1977; special concurring opinion by MacKinnon, J., May 20, 1977) and *Action for Children's Television* v. *FCC*, No. 74-2006 (D.C. Cir. July 1, 1977), the Commission has determined, as an exercise of discretion, to add a new section, § 1.18 (c), to its Rules of Practice. This new section will require that communications relating to a rulemaking proceeding be made only during the regular course of the proceeding, thus ensuring that they become part of the rulemaking record and providing an opportunity for comment on such communications. Section 1.18(c) provides that, after a rulemaking proceeding has commenced, all communications concerning the merits of that proceeding from persons not employed by the Commission to Commissioners, or members of their personal staffs, are prohibited. If a prohibited communication does occur it will be placed on the Commission's public record but will not be considered by the Commission when it reviews the record of the proceeding. Requests for information as to the status of a rulemaking proceeding are not subject to these restrictions. Section 1.18 (b) is amended to reflect the Commission's current practice of making the entire rulemaking record publicly available. The titles to § 1.18 and § 1.18(a) are also being amended.

While this rule is effective September 1, 1977, the Commission invites comments on it on or before October 3, 1977. Comments should be addressed to the Office of the Secretary. The Commission will review all comments received and take whatever action, if any, it deems appropriate.

In consideration of the foregoing, 16 CFR Chapter 1 is amended as follows:

By amending § 1.18(b) and adding § 1.18(c) to read as follows:

§ 1.18 Rulemaking Record.

(a) *Definition.*

* * * * *

(b) *Public availability.* The rulemaking record shall be publicly available except when the presiding officer, for good cause shown, determines that it is in the public interest to allow any submission to be received in camera subject to the provisions of § 4.11 of this chapter.

(c) *Communications to Commissioners and their attorney advisors.* Except as provided by the Commission, pursuant to § 1.14(a) of the Rules of Practice, after commencement of a trade regulation rule proceeding, no person not employed by the Commission shall communicate, orally or in writing, with any Commissioner or any member of a Commissioner's personal staff, with respect to the merits of that proceeding. If a prohibited communication does occur, the communication will be placed on the public record on receipt. In the case of an oral communication, the Commissioner or staff member shall place on the public record a memorandum setting forth the contents of such communication and the circumstances thereof. Such communications or memoranda will not be part of the rulemaking record.

By direction of the Commission, Commissioners Collier and Dole dissenting.

JAMES A. TOBIN,
Acting Secretary.

DISSENTING STATEMENT OF COMMISSIONER COLLIER TO COMMISSION DECISION TO ADOPT AMENDMENT TO § 1.18 OF THE COMMISSION'S RULES OF PRACTICE

I dissent from this modification of the Commission's rules, not because I believe that off-the-record communications with respect to the merits of rulemaking proposals should be permitted, but because the Commission has declined to provide an adequate opportunity for such communications to be made on-the-record.

In my opinion, our current rules are seriously deficient in their failure to provide for oral presentations to the Commissioners by designated representatives in rulemaking proceedings. Section 1.14 of our Rules provides: "Where it believes that it should have further information or additional views of interested persons as to the form and content of the rule, it may withhold final action pending the receipt of such additional information or views." As implemented by the Commission to date, this Rule has not provided for the regular opportunity by interested persons to make oral presentations to the full Commission.

In contrast, we provide in adjudicative proceedings that: "Oral agruments will be held in all cases on appeal to the Commission, unless the Commission otherwise orders upon its own initiative or upon request of any party made at the time of filing his brief." § 3.52(f). In practice, this Rule generally results in the Commission's granting oral argument.

The same presumption favoring oral presentations at the close of rulemaking proceedings should be created. These presentations, like post-record written comments, should be based upon information already in the record. See § 1.13(h). The opportunity should be afforded to representatives of various interests that were selected by the presiding officer. See § 1.13(d)(5)(D). See also § 1.17.

I have no quarrel with controlling communications to Commissioners during the course of rulemaking proceedings. The failure to do so can render our orderly procedures for accumulating relevant information and views a nullity if not a charade. But I object to an absolute ban on such communications (in contrast, for example, to placing them on the public record), unless and until the Commission establishes a proper forum for receipt of oral presentations.

