

### § 4.3

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a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may go forward as though the document had not been filed.

(g) *Authority to reject documents for filing.* The Secretary of the Commission may reject a document for filing that fails to comply with the Commission's rules. In cases of extreme hardship, the Secretary may excuse compliance with a rule regarding the filing of documents if the Secretary determines that the non-compliance would not interfere with the functions of the Commission.

[74 FR 1835, Jan. 13, 2009, as amended at 74 FR 20209, May 1, 2009]

#### § 4.3 Time.

(a) *Computation.* Computation of any period of time prescribed or allowed by the rules in this chapter, by order of the Commission or an Administrative Law Judge, or by any applicable statute, shall begin with the first business day following that on which the act, event, or development initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national holiday, or other day on which the office of the Commission is closed, the period shall run until the end of the next following business day. When such period of time, with the intervening Saturdays, Sundays, and national holidays counted, is seven (7) days or less, each of the Saturdays, Sundays, and such holidays shall be excluded from the computation. When such period of time, with the intervening Saturdays, Sundays, and national holidays counted, exceeds seven (7) days, each of the Saturdays, Sundays, and such holidays shall be included in the computation.

(b) *Extensions.* For good cause shown, the Administrative Law Judge may, in any proceeding before him or her: (1) Extend any time limit prescribed or allowed by order of the Administrative Law Judge or the Commission (if the Commission order expressly authorizes the Administrative Law Judge to extend time periods); or (2) extend any time limit prescribed by the rules in this chapter, except those governing motions directed to the Commission,

interlocutory appeals and initial decisions and deadlines that the rules expressly authorize only the Commission to extend. Except as otherwise provided by law, the Commission, for good cause shown, may extend any time limit prescribed by the rules in this chapter or by order of the Commission or an Administrative Law Judge, provided, however, that in a proceeding pending before an Administrative Law Judge, any motion on which he or she may properly rule shall be made to the Administrative Law Judge. Notwithstanding the above, where a motion to extend is made after the expiration of the specified period, the motion may be considered where the untimely filing was the result of excusable neglect.

(c) *Additional time after service by mail.* Whenever a party in an adjudicative proceeding under part 3 of the rules is required or permitted to do an act within a prescribed period after service of a paper upon it and the paper is served by first-class mail pursuant to § 4.4(a)(3) or § 4.4(b), 3 days shall be added to the prescribed period.

(d) *Date of filing.* Documents must be received in the office of the Secretary of the Commission by 5:00 p.m. Eastern time to be deemed filed that day. Any documents received by the agency after 5:00 p.m. will be deemed filed the following business day.

[32 FR 8456, June 13, 1967, as amended at 42 FR 30150, June 13, 1977; 50 FR 28097, July 10, 1985; 50 FR 53306, Dec. 31, 1985; 66 FR 17633, Apr. 3, 2001; 74 FR 1836, Jan. 13, 2009]

#### § 4.4 Service.

(a) *By the Commission.* (1) Service of complaints, initial decisions, final orders and other processes of the Commission under 15 U.S.C. 45 may be effected as follows:

(i) *By registered or certified mail.* A copy of the document shall be addressed to the person, partnership, corporation or unincorporated association to be served at his, her or its residence or principal office or place of business, registered or certified, and mailed; service under this provision is complete upon delivery of the document by the Post Office; or

(ii) *By delivery to an individual.* A copy thereof may be delivered to the person to be served, or to a member of

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the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation or unincorporated association to be served; service under this provision is complete upon delivery as specified herein; or

(iii) *By delivery to an address.* A copy thereof may be left at the principal office or place of business of the person, partnership, corporation, or unincorporated association, or it may be left at the residence of the person or of a member of the partnership or of an executive officer or director of the corporation, or unincorporated association to be served; service under this provision is complete upon delivery as specified herein.

(2) All other orders and notices, including subpoenas, orders requiring access, orders to file annual and special reports, and notices of default, may be served by any method reasonably certain to inform the affected person, partnership, corporation or unincorporated association, including any method specified in paragraph (a)(1), except that civil investigative demands may only be served in the manner provided by section 20(c)(7) of the FTC Act (in the case of service on a partnership, corporation, association, or other legal entity) or section 20(c)(8) of the FTC Act (in the case of a natural person). Service under this provision is complete upon delivery by the Post Office or upon personal delivery.

(3) All documents served in adjudicative proceedings under the Commission's Rules of Practice, 16 CFR part 3, other than complaints and initial, interlocutory, and final decisions and orders, may be served by personal delivery (including delivery by courier), or by first-class mail, and shall be deemed served on the day of personal delivery or the day of mailing.

