14. Part 379 of the Export Administration Regulations is amended by adding a new paragraph (f)(3) to § 379.4 reading as follows:

§ 379.4 General license GTDR: Technical data under restriction.

* * * * *

(f) * * *

(3) *Requirement of written assurances for entry No. 1572 on the Commodity Control List (CCL).* No technical data related to CCL entry 1572A, Exception 2 through 4, may be exported under the provisions of this General License GTDR until the exporter has received written assurance from the importer that the technical data will not be shipped, either directly or indirectly, to Country Groups P, Q, W, Y or Z, or Afghanistan. The letter of assurance requirements are stated in § 379.4(f)(1).

Secs. 4(e), 5, 6, 7, 13, 15, 17(d) Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. § 2401 *et seq.*; Section 309(c), Pub. L. 95-242, 92 Stat. 141, to be codified at 42 U.S.C. § 2139a; Section 103, Pub. L. 94-163, 89 Stat. 877, 42 U.S.C. § 6212; Section 101, Pub. L. 93-153, 87 Stat. 576, amending 30 U.S.C. § 185; Section 201(11), Pub. L. 94-258, 90 Stat. 309, amending 10 U.S.C. § 7430; Executive Order 12214 (45 F.R. 29783, May 6, 1980); Department Organization Order 10-3 (45 F.R. 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41-1 (45 F.R. 11862, February 22, 1980) and 41-4 (45 FR 65003, October 1, 1980).)

Dated: May 6, 1981.

William V. Skidmore,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 81-14221 Filed 5-11-81; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Parts 0, 1, 2, 4, and 5

Organization Changes in the Commission's Rulemaking and Investigatory Procedures

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: These rules reflect adoption of and amendments to the Commission's interim rules published May 29, 1980 (45 Fed. Reg. 36337), implementing the Federal Trade Commission Improvements Act of 1980 and respond to comments submitted on those rules. They are designed to implement changes made by that Act in the Commission's rulemaking and investigatory procedures.

EFFECTIVE DATE: May 12, 1981.

FOR FURTHER INFORMATION CONTACT: Barry R. Rubin, Assistant General Counsel, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3520.

SUPPLEMENTARY INFORMATION: The Commission's interim rules implementing the Federal Trade Commission Improvements Act of 1980 were the subject of 60 days' public comment. In light of the comments received and of the Commission's experience with the interim rules, several changes are made. In addition, other technical corrections are made in the Commission's Rules of Practice, such as substitution of "Office of Personnel Management" for "Civil Service Commission" wherever it appears in the rules.

The Comments

Eight comments were received on the interim rules. The following is a discussion of the principal issues raised in the comments and the Commission's responses thereto. Specific changes in the rules are described in the next section.

1. The Grocery Manufacturers of America (GMA) objects to the Commission's assertion that documents submitted to it in response to compulsory process ("custodial documents") may be disclosed to Commission contractors or consultants who have signed a nondisclosure agreement, arguing that disclosure should be limited to Commission employees. The legislative history of the Improvements Act supports the Commission's interpretation. In debating the conference report on the bill that would become the Improvements Act, Senator Ford, Chairman of the Subcommittee on Consumer of the Senate Commerce Committee, said that section 21(b)(3)(B) of the FTC Act "does not preclude use of custodial documents by consultants retained by the Commission, provided that they will be using the documents for official business and have signed a written agreement not to disclose information without the Commission's consent." 126 Cong. Rec. S5678 (May 21, 1980).

GMA also urges that the amendments to section 6(f) of the FTC Act limiting public disclosure of certain confidential commercial or financial information should be read to preclude disclosure even in Commission administrative proceedings. However, section 21 (d)(2) of the FTC Act specifically provides that disclosure in such proceedings should be

governed by the Commission's rules for adjudicative proceedings. In explaining the confidentiality provisions of the statute to the House, Congressman Preyer, a member of the Conference Committee, stated that

> The Commission may disclose trade secrets and confidential commercial and financial information in the following circumstances: * * * relevant and material information may be disclosed in Commission administrative proceedings or in judicial proceedings, but it may be made subject to appropriate protective orders * * *. 126 Cong. Rec. H3870 (May 20, 1980).

