introduced in the course of the hearing; and
- (e) Such other matters as may aid in the orderly and expeditious disposition of the proceedings.

§ 207.112 Hearings.

(a) *Purpose of and scheduling of hearings.* An opportunity for a hearing before an administrative law judge shall be provided for each action initiated under § 207.102 of this subpart. The purpose of such hearing shall be to receive evidence and hear argument in order to determine whether a charged party has committed a prohibited act and if so, what sanctions are appropriate. Hear-

ings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed, unless otherwise ordered by the administrative law judge.

(b) *Joinder or consolidation.* The administrative law judge may order such joinder or consolidation of proceedings initiated under § 207.102 of this subpart at the administrative law judge's discretion.

(c) *Compliance with Administrative Procedure Act.* The administrative law judge shall conduct a hearing that complies with the requirements of section 554 of title 5 of the United States Code.

§ 207.113 The record.

(a) *Definition of the record.* The record shall consist of—

- (1) The charging letter and response, motions and responses, and other documents and exhibits properly filed with the Commission Secretary;
 - (2) All orders, notices, and the recommended or initial determinations of the administrative law judge;
 - (3) Orders, notices, and any final determination of the Commission;
 - (4) Hearing transcripts, and evidence admitted at the hearing; and
 - (5) Any other items certified into the record by the administrative law judge.
- (b) *Certification of the record.* The record shall be certified to the Commission by the administrative law judge upon his or her filing of the initial determination.

§ 207.114 Initial determination.

(a) *Time for filing of initial determination.* (1) Except as may otherwise be ordered by the Commission, within ninety (90) days of the date of issuance of the charging letter, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether each charged party has committed a prohibited act, and as to appropriate sanctions.

(2) The administrative law judge may request the Commission to extend the time period for issuance of the initial determination for good cause shown.

(b) *Contents of the initial determination.* The initial determination shall include the following:

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(1) An opinion making all necessary findings of fact and conclusions of law and the reasons therefor, and

(2) A statement that the initial determination shall become the determination of the Commission unless a party files a petition for review of the determination pursuant to § 207.115 or the Commission pursuant to § 207.116 of this subpart, orders on its own motion a review of the initial determination or certain issues therein.

(c) *Burden of proof.* A finding that a charged party committed a prohibited act shall be supported by clear and convincing evidence.

(d) *Effect of initial determination.* The initial determination shall become the determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission within such time orders review of the initial determination or certain issues therein pursuant to § 207.115 or 207.116 of this subpart or by order shall have changed the effective date of the initial determination. In the event an initial determination becomes the determination of the Commission, the parties shall be notified thereof by the Commission Secretary.

§ 207.115 Petition for review.

(a) *The petition and responses.* (1) Any party may request a review by the Commission of the initial determination by filing with the Commission Secretary a petition for review, except that a party who has defaulted may not petition for review of any issue regarding which the party is in default.

(2) Any person who wishes to obtain judicial review pursuant to 19 U.S.C. 1677f(f)(5) must first seek review by the Commission in accordance with the procedures set forth in this regulation governing petitions for review.

(3) Any petition for review must be filed within fourteen (14) days after service of the initial determination on the charged party. The petition shall:

- (i) Identify the party seeking review;
- (ii) Specify the issues upon which review is sought, including a statement as to whether review is sought of the initial determination regarding the commitment of a prohibited act, or of

the initial determination regarding sanctions;

(iii) Set forth a concise statement of the relevant law or material facts necessary for consideration of the stated issues; and

(iv) Present a concise argument setting forth the reasons why review is necessary or appropriate.

(4) Any issue not raised in the petition for review filed under this section will be deemed to have been abandoned and may be disregarded by the Commission.

(5) Any party may file a response to the petition within seven (7) days after service of the petition, except that a party who has defaulted may not file a response to any issue regarding which the party is in default.

(b) *Grant or denial of review.* (1) The Commission shall decide whether to grant a petition for review, in whole or in part, within forty-five (45) days of the service of the initial determination on the parties, or by such other time as the Commission may order.

(2) The Commission shall base its decision whether to grant a petition for review upon the petition and response thereto, without oral argument or further written submissions, unless the Commission shall order otherwise.

(3) The Commission shall grant a petition for review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for the filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has granted the petition shall be served by the Commission Secretary on all parties.

§ 207.116 Commission review on its own motion.

Within forty-five (45) days of the date of service of the initial determination, the Commission on its own initiative shall order review of an initial determination or certain issues therein upon request of any Commissioner.