

## Federal Trade Commission

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the respondent's answer and request for a hearing. In fixing the time, date and place of the hearing, the presiding official shall give due regard to the respondent's need for adequate time to prepare a defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

### **§ 5.61 Prehearing procedures; motions; interlocutory appeals; summary decision; discovery; compulsory process.**

Because of the nature of the issues involved in proceedings under this part, the Commission anticipates that extensive motions, prehearing proceedings and discovery will not be required in most cases. For this reason, detailed procedures will not be established under this part. However, to the extent deemed warranted by the presiding official, prehearing conferences, motions, interlocutory appeals, summary decisions, discovery and compulsory process shall be permitted and shall be governed, where appropriate, by the provisions set forth in subparts C and D, part 3, of the Commission's Rules of Practice.

### **§ 5.62 Hearing rights of respondent.**

In any hearing under this subpart, the respondent shall have the right:

- (a) To be represented by counsel;
- (b) To present and cross-examine witnesses and submit evidence;
- (c) To present objections, motions, and arguments, oral or written; and
- (d) To obtain a transcript of the proceedings on request.

### **§ 5.63 Evidence; transcript; *in camera* orders; proposed findings of fact and conclusions of law.**

Sections 3.43, 3.44, 3.45, and 3.46 of the Commission's Rules of Practice shall govern, respectively, the receipt and objections to admissibility of evidence, the transcript of the hearing, *in camera* orders and the submission and consideration of proposed findings of fact and conclusions of law except that (a) a copy of the hearing transcript shall be provided the respondent; and (b) the Commission has the burden of establishing, by a preponderance of the evidence on the record as a whole, the al-

legations stated in the order to show cause.

### **§ 5.64 Initial decision.**

Section 3.51 of the Commission's Rules of Practice shall govern the initial decision in proceedings under this subpart, except that the determination of the Administrative Law Judge must be supported by a preponderance of the evidence.

### **§ 5.65 Review of initial decision.**

Appeals from the initial decision of the Administrative Law Judge or review by the Commission in the absence of an appeal shall be governed by §§ 3.52 and 3.53 of the Commission's Rules of Practice except that oral arguments shall be nonpublic subject to the exceptions stated in § 3.52 of this part.

### **§ 5.66 Commission decision and reconsideration.**

The Commission's decision and any reconsideration or reopening of the proceeding shall be governed by §§ 2.51, 3.54, 3.55, 3.71 and 3.72 of the Commission's Rules of Practice, except that (a) if the initial decision is modified or reversed, the Commission shall specify such findings of fact and conclusions of law as are different from those of the presiding official; and (b) references therein to "court of appeals" shall be deemed for purposes of proceedings under this part to refer to "district court."

### **§ 5.67 Sanctions.**

In the case of any respondent who fails to request a hearing after receiving adequate notice of the allegations pursuant to § 5.57 or who is found in the Commission's final decision to have violated 18 U.S.C. 207 (a), (b), or (c), the Commission may order such disciplinary action as it deems warranted, including:

- (a) Reprimand;
- (b) Suspension from participating in a particular matter or matters before the Commission; or
- (c) Prohibiting the respondent from making, with the intent to influence, any formal or informal appearance before, or any oral or written communication to, the Commission or its staff on any matter or business on behalf of

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any other person (except the United States) for a period not to exceed five (5) years.

### § 5.68 Judicial review.

A respondent against whom the Commission has issued an order imposing disciplinary action under this part may seek judicial review of the Commission's determination in an appropriate United States District Court by filing a petition for such review within sixty (60) days of receipt of notice of the Commission's final decision.

## PART 6—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL TRADE COMMISSION

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AUTHORITY: 29 U.S.C. 794, 794d.

SOURCE: 52 FR 45628, Dec. 1, 1987, unless otherwise noted.

### § 6.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Exec-

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utive agencies or the United States Postal Service. This part also implements section 508 of the Rehabilitation Act of 1973, as amended, with respect to the accessibility of electronic and information technology developed, procured, maintained, or used by the agency.

[52 FR 45628, Dec. 1, 1987, as amended at 66 FR 51863, Oct. 11, 2001]

### § 6.102 Application.

This part applies to all programs or activities conducted by the Commission except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

### § 6.103 Definitions.

For purposes of this part, the term—

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and to enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Commission* means the Federal Trade Commission.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the Commission's alleged discriminatory action in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Electronic and information technology* includes information technology and