This corresponds to the Commission's longstanding interpretation of its statute (prior to the Improvements Act) that even trade secrets may be disclosed *in camera* in Commission adjudication. *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1186 n.1 (1961). The Senate Report confirms this reading and specifically refers to the Commission's Rules of Practice regarding *in camera* submissions, 16 CFR §§ 1.18d(b) and 3.45. S. Rep. No. 96–500, 96th Cong., 1st Sess. 27–28 (1979) ("Senate Report"). As discussed below, rule 4.10(g) has been amended to provide submitters an opportunity to seek a protective or *in camera* order prior to the material being disclosed.

2. The Manufactured Housing Institute (MHI) comments that the Commission has not adequately insulated the presiding officers in rulemaking from the Commission staff. However, the only link that remains is with the Commission's Executive Director (who has agencywide budgetary and administrative responsibility) for the limited purpose of conducting periodic evaluations of the performance of presiding officers. See Senate Report at 20.

MHI also objects to allowing the staff in rulemaking to make a report which is then considered by the presiding officer in formulating his recommended decision. The staff report itself is not "evidence," but is merely a summary of the record including recommendations for a final rule if appropriate. All interested persons have an opportunity to comment both on the staff report and on the presiding officer's recommended decision. Accordingly, the Commission believes this procedure is entirely consistent with the Improvements Act. Rule 1.13(c)(6), which MHI argues is inadequate to effectuate the congressional intent in preventing *ex parte* communications with the presiding officer, is simply a restatement of the statutory requirement. Similarly, MHI argues that rule 2.6 should spell out in detail the way the subject of an investigation is to be notified of its nature and purpose. The Commission believes the rule, which incorporates the statutory language, is adequate.

MHI objects that although the legislative history requires a staff memorandum justifying issuance of compulsory process, no such requirement is contained in the rules. As an internal requirement, the Commission believes it is unnecessary to address this requirement in its rules of practice.

MHI requested a minor clarification in rule 2.9, which describes the rights of witnesses in investigations, to make it clear that both the interviewer and his or her counsel can raise objections. The rule has been amended accordingly. MHI also requested a clarification of rule 2.51 to make explicit the 120-day time limit for responding to petitions to reopen orders. An appropriate change has been made.

MHI objected to the requirement that a request for return of documents submitted to the Commission can come only at the end of a proceeding since a third-party witness may have no way of knowing when that occurs. Additionally, MHI requested clarification of the term "original" document in rule 4.12. As discussed more fully below, the Commission has amended rule 4.12 to address these concerns. Other clarifying changes in rules 4.10 and 4.11 regarding the confidentiality and disclosure of documents submitted to the Commission (described below) respond to concerns raised by MHI and others.

The Commission declines, however, to attempt to define "confidential" in rule 4.10(a)(2) in greater detail. Examples in rule 4.10(a)(2) are intended only to be illustrative since, as provided in the rule, the prohibition on disclosure contained in FTC Act § 6(f) governs in any event. Further guidance on the meaning of the term "confidential commercial or financial information" can be gained by reference to the case law under exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4). See Senate Report at 10–11.

3. The Chamber of Commerce of the United States (in a comment that raised the same issues as one filed by the law firm of Lovejoy, Wasson, Lundgren and Ashton) urged the Commission to broaden rule 2.6 to provide that in all instances where information is requested by the Commission—not just CID's—the person be advised of the nature and purpose of the investigation. Rule 2.6 currently provides two slightly different requirements for notice, one for CID's (tracking the new statute) and one for all other requests for information. The Commission agrees that the notice requirements of the Improvements Act should be applied to all requests for information.

