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AUTHORITY: 15 U.S.C. 46, unless otherwise noted.

SOURCE: 32 FR 8449, June 13, 1967, unless otherwise noted.

### Subpart A—Scope of Rules; Nature of Adjudicative Proceedings

#### § 3.1 Scope of the rules in this part; expedition of proceedings.

The rules in this part govern procedure in formal adjudicative proceedings. To the extent practicable and consistent with requirements of law, the Commission's policy is to conduct such proceedings expeditiously. In the conduct of such proceedings the Administrative Law Judge and counsel for all parties shall make every effort at each stage of a proceeding to avoid delay. In the event of a scheduling conflict between a proceeding in which the Commission also has sought or is seeking relief under Section 13(b) of the FTC Act, 15 U.S.C. 53(b), and another proceeding, the proceeding in which the Commission also has sought or is seeking relief under Section 13(b) shall take precedence. The Commission, at any time, or the Administrative Law Judge at any time prior to the filing of his or her initial decision, may, with

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the consent of the parties, shorten any time limit prescribed by these Rules of Practice.

[74 FR 20208, May 1, 2009]

#### § 3.2 Nature of adjudicative proceedings.

Adjudicative proceedings are those formal proceedings conducted under one or more of the statutes administered by the Commission which are required by statute to be determined on the record after opportunity for an agency hearing. The term includes hearings upon objections to orders relating to the promulgation, amendment, or repeal of rules under sections 4, 5 and 6 of the Fair Packaging and Labeling Act, but does not include rulemaking proceedings up to the time when the Commission determines under § 1.26(g) of this chapter that objections sufficient to warrant the holding of a public hearing have been filed. The term also includes proceedings for the assessment of civil penalties pursuant to § 1.94 of this chapter. The term does not include other proceedings such as negotiations for and Commission consideration of the entry of consent orders; investigational hearings as distinguished from proceedings after the issuance of a complaint; requests for extensions of time to comply with final orders or other proceedings involving compliance with final orders; proceedings for the promulgation of industry guides or trade regulation rules; or the promulgation of substantive rules and regulations.

[74 FR 1820, Jan. 13, 2009]

#### Subpart B—Pleadings

##### § 3.11 Commencement of proceedings.

(a) *Complaint*. Except as provided in § 3.13, an adjudicative proceeding is commenced when an affirmative vote is taken by the Commission to issue a complaint.

(b) *Form of complaint*. The Commission's complaint shall contain the following:

(1) Recital of the legal authority and jurisdiction for institution of the proceeding, with specific designation of the statutory provisions alleged to have been violated;

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(2) A clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the type of acts or practices alleged to be in violation of the law;

(3) Where practical, a form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint; and

(4) Notice of the specific date, time and place for the evidentiary hearing. Unless a different date is determined by the Commission, the date of the evidentiary hearing shall be 5 months from the date of the administrative complaint in a proceeding in which the Commission, in an ancillary proceeding, has sought or is seeking relief pursuant to Section 13(b) of the FTC Act, 15 U.S.C. 53(b), and 8 months from the date of issuance of the administrative complaint in all other proceedings.

[74 FR 1820, Jan. 13, 2009]

### § 3.12 Answer.

(a) *Time for filing.* A respondent shall file an answer within 14 days after being served with the complaint.

(b) *Content of answer.* An answer shall conform to the following:

(1) *If allegations of complaint are contested.* An answer in which the allegations of a complaint are contested shall contain:

(i) A concise statement of the facts constituting each ground of defense;

(ii) Specific admission, denial, or explanation of each fact alleged in the complaint or, if the respondent is without knowledge thereof, a statement to that effect. Allegations of a complaint not thus answered shall be deemed to have been admitted.

(2) *If allegations of complaint are admitted.* If the respondent elects not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that the respondent admits all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such an answer, the

respondent may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 3.46.

(c) *Default.* Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of the respondent's right to appear and contest the allegations of the complaint and to authorize the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

[74 FR 1820, Jan. 13, 2009]

### § 3.13 Adjudicative hearing on issues arising in rulemaking proceedings under the Fair Packaging and Labeling Act.

(a) *Notice of hearing.* When the Commission, acting under § 1.26(g) of this chapter, determines that objections which have been filed are sufficient to warrant the holding of an adjudicative hearing in rulemaking proceedings under the Fair Packaging and Labeling Act, or when the Commission otherwise determines that the holding of such a hearing would be in the public interest, a hearing will be held before an Administrative Law Judge for the purpose of receiving evidence relevant and material to the issues raised by such objections or other issues specified by the Commission. In such case the Commission will publish a notice in the FEDERAL REGISTER containing a statement of:

(1) The provisions of the rule or order to which objections have been filed;

(2) The issues raised by the objections or the issues on which the Commission wishes to receive evidence;

(3) The time and place for hearing, the time to be at least thirty (30) days after publication of the notice; and

(4) The time within which, and the conditions under which, any person who petitioned for issuance, amendment, or repeal of the rule or order, or any person who filed objections sufficient to warrant the holding of the hearing, or any other interested person, may file notice of intention to participate in the proceeding.

(b) *Parties.* Any person who petitions for issuance, amendment, or repeal of a