DISSENTING STATEMENT OF COMMISSIONER DOLE

I agree that the Commission should tighten up its procedures for dealing with contacts between Commissioners and outside parties on the merits of pending rulemaking proceedings. Otherwise, the elaborate procedures established for the development and analysis in public of a rulemaking record could be compromised.

However, I disagree with the solution adopted by the majority. I believe that the purpose of this rule could have been served in a less restrictive way, modeled along the lines of the draft recommendations recently issued by the Administrative Conference of the United States, Select Committee on Ex Parte Communications. I would have preferred a rule requiring that, after commencement of a trade regulation rulemaking proceeding, all written communications from any person not employed by the Commission received by any Commissioner and addressed to the merits of the proposed rule be placed on the public record. In addition, all oral communications of substantive significance from any person not employed by the Commission addressed to the merits of the proposed rule and made privately to any Commissioner would be required to be summarized and placed on the public record. It has been my policy in the past, when meeting with any person outside the agency concerning agency business, to have an FTC staff member present, and I would have continued this policy.

The solution I would have preferred is consistent with the current emphasis on open government conducive to developing all relevant information and the accessibility of government decision-makers to any member of the public. It is also consistent with the traditionally flexible, legislative nature of informal rulemaking. At the same time, this solution would have ensured that the public and reviewing courts were provided with a record of all considerations presented to the agency.

[FR Doc.77-25666 Filed 8-31-77;8:45 am]

SUBCHAPTER A—ORGANIZATION, PROCEDURES, AND RULES OF PRACTICE

PART 4—MISCELLANEOUS RULES

Restrictions on Ex Parte Communications

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The rule amends the Commission's Rules of Practice to reflect the provisions of the Government in the Sunshine Act, and to clarify the coverage of the rule with respect to communications between Commission decisionmakers and Commission staff.

EFFECTIVE DATE: September 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Jerome A. Tintle, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580 (202-523-3487).

SUPPLEMENTARY INFORMATION: The Commission published a notice of proposed rulemaking at 42 FR 33041 (June 29, 1977) inviting comments to be filed by July 29, 1977 on a proposed amendment of § 4.7 of the Commission's Rules of Practice. The amendments reflect the provisions of section 4 of the Government in the Sunshine Act, Pub. L. 94-409. No comments were received.

Accordingly, 16 CFR 4.7 is amended to read as follows:

§ 4.7 Ex Parte Communications.

(a) *Definitions.* For purposes of this section, "ex parte communications" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding.

(b) *Prohibited ex parte communications.* While a proceeding is in adjudicative status within the Commission, except to the extent required for the disposition of *ex parte* matters as au-

thorized by law, (1) no person not employed by the Commission, and no employee or agent of the Commission who performs investigative or prosecuting functions in adjudicative proceedings, shall make or knowingly cause to be made to any member of the Commission, or to the Administrative Law Judge, or to any other employee who is or who reasonably may be expected to be involved in the decisional process in the proceeding, an ex parte communication relevant to the merits of that or a factually related proceeding; and (2) no member of the Commission, the Administrative Law Judge, or any other employee who reasonably may be expected to be involved in the decisional process in the proceeding, shall make or knowingly cause to be made to any person not employed by the Commission, or to any employee or agent of the Commission who performs investigative or prosecuting functions in adjudicative proceedings, an ex parte communication relevant to the merts of that or a factually related proceeding.

(c) *Procedures.* A Commissioner, the Administrative Law Judge or any other employee who is or who may reasonably be expected to be involved in the decisional proces who receives or who makes or knowingly causes to be made, a communication prohibited by paragraph (b) of this section shall promptly provide to the Secretary of the Commission: (1) All such written communications; (2) memoranda stating the substance of and circumstances of all such oral communications; and (3) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (1) and (2) of this subsection. The Secretary shall make relevant portions of any such materials part of the public record of the Commission, pursuant to Section 4.8, and place them in the docket binder of the proceeding to which it pertains, but they will not be considered by the Commission as part of the record for purposes of decision unless introduced into evidence in the proceeding. The Secretary shall also send copies of the materials to or otherwise notify all parties to the proceeding.

(d) *Sanctions.* (1) Upon receipt of an ex parte communication knowingly made or knowingly caused to be made by a party and prohibited by paragraph (b) of this section, the Commission, Administrative Law Judge, or other employee presiding over the proceeding may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the Commission, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation. The Commission may take such action as it considers appropriate, including but not limited to, action under Section 4.1 (e) (2) and 5 U.S.C. Section 556(d).