The Chamber objects to the Commission's procedures for sharing information with state and federal law enforcement agencies, arguing that such agencies should be required to adopt detailed custodial arrangements for the documents. Commission rule 4.11 requires, as does the statute, a detailed certification including an agreement by the other agency to maintain the documents in confidence. The Commission believes these restrictions on disclosure are adequate to protect the rights of the submitter.

Further, the Chamber contends that the statute does not permit sharing information with states bringing antitrust treble damage suits. The Commission disagrees with this interpretation of the statute and notes that the Commission's view has been upheld in *Fleming* v. *FTC*, CCH 1980–1 Trade Cas. ¶ 63642 (D.D.C. Nov. 24, 1980). See also 126 Cong. Rec. H3158 (May 1, 1980). Finally, the Chamber asks that submitters of documents be notified of their release to other law enforcement agencies and be given a description of each document released. The Commission agrees that a submitter should be notified of the fact that documents have been released in most cases and has amended rule 4.11 as discussed below. On the other hand, the Commission believes that routine provision of a list of each document released would be inordinately burdensome; the office of the General Counsel, through which documents are released, is available to provide a general description of that information in most cases.

4. Sears, Roebuck & Co. suggests minor clarifying changes in the rules regarding compulsory process and motions to quash certain Commission orders. As described below, changes have been made in those sections to conform the CID and other compulsory process procedures in many respects.

5. The law firm of Howrey & Simon, on behalf of Exxon, addresses the issue of return of documents submitted, arguing that the Commission must return all documents submitted, including all Commission-made copies and notes. The Commission disagrees and notes that the Improvements Act specifically recognizes the authority of the Commission to retain such copies and notes. See FTC Act section 21(b)(5)(B). Unlike a grand jury, which has a limited existence and no ongoing policy or law enforcement functions, the Commission often uses information submitted in one investigation in a subsequent

investigation. The decision to retain or destroy Commission-made copies of documents or notes depends on whether they are records appropriate for preservation by the government within the meaning of the Federal Records Act, 44 U.S.C. § 3301 *et seq.* That determination, including the question of whether the documents should be preserved because of the information value to the government therein, is peculiarly within the purview of the Commission, not the submitter.

6. The Food Marketing Institute (FMI) suggests that the Commission establish a "pre-submission procedure for determining confidentiality." However, the Commission believes that the confidentiality provisions of the Improvements Act obviate the need for any such procedure except in extraordinary circumstances. Specifically, section 21(b)(3)(B) protects the confidentiality of all documents submitted in response to compulsory process in a law enforcement investigation and section 21(c) protects all other documents marked confidential from public disclosure without 10 days' notice. Further, FMI asks the Commission to establish detailed procedures for identifying which copies should be retained by the Commission. The Commission believes that the determination of whether copies are "appropriate for preservation" under the Federal Records Act will depend on many factors not susceptible to codification such as potential investigatory interest in an industry or a certain practice.

7. On August 29, 1980, the Section of Antitrust Law, American Bar Association, submitted comments which, for the most part, raised issues mentioned in the other comments. In addition, the Section urged that the Commission consider several changes in rulemaking procedures described in its study on FTC Rulemaking. These include fundamental changes such as the use of administrative law judges in place of presiding officers and stricter *ex parte* prohibitions which are beyond the scope of these rule changes. The Commission believes that the statutory provisions for separation of presiding officers from the staff of the Commission and for a limited *ex parte* prohibition adequately meet the Section's concerns. The Section also urged clarifying changes in the Commission's confidentiality rules, many of which are included in these amended rules. The Section questioned whether the FOIA exemption in section 21(f) of the FTC Act is applicable to documents produced in postcomplaint proceedings. The Commission believes the exemption in section 21(f), as well as the exemption in section 21(b), is equally applicable in precomplaint and postcomplaint proceedings.

