§ 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 rule or order, and any person who files objections sufficient to warrant the holding of a hearing, and who files timely notice of intention to participate, shall be regarded as a party and shall be individually served with any pleadings filed in the proceeding. Upon written application to the Administrative Law Judge and a showing of good cause, any interested person may be designated by the Administrative Law Judge as a party.

[32 FR 8449, June 13, 1967, as amended at 40 FR 33969, Aug. 13, 1975]

§ 3.14 Intervention.

(a) Any individual, partnership, unincorporated association, or corporation desiring to intervene in an adjudicative proceeding shall make written application in the form of a motion setting forth the basis therefor. Such application shall have attached to it a certificate showing service thereof upon each party to the proceeding in accordance with the provisions of §4.4(b) of this chapter. A similar certificate shall be attached to the answer filed by any party, other than counsel in support of the complaint, showing service of such answer upon the applicant. The Administrative Law Judge or the Commission may by order permit the intervention to such extent and upon such terms as are provided by law or as otherwise may be deemed proper.

(b) In an adjudicative proceeding where the complaint states that divestiture relief is contemplated, the labor organization[s] representing employees of the respondent[s] may intervene as a matter of right. Applications for such intervention are to be made in accordance with the procedures set forth in paragraph (a) of this section and must be filed within 60 days of the issuance of the complaint. Intervention as a matter of right shall be limited to the issue of the effect, if any, of proposed remedies on employment, with full rights of participation in the proceeding concerning this issue. This paragraph does not affect a labor organization's ability to petition for leave to intervene pursuant to §3.14(a).

[32 FR 8449, June 13, 1967, as amended at 46 FR 20979, Apr. 8, 1981]

§ 3.15 Amendments and supplemental pleadings.

(a) *Amendments*—(1) *By leave.* If and whenever determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to pleadings or notice of hearing: *Provided, however,* That a motion for amendment of a complaint or notice may be allowed by the Administrative Law Judge only if the amendment is

reasonably within the scope of the original complaint or notice. Motions for other amendments of complaints or notices shall be certified to the Commission.

(2) *Conformance to evidence.* When issues not raised by the pleadings or notice of hearing but reasonably within the scope of the original complaint or notice of hearing are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings or notice of hearing; and such amendments of the pleadings or notice as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time.

(b) *Supplemental pleadings.* The Administrative Law Judge may, upon reasonable notice and such terms as are just, permit service of a supplemental pleading or notice setting forth transactions, occurrences, or events which have happened since the date of the pleading or notice sought to be supplemented and which are relevant to any of the issues involved.

Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals; Summary Decisions

§3.21 Prehearing procedures.

(a) *Meeting of the parties before scheduling conference.* An early as practicable before the prehearing scheduling conference described in paragraph (b) of this section, counsel for the parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, and to agree, if possible, on a proposed discovery schedule, a preliminary estimate of the time required for the hearing, and a proposed hearing date, and on any other matters to be determined at the scheduling conference.

(b) *Scheduling conference.* Not later than fourteen (14) days after the answer is filed by the last answering respondent, the Administrative Law Judge shall hold a scheduling conference. At the scheduling conference, counsel for the parties shall be prepared to address their factual and legal theories, a schedule of proceedings, possible limitations on discovery, and other possible agreements or steps that may aid in the orderly and expeditious disposition of the proceeding.

(c) *Prehearing scheduling order.* (1) Not later than two (2) days after the scheduling conference, the Administrative Law Judge shall enter an order that sets forth the results of the conference and establishes a schedule of proceedings, including a plan of discovery, dates for the submission and hearing of motions, the specific method by which exhibits shall be numbered or otherwise identified and marked for the record, and the time and place of a final prehearing conference and of the evidentiary hearing.

(2) The Administrative Law Judge may grant a motion to extend any deadline or time specified in this scheduling order only upon a showing of good cause. Such motion shall set forth the total period of extensions, if any, previously obtained by the moving party. In determining whether to grant the motion, the Administrative Law Judge shall consider any extensions already granted, the length of the proceedings to date, and the need to conclude the evidentiary hearing and render an initial decision in a timely manner. The Administrative Law Judge shall not rule on *ex parte* motions to extend the deadlines specified in the scheduling order, or modify such deadlines solely upon stipulation or agreement of counsel.

(d) *Meeting prior to final prehearing conference.* Counsel for the parties shall meet before the final prehearing conference described in paragraph (e) of this section to discuss the matters set forth therein in preparation for the conference.

(e) *Final prehearing conference.* As close to the commencement of the evidentiary hearing as practicable, the Administrative Law Judge shall hold a final prehearing conference, which counsel shall attend in person, to submit any proposed stipulations as to law, fact, or admissibility of evidence, exchange exhibit and witness lists, and designate testimony to be presented by