(2) A person, not a party to the proceeding who knowingly makes or causes to be made an ex parte communication prohibited by paragraph (b) of this section shall be subject to all sanctions provided herein if he subsequently becomes a party to the proceeding.

(e) The prohibitions of this section shall apply from the time the Commission votes to issue a complaint in an adjudicative proceeding or votes to conduct adjudicative hearings on issues arising in rulemaking proceedings under the Fair Packaging and Labeling Act.

(f) The prohibitions of paragraph (b) of this section do not apply to communications between Commissioners and employees or agents of the Commission who perform investigative or prosecutorial functions in adjudicative proceedings, when such communications are occasioned by and concern: (1) the initiation, conduct or disposition of a separate investigation or adjudicative proceeding, whether or not it involves a party already in an adjudicative proceeding; (2) proceedings outside the scope of Section 3.2, including matters in state or federal courts and before other governmental agencies; (3) nonadjudicative functions of the Commission, including but not limited to obligations under § 4.11 or communictions with Congress; or (4) the disposition of a consent settlement under § 3.25 executed by some but not all respondents. *Provided however,* That to the extent such communications relate to a fact in issue in a pending adjudicative proceeding, such portions will be placed in the docket binder of the proceeding to which it pertains. The prohibitions of paragraph (b) of this section also do not aply to communications between Commissioners, the Administrative Law Judge, or any other employee who is involved in the decisional process, and any employee who has been directed by the Commission or requested by an individual Commissioner or Administrative Law Judge, to assist in the decision of an adjudicative proceeding. Such employee shall not, however, have performed an investigative or prosecutorial function in that or a factually related proceeding.

By direction of the Commission.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc.77-25673 Filed 8-31-77;8:45 am]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. R-77; 3322]

PART 1912—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Servicing Companies

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to provide an update of § 1912.7 and of Title 24 of the Code of Federal Regulations as previously published.

DATES: September 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, D.C. 20410.

The entries are to read as follows:

§ 1912.7 Servicing Companies.

The following servicing companies have been designated to issue standard flood insurance policies and service claims under those policies pursuant to the Natural Flood Insurance Program as implemented by this subchapter of Title 24 of the Code of Federal Regulations.

ALABAMA

The Hartford Insurance Group, Atlanta Center, 250 Piedmont Avenue NW., P.O. Box 1720, Atlanta, Ga. 30308 (404-658-1414).

ALASKA

Industrial Indemnity Company of Alaska, P.O. Box 307, Anchorage, Alaska 99510 (907-279-9441).

ARIZONA

Aetna Technical Services, Inc., 3225 North Central Avenue, Phoenix, Ariz. 85102 (602-264-8821).

ARKANSAS

The Travelers Indemnity Company, 700 South University, P.O. Box 51, Little Rock, Ark. 72203 (501-664-5085).

CALIFORNIA

Fireman's Fund American Insurance Co., P.O. Box 2323, Los Angeles, Calif. 90051 (213-381-3141).

COLORADO

CNA Insurance, 1660 Lincoln Street—Suite 1800, Denver, Colo. 80203 (303-861-0561).

CONNECTICUT

Aetna Insurance Company, P.O. Box 1779, Hartford, Conn. 06101 (203-523-4861).

D.C.—DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA

Insurance Company of North America, 5225 Wisconsin Avenue, NW., Washington, D.C. 20015 (202-244-2000).

DELAWARE

General Accident F&L Assurance Corp., Ltd., 414 Walnut Street, Philadelphia, Pa. 19106 (215-238-5512).

FLORIDA

The Travelers Indemnity Company, 1516 East Colonial Drive, Orlando, Fla. 32803 (305-896-2001). Toll free: (800-432-4876).

GEORGIA

The Hartford Insurance Group, Atlanta Center, 250 Piedmont Avenue NW., P.O. Box 1720, Atlanta, Ga. 30308 (404—658-1414).

HAWAII

First Insurance Company of Hawaii, Ltd., P.O. Box 2866, Honolulu, Hawaii 96803 (808—548-5511).

IDAHO

Aid Insurance Company, Snake River Division, 1845 Federal Way, Boise, Idaho 83701 (208—343-4931).