Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

PART 1—GENERAL PROCEDURES

Miscellaneous Amendments

The Commission announces the following rules, which are effective April 4, 1975, to implement the initial stages of trade regulation rule proceedings pursuant to the authority of Pub. L. 93-637. Under separate announcement these rules are supplemented by proposed rules further implementing that authority. Subpart B is redesignated as Subpart C and a new Subpart B is added. The amendments to redesignated Subpart C, Rules and Rulemaking, are made to eliminate references to the Flammable Fabrics Act and to reflect the promulgation of the new Subpart B for trade regulation rules.

Part 1 of Title 16 is amended as set forth below.

1. Subpart B is redesignated as Subpart C and a new Subpart B is added to read as follows:

Subpart B—Rules and Rulemaking Under Section 18(a)(1)(B) of the FTC Act As Amended by Public Law 93-637

Sec.

1.7 Scope of rules in this subpart.
1.8 Nature, authority and use of trade regulation rules.
1.9 Initiation of a trade regulation rule proceeding.
1.10 Investigations and conferences.
1.11 Initial notice.
1.13 Rulemaking proceeding.
1.15 Petition for amendment to or repeal of a rule.
1.16 Petition for exemption from trade regulation rule.

AUTHORITY: Pub. L. 93-637.

§ 1.7 Scope of rules in this subpart.

The rules in this subpart apply to and govern proceedings for the promulgation of rules as provided in section 18(a)(1)(B) of the Federal Trade Commission Act as amended by Pub. L. 93-637 only. Such rules shall be known as trade regulation rules. All other rulemaking proceedings shall be governed by the rules in the remainder of this part.

§ 1.8 Nature, authority and use of trade regulation rules.

For the purpose of carrying out the provisions of the Federal Trade Commission Act, the Commission is empowered to promulgate trade regulation rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce. Such rules may include requirements prescribed for the purpose of preventing such acts or practices. A violation of a rule shall constitute an unfair or deceptive act or practice in violation of section 5(a)(1) of that Act, unless the Commission otherwise expressly provides in its rule. However, the respondent in an adjudicative proceeding may show that his conduct does not violate the rule, or assert any other defense to which he is legally entitled.

§ 1.9 Initiation of a trade regulation rule proceeding.

Trade regulation rule proceedings may be commenced by the Commission upon its own initiative or pursuant to written petition filed with the Secretary by any interested person stating reasonable grounds therefor. If the Commission determines to commence a trade regulation rule proceeding pursuant to the petition, the petitioner shall be mailed a copy of the public notices issued under §§ 1.11 and 1.12. Any person whose petition is not deemed by the Commission sufficient to warrant commencement of a rulemaking proceeding shall be notified of that determination and may be given an opportunity to submit additional data.

§ 1.10 Investigations and conferences.

The Commission at any time may conduct such investigations, make such studies and hold such conferences as it may deem necessary. All or any part of any such investigation may be conducted under the provisions of Subpart A of Part 2 of this Chapter.

§ 1.11 Initial notice.

A trade regulation rule proceeding shall commence with an initial notice of proposed rulemaking. Such notice shall be published in the Federal Register and, to the extent practicable, otherwise made available to interested persons. The initial notice shall include: (a) the terms or substance of the proposed rule or a description of the subjects and issues involved; (b) reference to the legal authority under which the rule is proposed; (c) a statement describing with particularity the reason for the rule; (d) an invitation to all interested persons to propose disputed issues of specific fact, in contrast to legislative fact, that are material and necessary to resolve; and (e) an invitation to all interested persons to comment on the proposed rule.

§ 1.13 Rulemaking proceeding.

(a) *Written comments.* After commencement of a trade regulation rule proceeding, the Commission shall accept written submissions of data, views, and arguments on all issues of fact, law, and policy. Written comments other than under subsection (b) of this section shall be accepted until ten (10) days before commencement of the informal hearing.

(b) *Comments proposing disputed issues of specific fact, in contrast to legislative fact, that are material and necessary to resolve.* Written comments which propose disputed issues of specific fact, in contrast to legislative fact, that are material and necessary to resolve shall be accepted for a period of sixty (60) days after publication of the initial notice.

§ 1.15 Petition for amendment to or repeal of a rule.

