

§ 201.250 Dispositive motions.

(a) *Motion for a ruling on the pleadings.* No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. The hearing officer shall promptly grant or deny the motion.

(b) *Motion for summary disposition in 30- and 75-day proceedings.* In any proceeding under the 30- or 75-day timeframe designated pursuant to § 201.360(a)(2), after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to § 201.230, any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to § 201.323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law. The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

(c) *Motion for summary disposition in 120-day proceedings.* In any proceeding under the 120-day timeframe designated pursuant to § 201.360(a)(2), after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to § 201.230, a party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, deposition transcripts, documentary evidence or facts officially noted pursuant to § 201.323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a mat-

ter of law. A motion for summary disposition shall be made only with leave of the hearing officer. Leave shall be granted only for good cause shown and if consideration of the motion will not delay the scheduled start of the hearing. The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

(d) *Motion for a ruling as a matter of law following completion of case in chief.* Following the interested division's presentation of its case in chief, any party may make a motion, asserting that the movant is entitled to a ruling as a matter of law on one or more claims or defenses.

(e) *Length limitation for dispositive motions.* Dispositive motions, together with any supporting memorandum of points and authorities (exclusive of any declarations, affidavits, deposition transcripts or other attachments), shall not exceed 9,800 words. Requests for leave to file motions and accompanying documents in excess of 9,800 words are disfavored. A double-spaced motion that does not, together with any accompanying memorandum of points and authorities, exceed 35 pages in length, inclusive of pleadings incorporated by reference (but excluding any declarations, affidavits, deposition transcripts or attachments) in the dispositive motion, is presumptively considered to contain no more than 9,800 words. Any motion that exceeds this page limit must include a certificate by the attorney, or an unrepresented party, stating that the brief complies with the word limit set forth in this paragraph and stating the number of words in the motion. The person preparing the certificate may rely on the word count of a word-processing program to prepare the document.

(f) *Opposition and reply length limitations and response time.* A non-moving party may file an opposition to a dispositive motion and the moving party may thereafter file a reply.

(1) *Length limitations.* Any opposition must comply with the length limitations applicable to the movant's motion as set forth in paragraph (e) of this section. Any reply must comply with the length limitations set forth in § 201.154(c).

(2) *Response time.* (i) For motions under paragraphs (a), (b), and (d) of this section, the response times set forth in § 201.154(b) apply to any opposition and reply briefs.

(ii) For motions under paragraph (c) of this section, any opposition must be filed within 21 days after service of such a motion, and any reply must be filed within seven days after service of any opposition.

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RULES REGARDING HEARINGS

§ 201.300 Hearings.

Hearings for the purpose of taking evidence shall be held only upon order of the Commission. All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

§ 201.301 Hearings to be public.

All hearings, except hearings on applications for confidential treatment filed pursuant to § 201.190, hearings held to consider a motion for a protective order pursuant to § 201.322, and hearings on *ex parte* application for a temporary cease-and-desist order, shall be public unless otherwise ordered by the Commission on its own motion or the motion of a party. No hearing shall be nonpublic where all respondents request that the hearing be made public.

§ 201.302 Record of hearings.

(a) *Recordation.* Unless ordered otherwise by the hearing officer or the Commission, all hearings shall be recorded and a written transcript thereof shall be prepared.

(b) *Availability of a transcript.* Transcripts of public hearings shall be available for purchase at prescribed rates. Transcripts of nonpublic proceedings, and transcripts subject to a protective order pursuant to § 201.322, shall be available for purchase only by parties; provided, however, that any person compelled to submit data or

evidence in a hearing may purchase a copy of his or her own testimony.

(c) *Transcript correction.* Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as directed by the Commission or the hearing officer, a party or witness may make a motion to correct the transcript. Proposed corrections of the transcript may be submitted to the hearing officer by stipulation pursuant to § 201.324, or by motion. Upon notice to all parties to the proceeding, the hearing officer may, by order, specify corrections to the transcript.

§ 201.310 Failure to appear at hearings: Default.

Any person named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed who fails to appear at a hearing of which he or she has been duly notified may be deemed to be in default pursuant to § 201.155(a). A party may make a motion to set aside a default pursuant to § 201.155(b).

§ 201.320 Evidence: Admissibility.

(a) Except as otherwise provided in this section, the Commission or the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unreliable.

(b) Subject to § 201.235, evidence that constitutes hearsay may be admitted if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair.

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§ 201.321 Evidence: Objections and offers of proof.

(a) *Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling. Such exceptions will be deemed waived on appeal to the Commission, however, unless raised:

(1) Pursuant to interlocutory review in accordance with § 201.400;

(2) In a proposed finding or conclusion filed pursuant to § 201.340; or