

## § 10.69

(iii) Leaving them at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein;

(iv) Mailing them by registered or certified mail to him at his last known address; or

(v) Any other method whereby actual notice is given to him and the fees and mileage are timely made available.

(3) *Service upon other persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees and mileage may be effected by

(i) Handing them to a registered agent for service, or to any officer, director, or agent in charge of any office of such person;

(ii) Mailing them by registered or certified mail to any such representative at his last known address; or

(iii) Any other method whereby actual notice is given to any such representative and the fees and mileage are timely made available.

(f) *Enforcement of subpoenas.* Upon failure of any person to comply with a subpoena issued at the request of a party, that party may petition the Commission in its discretion to institute an action in an appropriate U.S. District Court for enforcement of that subpoena. When instituting an action to enforce a subpoena requested by the Division of Enforcement, the Commission, in its discretion, may delegate to the Director of the Division or any Commission employee designated by the Director and acting under his or her direction, or to any other employee of the Commission, authority to serve as the Commission's counsel in such subpoena enforcement action.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995; 63 FR 55794, Oct. 19, 1998; 63 FR 68829, Dec. 14, 1998; 64 FR 30903, June 9, 1999]

## § 10.69 Reopening hearings.

Any party may petition the Administrative Law Judge to reopen a hearing to adduce additional evidence at any time prior to issuance of the initial decision. The petition shall show that the evidence sought to be adduced is relevant and material and that there were reasonable grounds for failure to ad-

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duce such evidence at the time of the original hearing.

### Subpart F—Post Hearing Procedures; Initial Decisions

#### § 10.81 Filing the transcript of evidence.

As soon as practicable after the close of the hearing, the reporter shall transmit to the Proceedings Clerk the transcript of the testimony and the exhibits introduced in evidence at the hearing, except such portions of the transcript and exhibits as shall have been delivered to the Administrative Law Judge.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995]

#### § 10.82 Proposed findings and conclusions; briefs.

In any proceeding involving a hearing or an opportunity for hearing, the parties may file written proposed findings of fact and conclusions of law. Briefs may be filed in support of proposed findings and conclusions either as part of the same document or in a separate document. Any proposed finding or conclusion not briefed may be regarded as waived.

(a) *Proposed findings and briefs; time for filing.* Where the parties file proposed findings and briefs, the following schedule shall apply, unless otherwise determined by the Administrative Law Judge:

(1) *Initial submission.* Proposed findings, conclusions and an initial brief shall be served and filed by the Division of Enforcement and intervenors on the side of the Division of Enforcement within 45 days of the close of the hearing;

(2) *Answering submission.* Proposed findings, conclusions, and an answering brief shall be served and filed by the respondents and intervenors on the side of the respondents within 30 days after service of the initial findings, conclusions and briefs upon the respondents;

(3) *Reply.* A reply brief may be filed by the Division of Enforcement and intervenors on the side of the Division of Enforcement within 15 days after filing of the answering submission;

(4) *Submissions by limited participants.* Submissions by a person admitted as a

limited participant pursuant to §10.34 of these rules, are permitted under such terms as determined by the Administrative Law Judge.

(b) *Alternative procedures for submissions.* In his discretion the Administrative Law Judge may lengthen or shorten the periods for the filing of submissions, may direct simultaneous filings, may direct that respondents make the first filing, or may otherwise modify the procedures set forth in paragraph (a) of this section for purposes of a particular proceeding.

(c) *Briefs.* (1) The initial brief should include:

(i) A short, clear and concise statement of the case;

(ii) Specification of the questions to be resolved; and

(iii) The argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question.

(2) The answering brief shall generally follow the same style as prescribed for the initial brief but may omit a statement of the case if the party does not dispute the statement of the case contained in the initial brief;

(3) Reply briefs should be limited to rebuttal of matters in the prior briefs.

(d) *Content and form of proposed findings and conclusions.* (1) The findings of fact shall be confined to the material issues of fact presented on the record, with exact citations to the transcripts of record and exhibits in support of each proposed finding.

(2) The proposed findings and conclusions of the party filing initially shall be set forth in consecutively numbered paragraphs and all counter-statement of proposed findings and conclusions shall, in addition to any other matter, indicate which paragraphs of initial proposals are not disputed.

### § 10.83 Oral arguments.

In his discretion the Administrative Law Judge may hear oral arguments by the parties any time before he files his initial decision with the Proceedings Clerk. The argument shall be recorded and transcribed in written form.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995]

### § 10.84 Initial decision.

(a) *When initial decision is required.* The Administrative Law Judge shall make an initial decision in any proceeding in which a hearing is required to be conducted in conformity with the requirements of the Administrative Procedure Act, as codified, 5 U.S.C. 557. He shall make an initial decision in other proceedings in which the Commission directs him to make such a decision.

(b) *Filing of initial decision.* After the parties have been afforded an opportunity to file their proposed findings of fact, proposed conclusions of law and supporting briefs pursuant to §10.82, the Administrative Law Judge shall prepare upon the basis of the record in the proceeding and shall file with the Proceedings Clerk his or her decision, a copy of which shall be served by the Proceedings Clerk upon each of the parties.

(c) *Effect of initial decision.* The initial decision shall become the decision of the Commission 30 days after service thereof, except:

(1) The decision shall not become final as to any party who shall have filed a notice of appeal pursuant to §10.102 of these rules; and

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

In the event that the initial decision becomes the final decision of the Commission with respect to a party, that party shall be duly notified thereof by the Proceedings Clerk. The notice shall state that the time for filing a notice of appeal by the party has expired, that the Commission has determined not to review the initial decision on its own initiative and shall specify the date on which a final order in the proceeding shall become effective as against that party.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995; 61 FR 21954, May 13, 1996; 63 FR 55794, Oct. 19, 1998]