(a) *Petition for substantive amendment to or repeal of a rule.* The procedures for petitions for substantive amendments to or repeal of a rule shall be the same as for the issuance thereof.

(b) *Petition for nonsubstantive amendment of a rule.* When the Commission, for good cause, finds that notice and public procedure relating to a petition for nonsubstantive amendment of a rule or such an amendment proposed by the Commission itself are impractical, unnecessary, or contrary to the public interest, it may dispense with the procedures of this subpart and publish the nonsubstantive amendment of the rule along with the above finding and a brief statement of the reasons therefor.

§ 1.16 Petition for exemption from trade regulation rule.

Any person to whom a rule would otherwise apply may petition the Commission for an exemption from such rule. The procedures for determining such a petition shall be those of Subpart C of these rules.

Subpart C—Rules and Rulemaking

2. Subpart C is redesignated as Subpart I, and a new Subpart C is redesignated from Subpart B; §§ 1.11 through 1.16 are redesignated as §§ 1.21 through 1.26, and §§ 1.21, 1.22 and 1.24 are revised to read as follows:

§ 1.21 Scope of the rules in this subpart.

The rules in this subpart apply to and govern procedures for the promulgation of rules, including quantity limit rules, rules authorized under the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, and the Textile Fiber Products Identification Act, and rules under the Fair Packaging and Labeling Act except to the extent that objections to orders relating to the issuance, amendment, or repeal of rules under the latter Act are required by statute to be determined on the record after opportunity for an agency hearing. The rules in this subpart do not apply to the promulgation of industry guides, general statements of policy, or rules of agency organization, procedure, or practice, or rules governed by the procedures of Subpart B of this part.

§ 1.22 Rulemaking.

(a) *Nature and authority.*—For the purpose of carrying out the provisions of the statutes administered by it, the Commission is empowered to promulgate rules and regulations applicable to unlawful trade practices. Such rules and regulations express the experience and judgment of the Commission, based on facts of which it has knowledge derived from studies, reports, investigations, hearings, and other proceedings, or within official notice, concerning the substantive requirements of the statutes which it administers.

(b) *Scope.*—Rules may cover all applications of a particular statutory provision and may be nationwide in effect, or they may be limited to particular areas or industries or to particular product or geographic markets, as may be appropriate.

(c) *Use of rules in adjudicative proceedings.*—Where a rule is relevant to

any issue involved in an adjudicative proceeding thereafter instituted, the Commission may rely upon the rule to resolve such issue, provided that the respondent shall have been given a fair hearing on the applicability of the rule to the particular case.

§ 1.24 Rules applicable to wool, fur, and textile fiber products and rules promulgated under the Fair Packaging and Labeling Act.

Rules having the force and effect of law are authorized under section 6 of the Wool Products Labeling Act of 1939, section 8 of the Fur Products Labeling Act, section 7 of the Textile Fiber Products Identification Act, and sections 4, 5, and 6 of the Fair Packaging and Labeling Act.

Subpart J—Economic Surveys, Investigations and Reports

3. Subpart J is redesignated from Subpart C and § 1.21 is redesignated as § 1.91 of this subpart.

(Sec. 6, 38 Stat. 721 (15 U.S.C. 46), Pub. L. No. 93-637, Sec. 202 (Jan. 4, 1975).)

By direction of the Commission, dated March 11, 1975.

[SEAL] VIRGINIA M. HARDING,
Acting Secretary.

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PROCEDURES AND RULES OF PRACTICE

Miscellaneous Amendments

The Commission announces the following amendments to 16 CFR Chapter I. The amendments are effective April 4, 1975.

PART 1—GENERAL PROCEDURES

Subpart A—Industry Guidance

1. Section 1.4(b) is revised to provide for confidential treatment in appropriate circumstances of information contained in formal written objections or comments on requests for advice concerning proposed mergers. Section 1.4(b) is revised to read as follows:

Section 1.4 Public disclosure.