Rules Changes

After considering the foregoing comments and the Commission's experience under its interim rules during the past several months, it has amended the interim rules as described below. In addition, these rules implement the rulemaking changes made by sections 8 and 15 of the Improvements Act. Finally, they include many technical changes in the Commission's rules.

1. Section 15 of the Improvements Act adds a new section 22 to the FTC Act requiring the publication of preliminary and final regulatory analyses and other requirements. In addition, the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, requires the preparation of initial and final regulatory flexibility analyses. The statute also provides that in the interest of avoiding duplicative or unnecessary analyses, those analyses may be made a part of any other analyses. The Commission believes that rather than preparing separate documents under the Regulatory Flexibility Act, it will be more efficient to incorporate those analyses into the analyses required by the Improvements Act. The Commission's rules, like the Regulatory Flexibility Act, are intended to require regulatory flexibility analyses for rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.

Section 8 of the Improvements Act amends section 18 of the FTC Act by requiring the publication of an advance notice of proposed rulemaking prior to the commencement of a rulemaking proceeding. Amendments to rules 1.9, 1.10, 1.11 and 1.14 implement those sections.

2. Section 1.13 is amended to clarify several rulemaking procedures. First, the deadline for submission of written comments will no longer be set in the Rules of Practice (formerly set at 45 days before the commencement of the oral hearings) but now will be set by the Commission in the initial notice. Interested persons will than have an additional period of 30 days to submit proposals to the presiding officer for designated issues. The Commission anticipates that interested persons will then be able to use the written comments in framing proposals for disputed issues.

Second, the rules now explicity require all motions to be filed with the presiding officer until the close of the postrecord comment period and authorize him or her to rule on all motions (including motions to extend time periods). Similarly, the presiding officer is given the explicit duty to maintain the rulemaking record.

Third, rule 1.13(c)(3)(i) concerning the procedures for appealing rulings of the presiding officer to the Commission has been clarified. The rule eliminates the requirement of the filing of an "application for review" with the Commission after certification of the appeal; the presiding officer's certification serves the purpose of the application.

3. Section 1.13(d)(6) is amended to clarify the fact that compulsory process in trade regulation rulemaking must take the form of a civil investigative demand and is available to the Commission staff as well as other rulemaking participants. Rule 1.15 is amended to allow the Commission to make nonsubstantive amendments to trade regulation rules without additional comment periods.

4. Section 1.17 is amended to incorporate the requirements of section 10 of the Improvements Act regarding compensation of participants in rulemaking proceedings. These include the establishment of a small business outreach program and limitations on the amount a person can receive in any one proceeding or in any fiscal year. In accordance with the legislative history of section 10, these limitations are prospective only, and money received prior to the effective date of the Improvements Act is not counted in arriving at these limitations. See 126 Cong. Rec. H3859 (May 20, 1980) (Remarks of Chairman Scheuer). Further, the Commission deleted the $50 per hour limit on attorneys' fees in rule 1.17 (e)(2) since that arbitrary figure may restrict the ability of small businesses and others to obtain effective representation. The Commission (through its General Counsel) will, of course, continue to assure that all costs incurred are reasonable.

5. Section 2.6 is amended to apply to all recipients of requests for information who are under investigation the requirement that they be notified of the purpose of the investigation. The Commission believes this accurately reflects the intention of Congress when it adopted the Improvements Act, although this requirement is limited by the statute to CID's. Similarly, the Commission has amended rules 2.11 and 2.12 to provide that petitions to limit or quash *any* form of investigatory compulsory process be submitted within 20 days.

6. Section 2.7(a) is amended to clarify the provision allowing the recipient of a CID to make documents available at its principal place of business. Section 2.9(b)(2) is amended to provide that in an investigational hearing the witness or his counsel may object to questions on the record.

7. Section 2.51(d) implements section 2 of the Improvements Act requiring the Commission to make a determination on a request to reopen an order within 120 days. It is amended to make explicit the 120-day limit.

