

## § 501.737

or transaction subject to a hearing under this subpart, and imposing sanctions available under Federal Rule of Civil Procedure 37(b)(2) (Fed. R. Civ. P. 37(b)(2), 28 U.S.C.) for a party's failure to comply with discovery requests;

(i) Establishing time, place, and manner limitations on the attendance of the public and the media for any hearing; and

(j) Setting fees and expenses for witnesses, including expert witnesses.

### **§ 501.737 Adjustments of time, postponements and adjournments.**

(a) *Availability.* Except as otherwise provided by law, the Administrative Law Judge or the Secretary's designee, as appropriate, at any time prior to the filing of his or her decision, may, for good cause and in the interest of justice, modify any time limit prescribed by this subpart and may, consistent with paragraph (b) of this section, postpone or adjourn any hearing.

(b) *Limitations on postponements, adjournments and adjustments.* A hearing shall begin at the time and place ordered, provided that, within the limits provided, the Administrative Law Judge or the Secretary's designee, as appropriate, may for good cause shown postpone the commencement of the hearing or adjourn a convened hearing for a reasonable period of time.

(1) *Additional considerations.* In considering a motion for postponement of the start of a hearing, adjournment once a hearing has begun, or extensions of time for filing papers, the Administrative Law Judge or the Secretary's designee, as appropriate, shall consider, in addition to any other factors:

(i) The length of the proceeding to date;

(ii) The number of postponements, adjournments or extensions already granted;

(iii) The stage of the proceedings at the time of the request; and

(iv) Any other matter as justice may require.

(2) *Time limit.* Postponements, adjournments or extensions of time for filing papers shall not exceed 21 days unless the Administrative Law Judge or the Secretary's designee, as appropriate, states on the record or sets forth in a written order the reasons

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why a longer period of time is necessary.

### **§ 501.738 Disqualification and withdrawal of Administrative Law Judge.**

(a) *Notice of disqualification.* If at any time an Administrative Law Judge or Secretary's designee believes himself or herself to be disqualified from considering a matter, the Administrative Law Judge or Secretary's designee, as appropriate, shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

(b) *Motion for Withdrawal.* Any party who has a reasonable, good faith basis to believe an Administrative Law Judge or Secretary's designee has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the Administrative Law Judge or Secretary's designee, as appropriate, that the Administrative Law Judge or Secretary's designee withdraw. The motion shall be accompanied by a statement subject to 18 U.S.C. 1001 setting forth in detail the facts alleged to constitute grounds for disqualification. If the Administrative Law Judge or Secretary's designee finds himself or herself qualified, he or she shall so rule and shall continue to preside over the proceeding.

### **§ 501.739 Record in proceedings before Administrative Law Judge; retention of documents; copies.**

(a) *Recordation.* Unless otherwise ordered by the Administrative Law Judge, all hearings shall be recorded and a written transcript thereof shall be prepared.

(1) *Availability of a transcript.* Transcripts of hearings shall be available for purchase.

(2) *Transcript correction.* Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as directed by the Administrative Law Judge, a party or witness may make a motion to correct the transcript. Proposed corrections of the transcript may be submitted to the Administrative Law Judge by stipulation pursuant to § 501.732(c), or by motion. Upon notice to all parties to the proceeding, the Administrative Law

Judge may, by order, specify corrections to the transcript.

(b) *Contents of the record.* The record of each hearing shall consist of:

(1) The Order Instituting Proceedings, Answer to Order Instituting Proceedings, Notice of Hearing and any amendments thereto;

(2) Each application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(3) Each stipulation, transcript of testimony, interrogatory, deposition, and document or other item admitted into evidence;

(4) With respect to a request to disqualify an Administrative Law Judge or to allow the Administrative Law Judge's withdrawal under § 501.738, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(5) All proposed findings and conclusions;

(6) Each written order issued by the Administrative Law Judge; and

(7) Any other document or item accepted into the record by the Administrative Law Judge.

(c) Retention of documents not admitted. Any document offered as evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be part of the record. The Administrative Law Judge shall retain any such document until the later of the date the proceeding becomes final, or the date any judicial review of the final proceeding is no longer available.

(d) *Substitution of copies.* A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (c) of this section.

#### § 501.740 Decision of Administrative Law Judge.

The Administrative Law Judge shall prepare a decision that constitutes his or her final disposition of the proceedings.

(a) *Content.* (1) The Administrative Law Judge shall determine whether or not the respondent has violated any provision of parts 500 and 515 of this chapter or the provisions of any license, ruling, regulation, order, direc-

tion or instruction issued by or under the authority of the Secretary pursuant to part 500 or 515 of this chapter or otherwise under the Trading with the Enemy Act.

(2) The Administrative Law Judge's decision shall include findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record.

(3) (i) Upon a finding of violation, the Administrative Law Judge shall award an appropriate monetary civil penalty in an amount consistent with the Penalty Guidelines published by the Director.

(ii) Notwithstanding paragraph (a)(3)(i) of this section, the Administrative Law Judge:

(A) Shall provide an opportunity for a respondent to assert his or her inability to pay a penalty, or financial hardship, by filing with the Administrative Law Judge a financial disclosure statement subject to 18 U.S.C. 1001 that sets forth in detail the basis for the financial hardship or the inability to pay; and

(B) Shall consider any such filing in determining the appropriate monetary civil penalty.

(b) *Administrative Law Judge's decision*—(1) *Service.* The Administrative Law Judge shall serve his or her decision on the respondent and on the Director through the Office of Chief Counsel, and shall file a copy of the decision with the Secretary's designee.

(2) *Filing of report with the Secretary's designee.* If the respondent or Director files a petition for review pursuant to § 501.741, or upon a request from the Secretary's designee, the Administrative Law Judge shall file his or her report with the Secretary's designee not later than 20 days after service of his or her decision on the parties. The report shall consist of the record, including the Administrative Law Judge's decision, and any petition from the respondent or the Director seeking review.

(3) *Correction of errors.* Until the Administrative Law Judge's report has been directed for review by the Secretary's designee or, in the absence of a direction for review, until the decision