(4) When a party has appeared in a proceeding by an attorney, service on that individual of any document pertaining to the proceeding other than a complaint shall be deemed service upon the party. However, service of those documents specified in paragraph (a)(1) of this section shall first be attempted in accordance with the provision of paragraphs (a)(1) (i), (ii), and (iii) of this section.

(b) *By other parties.* Service of documents by parties other than the Commission shall be by delivering copies thereof as follows: Upon the Commission, by personal delivery (including delivery by courier) or delivery by first-class mail to the Office of the Secretary of the Commission and, in adjudicative proceedings under the Commission's Rules of Practice, 16 CFR part 3, to the lead complaint counsel, the Assistant Director in the Bureau of Competition, the Associate Director in the Bureau of Consumer Protection, or the Director of the Regional Office of complaint counsel, with a copy to the Administrative Law Judge. Upon a party other than the Commission or Commission counsel, service shall be by personal delivery (including delivery by courier) or delivery by first-class mail with a copy to the Administrative Law Judge. If the party is an individual or partnership, delivery shall be to such individual or a member of the partnership; if a corporation or unincorporated association, to an officer or agent authorized to accept service of process therefor. Personal service includes handling the document to be served to the individual, partner, officer, or agent; leaving it at his or her office with a person in charge thereof; or, if there is no one in charge or if the office is closed or if the party has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Documents served in adjudicative proceedings under part 3 of the Commission's Rules of Practice shall be deemed served on the day of personal service or the day of mailing. All other documents shall be deemed served on the day of personal service or on the day of delivery by the Post Office.

(c) *Proof of service.* In an adjudicative proceeding under the Commission's Rules of Practice, 16 CFR part 3, papers presented for filing shall contain proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service.

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Proof of service must appear on or be affixed to the papers filed.

[50 FR 28097, July 10, 1985, as amended at 66 FR 17633, Apr. 3, 2001; 66 FR 20527, Apr. 23, 2001]

#### § 4.5 Fees.

(a) *Deponents and witnesses.* Any person compelled to appear in person in response to subpoena shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) *Presiding officers.* Officers before whom depositions are taken shall be entitled to the same fees as are paid for like services in the courts of the United States.

(c) *Responsibility.* The fees and mileage referred to in this section shall be paid by the party at whose instance deponents or witnesses appear.

[32 FR 8456, June 13, 1967]

#### § 4.6 Cooperation with other agencies.

It is the policy of the Commission to cooperate with other governmental agencies to avoid unnecessary overlapping or duplication of regulatory functions.

[32 FR 8456, June 13, 1967]

#### § 4.7 Ex parte communications.

(a) *Definitions.* For purposes of this section, *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding.

(b) *Prohibited ex parte communications.* While a proceeding is in adjudicative status within the Commission, except to the extent required for the disposition of *ex parte* matters as authorized by law:

(1) No person not employed by the Commission, and no employee or agent of the Commission who performs investigative or prosecuting functions in adjudicative proceedings, shall make or knowingly cause to be made to any member of the Commission, or to the Administrative Law Judge, or to any other employee who is or who reasonably may be expected to be involved in the decisional process in the pro-

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ceeding, an *ex parte* communication relevant to the merits of that or a factually related proceeding; and

(2) No member of the Commission, the Administrative Law Judge, or any other employee who is or who reasonably may be expected to be involved in the decisional process in the proceeding, shall make or knowingly cause to be made to any person not employed by the Commission, or to any employee or agent of the Commission who performs investigative or prosecuting functions in adjudicative proceedings, an *ex parte* communication relevant to the merits of that or a factually related proceeding.

(c) *Procedures.* A Commissioner, the Administrative Law Judge or any other employee who is or who may reasonably be expected to be involved in the decisional process who receives or who make or knowingly causes to be made, a communication prohibited by paragraph (b) of this section shall promptly provide to the Secretary of the Commission:

(1) All such written communications;

(2) Memoranda stating the substance of and circumstances of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (c) (1) and (2) of this section. The Secretary shall make relevant portions of any such materials part of the public record of the Commission, pursuant to § 4.9, and place them in the docket binder of the proceeding to which it pertains, but they will not be considered by the Commission as part of the record for purposes of decision unless introduced into evidence in the proceeding. The Secretary shall also send copies of the materials to or otherwise notify all parties to the proceeding.

(d) *Sanctions.* (1) Upon receipt of an *ex parte* communication knowingly made or knowingly caused to be made by a party and prohibited by paragraph (b) of this section, the Commission, Administrative Law Judge, or other employee presiding over the proceeding may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the Commission, require the party