

to run de novo from the final judicial determination, except that if no petition for certiorari has been filed following affirmance of the order of the Commission by a court of appeals, the compliance report shall be due the day following the date on which the time expires for the filing of such petition. Staff of the Bureau of Competition and Consumer Protection will review such reports of compliance and may advise each respondent whether the staff intends to recommend that the Commission take any enforcement action. The Commission may, however, institute proceedings, including certification of facts to the Attorney General pursuant to the provisions of section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l)) and section 11(1) of the Clayton Act, as amended (15 U.S.C. 21(1)), to enforce compliance with an order, without advising a respondent whether the actions set forth in a report of compliance evidence compliance with the Commission's order or without prior notice of any kind to a respondent.

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PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

9. The authority for part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

10. In § 3.45 paragraphs (a), (b), and (c) are revised to read as follows:

§ 3.45 In camera orders.

(a) *Definition.* Except as hereinafter provided, material made subject to an in camera order will be kept confidential and not placed on the public record of the proceeding in which it was submitted. Only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review may have access thereto, provided that the Administrative Law Judge, the Commission and reviewing courts may disclose such in camera material to the extent necessary for the proper disposition of the proceeding.

(b) *In camera treatment of material.* The Administrative Law Judge may order material, or portions thereof, offered into evidence, whether admitted or rejected, to be placed in camera on a finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting their in camera treatment. This finding shall be based on the standard articulated in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); see also *Bristol-Myers Co.*,

90 F.T.C. 455, 456 (1977), which established a three-part test that was modified by *General Foods Corp.*, 95 F.T.C. 352, 355 (1980). No material, or portion thereof offered into evidence, whether admitted or rejected, may be withheld from the public record unless it falls within the scope of an order issued in accordance with this section, stating the date on which in camera treatment will expire, and including:

- (1) A description of the material;
- (2) A statement of the reasons for granting in camera treatment; and
- (3) A statement of the reasons for the date on which in camera treatment will expire. Such expiration date may not be omitted except in unusual circumstances, in which event the order shall state with specificity the reasons why the need for confidentiality of the material, or portion thereof at issue is not likely to decrease over time, and any other reasons why such material is entitled to in camera treatment for an indeterminate period. Any party desiring, in connection with the preparation and presentation of the case, to disclose in camera material to experts, consultants, prospective witnesses, or witnesses, shall make application to the Administrative Law Judge setting forth the justification therefor. The Administrative Law Judge, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. Material subject to an in camera order shall be segregated from the public record and filed in a sealed envelope, or other appropriate container, bearing the title, the docket number of the proceeding, the notation "In Camera Record under § 3.45," and the date, if any, on which in camera treatment expires.

(c) *Release of in camera material.* In camera material constitutes part of the confidential records of the Commission and is subject to the provisions of § 4.11 of this chapter.

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11. Section 3.56 is added to subpart F to read as follows:

§ 3.56 Effective date of orders; application for stay.

(a) Other than consent orders, an order to cease and desist under section 5 of the FTC Act becomes effective upon the sixtieth day after service, except as provided in section 5(g)(3) of the FTC Act, and except for divestiture provisions, as provided in section 5(g)(4) of the FTC Act.

(b) Any party subject to a cease and desist order under section 5 of the FTC Act, other than a consent order, may

apply to the Commission for a stay of all or part of that order pending judicial review. If, within 30 days after the application was received by the Commission, the Commission either has denied or has not acted on the application, a stay may be sought in a court of appeals where a petition for review of the order is pending.

(c) An application for stay shall state the reasons a stay is warranted and the facts relied upon, and shall include supporting affidavits or other sworn statements, and a copy of the relevant portions of the record. The application shall address the likelihood of the applicant's success on appeal, whether the applicant will suffer irreparable harm if a stay is not granted, the degree of injury to other parties if a stay is granted, and why the stay is in the public interest.

(d) An application for stay shall be filed within 30 days of service of the order on the party. Such application shall be served in accordance with the provisions of § 4.4(b) of this part that are applicable to service in adjudicative proceedings. Any party opposing the application may file an answer within 5 business days after receipt of the application. The applicant may file a reply brief, limited to new matters raised by the answer, within 3 business days after receipt of the answer.

PART 4—MISCELLANEOUS RULES

12. The authority for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

13. Section 4.7 is amended by adding a new sentence at the end of paragraph (e) and by revising the first sentence of paragraph (f) to read as follows:

§ 4.7 Ex parte communications.

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(e) * * * In addition, the prohibitions of this section shall apply with respect to communications concerning an application for stay filed with the Commission pursuant to § 3.56 from the time that the application is filed until its disposition.

(f) The prohibitions of paragraph (b) of this section do not apply to a communication occasioned by and concerning a nonadjudicative function of the Commission, including such functions as the initiation, conduct, or disposition of a separate investigation, the issuance of a complaint, or the initiation of a rulemaking or other proceeding, whether or not it involves a party already in an adjudicative proceeding; preparations for judicial review of a Commission order; a