* * * * *

(b) All requests for advice submitted under § 1.2 concerning proposed mergers, together with supporting materials, will be placed on the public record as soon after they are received as circumstances permit, except for information for which confidential classification has been requested, with a showing of justification therefor, and which the Commission, with due regard to statutory restrictions, its rules, and the public interest, has determined should not be made public. Within thirty (30) days after such requests and materials are placed on the public record, any person may file formal written objections or comments with the Secretary of the Commission. Such objections or comments shall be placed on the public record except for information for which confidentiality has been requested, with a showing of justification therefor, and which the Commission with due regard to statutory restrictions, its rules, and the public interest, has determined should not be made public. Additionally, any communications, written or oral, concerning such proposed mergers, received by any individual member of the Commission, or by an employee involved in the decisional process, will be placed on the public record immediately after their receipt. In the case of an oral communication, the member or employee shall immediately furnish the Commission with a memorandum setting forth the full contents of such communication and the circumstances thereof, and such memorandum will immediately be placed on the public record. Any advice given under § 1.3 concerning proposed mergers, together with a statement of supporting reasons, will be published when given.

Subpart G—Injunctive and Condemnation Proceedings

3. Section 1.61 is revised to take into account the Commission's expanded injunctive authority granted under the Trans-Alaska Pipeline Authorization Act, Pub. L. 93-153 section 408(f).

Section 1.61 is revised to read as follows:

§ 1.61 Injunctions.

In those cases where the Commission has reason to believe that it would be to the interest of the public, the Commission will apply to the courts for injunctive relief, pursuant to the authority granted in section 13 of the Federal Trade Commission Act.

Subpart I—Procedures for Implementation of the National Environmental Policy Act of 1969

Sections 1.81–1.86 are revisions (1) to accord with the National Council on Environmental Quality's revised Guidelines on "Preparation of Environmental Impact Statements", (2) to integrate provisions relating to rules and guides and those relating to legislative matters, and (3) to expand §§ 1.83–1.84 into three sections, each ot deal with a discrete segment of the Environmental Act chronology and duties. A proposed revision of §§ 1.81–1.86 was published December 6, 1973, 38 FR 33618. The differences in the proposed rules and the rules adopted appear in § 1.82(c) with the substitution of "emergency action makes * * *" for peditious action is in the public interest," and in § 1.84(c) with the substitution of "emergency action makes * * * *" for "emergencies make * * *".

4. Section 1.81 (a) and (b) are revised to read as follows:

§ 1.81 Authority and definition.

(a) This subpart is issued pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91-190 (NEPA), as implemented by Executive Order 11514 and by "Preparation of Environmental Impact Statements: Guidelines," issued by the Council on Environmental Quality (CEQ), 40 CFR 1500.1, et seq. (1973) (CEQ Guidelines).

(b) As used in this subpart, "environmental impact statement" means a detailed statement, as provided for in NEPA, Executive Order 11514, and CEQ Guidelines, on:

(1) The environmental impact of a proposed action;

(2) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(3) Alternatives to the proposed action;

(4) The relationship between local short-term uses of man's environment and enhancement of long-term productivity; and

(5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

* * * * *

5. Section 1.82 is revised to read as follows:

§ 1.82 Declaration of policy.

(a) No Commission rule or guide which is a major action significantly affecting the environment will be promulgated unless an environmental impact statement has been prepared for consideration in the decisionmaking, and

(b) No Commission legislative proposal or Commission legislative report on a proposal in an area in which the Commission has primary responsibility, concerning a matter significantly affecting the environment, will be submitted to Congress without an accompanying environmental impact statement, except that

(c) An environmental impact statement will not be prepared when the Commission finds that emergency action is necessary. In such instance, the Commission will consult with CEQ and develop a statement promptly after the action, in accordance with CEQ Guidelines, 40 CFR 1500.11(e).

(d) Nothing in this procedure shall be construed as stating or implying that section 102(2)(C) of NEPA applies to: any investigation made by the Commission for law enforcement purposes; any process or order issued by the Commission in connection with any type of investigation; any agreement of voluntary compliance or consent decree entered into by the Commission; or any adjudicatory proceedings commenced by the Commission.

6. Section 1.83 (a) and (b) are revised and new paragraphs (c) and (d) are added to read as follows:

§ 1.83 Draft environmental impact statements: availability and comment.

(a) Staff proposals recommending the initiation of a rule or guide proceeding, as well as staff evaluations of legislative proposals and legislative reports in an area in which the Commission has primary responsibility, shall include an assessment of the anticipated environmental impact, based on CEQ Guidelines, 40 CFR 1500.6 (a), (b).

(b) Upon the determination of the Commission that a matter subject to paragraph (a) of this section is a major action having a significant effect on the quality of the human environment, it