

§ 1025.53 Appeal from initial decision.

(a) *Who may file notice of intention.* Any party may appeal an Initial Decision to the Commission, provided that within ten (10) days after issuance of the Initial Decision such party files and serves a notice of intention to appeal.

(b) *Appeal brief.* An appeal is perfected by filing a brief within forty (40) days after service of the Initial Decision. The appeal brief must be served upon all parties. The appeal brief shall contain, in the order indicated, the following:

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

(2) A concise statement of the case;

(3) A statement containing the reasons why the party believes the Initial Decision is incorrect;

(4) The argument, presenting clearly the points of fact and law relied upon to support each reason why the Initial Decision is incorrect, with specific page references to the record and the legal or other material relied upon; and

(5) A proposed form of order for the Commission's consideration in lieu of the order contained in the Initial Decision.

(c) *Answering brief.* Within thirty (30) days after service of the appeal brief upon all parties, any party may file an answering brief which shall contain a subject index, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto. Such brief shall present clearly the points of fact and law relied upon in support of the reasons the party has for each position urged, with specific page references to the record and legal or other materials relied upon.

(d) *Participant's brief.* Within thirty (30) days after service of the appeal brief upon all parties, any participant may file a brief on appeal, presenting clearly the position urged.

(e) *Cross appeal.* If a timely notice of appeal is filed by a party, any other party may file a notice of cross appeal within ten (10) days of the date on

which the first notice of appeal was filed. Cross appeals shall be included in the answering brief and shall conform to the requirements for form, content, and filing specified in paragraph (b) of this section for an appeal brief. If an appeal is noticed but not perfected, no cross appeal shall be permitted and the notice of cross appeal shall be deemed void.

(f) *Reply brief.* A reply brief shall be limited to rebuttal of matters presented in answering briefs, including matters raised in cross-appeals. A reply brief shall be filed and served within fourteen (14) days after service of an answering brief, or on the day preceding the oral argument, whichever comes first.

(g) *Oral argument.* The purpose of an oral argument is to emphasize and clarify the issues. The Commission may order oral argument upon request of any party or upon its own initiative. A transcript of oral arguments shall be prepared. A Commissioner absent from an oral argument may participate in the consideration of and decision on the appeal.

§ 1025.54 Review of initial decision in absence of appeal.

The Commission may, by order, review a case not otherwise appealed by a party. Should the Commission so order, the parties shall, and participants may, file briefs in accordance with § 1025.53, except that the Commission may, in its discretion, establish a different briefing schedule in its order. The Commission shall issue its order within forty (40) days after issuance of the Initial Decision. The order shall set forth the issues which the Commission will review and may make provision for the filing of briefs. If the filing of briefs is scheduled by the Commission, the order shall designate which party or parties shall file the initial brief and which party or parties may thereafter file an answering brief, or the order may designate the simultaneous filing of briefs by the parties.

§ 1025.55 Final decision on appeal or review.

(a) *Consideration of record.* Upon appeal from or review of an Initial Decision, the Commission shall consider

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the record as a whole or such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition, shall, to the extent necessary or desirable, exercise all the powers which it could have exercised if it had made the Initial Decision.

(b) *Rendering of final decision.* In rendering its decision, the Commission shall adopt, modify, or set aside the findings, conclusions, and order contained in the Initial Decision, and shall include in its Final Decision a statement of the reasons for its action and any concurring or dissenting opinions. The Commission shall issue an order reflecting its Final Decision.

(c) Except as otherwise ordered by the Commission, the Commission shall endeavor to file its Decision within ninety (90) days after the filing of all briefs or after receipt of transcript of the oral argument, whichever is later.

§ 1025.56 Reconsideration.

Within twenty (20) days after issuance of a Final Decision and Order by the Commission, any party may file a petition for reconsideration of such decision or order, setting forth the relief desired and the grounds in support of the petition. Any petition filed under this section must be confined to new questions raised by the decision or order upon which the petitioner had no previous opportunity to argue. Any party desiring to oppose such a petition shall file an opposition to the petition within ten (10) days after service of the petition. The filing of a petition for reconsideration shall not stay the effective date of the Final Decision and Order or toll the running of any statutory time period affecting the Decision or Order unless specifically ordered by the Commission.

§ 1025.57 Effective date of order.

(a) *Orders in proceedings arising under the Consumer Product Safety Act.* An order of the Commission in proceedings arising under the Consumer Product Safety Act becomes effective upon receipt, unless otherwise ordered by the Commission.

(b) *Orders in proceedings arising under the Flammable Fabrics Act—(1) Consent orders.* An order in proceedings arising

under the Flammable Fabrics Act, which has been issued following the Commission's acceptance of an offer of settlement in accordance with § 1025.26 of these rules, becomes effective upon receipt of notice of Commission acceptance, unless otherwise ordered by the Commission.

(2) *Litigated orders.* All other orders in proceedings arising under the Flammable Fabrics Act become effective upon the expiration of the statutory period for court review specified in Section 5(c) of the Federal Trade Commission Act, title 15, United States Code, section 45(c), or, if a petition for review has been filed, upon a court's affirmation of the Commission's order.

(c) *Consequences of failure to comply with effective order.* A respondent against whom an order has been issued who is not in compliance with such order on or after the date the order becomes effective is in violation of such order and is subject to an immediate action for the civil or criminal penalties provided for in the applicable statute.

§ 1025.58 Reopening of proceedings.

(a) *General.* Any proceedings may be reopened by the Commission at any time, either on its own initiative or upon petition of any party to the proceedings.

(b) *Exception.* Proceedings arising under the Flammable Fabrics Act shall not be reopened while pending in a United States court of appeals on a petition for review after the transcript of the record has been filed, or while pending in the Supreme Court of the United States.

(c) *Commission-originated reopening—*
(1) *Before effective date of order.* At any time before the effective date of a Commission order, the Commission may, upon its own initiative and without prior notice to the parties, reopen any proceedings and enter a new decision or order to modify or set aside, in whole or in part, the decision or order previously issued.

(2) *After effective date of order.* Whenever the Commission is of the opinion that changed conditions of fact or law or the public interest may require that a Commission decision or order be altered, modified, or set aside in whole or