8. In response to the comments, the Commission has made several important changes in part 4 of its rules regarding the confidential treatment of imformation submitted to the Commission. First, rule 4.10 is amended to delete the reference to staff assurances of confidentiality since documents submitted to the Commission are now adequately protected by the procedures of section 21 of the FTC Act and by the amendment to section 6(f) of the FTC Act made by section 3 of the Improvements Act. Second, section 4.10(a) now describes only the classes of documents that can be withheld under the Freedom of Information Act; the Commission's authority to disclose information is now contained in sections 4.10(d), (e) and (f) and 4.11.

Section 4.10(d), as amended, limits the Commission's authority to disclose material submitted to it. Thus, although the Commission is empowered pursuant to sections 6(f) and 21(c) of the FTC Act to disclose noncustodial material which the Commission determines does not constitute confidential commercial or financial information, the Commission has determined that it will not disclose under the FOIA information that it can withhold if the information is marked confidential. In adopting this rule which waives its discretion to release certain documents, the Commission is seeking to encourage voluntary compliance with requests for information. Since persons who submit documents to the Commission in a law-enforcement investigation voluntarily in lieu of compulsory process will now be assured that their documents will receive the same confidentiality treatment as documents provided under compulsory process, there should be no disincentive to providing information to the Commission voluntarily. This is particularly true since the Commission has established an internal procedure for logging and controlling all documents received by it. (This of course does not restrict information-sharing with other agencies.)

Special restrictions on disclosure of information submitted to the Commission as in the line of business reporting program are effective according to their terms.

Third, the Commission amended rule 4.10(f) to provide that information obtained by it may be disclosed to persons other than the submitter in connection with the taking of oral testimony only if the Commission is not prohibited from disclosing it under section 6(f) of the FTC Act. If the material is marked confidential, the submitter will be provided 10 days' notice of the intended disclosure. Similarly, under amended rule 4.10(g) information will not be disclosed in administrative or adjudicatory proceedings without affording the submitter an opportunity to obtain a protective or *in camera* order.

Fourth, the Commission amended section 4.11(c) to clarify the contents of the certificate required from state and federal law enforcement agencies as a condition to sharing information. A copy of the certificate will be forwarded to the submitter of the information at the time the agency request is granted unless the agency requests that the submitter not be notified.

9. Section 4.12, which deals with the disposition of documents submitted to the Commission, has been amended to allow requests for return of documents to be filed at any time. The documents will still be returned only at the close of the proceeding but this provision removes the burden of knowing when an investigation is concluded from the submitter. The section also makes clear that Commission-made copies of documents will not be returned to the submitter except upon a showing of extraordinary circumstances.

Accordingly, the Commission amends its Rules of Practice as follows:

PART 0—ORGANIZATION

1. Section 0.10 is revised to read as follows:

§ 0.10 Office of the Executive Director.

(a) The Executive Director, under the direction of the Chairman, is the chief operating official. He exercises executive and administrative supervision over all the offices, bureaus, and staff of the Commission, and, in coordination with the Office of Policy Planning, resolves problems concerning priorities in case handling. Immediately under his direction is the Deputy Executive Director.

(b) The Deputy Executive Director functions as staff advisor to the Executive Director in all aspects of administrative management; provides administrative policy guidance to agency management and provides general supervision to the programs of data processing and information systems, personnel, budget and finance, and administrative service activities; initiates and develops long-range plans to assure that the Commission acquires and effectively utilizes the manpower, financial resources, physical facilities, and management tools necessary to accomplish its mission.

§ 0.12 [Amended]

2. Section 0.12 is amended by—changing the title of the publication "Statutes and Court Decisions involving the Commission" to read "Court Decisions—Federal Trade Commission."

3. The title of Section 0.13 is revised to read as follows:

§ 0.13 Office of Policy Planning.

* * * * *

§ 0.14 [Amended]

4. Section 0.14 is amended by changing "Civil Service Commission" to read "Office of Personnel Management."

5. Section 0.17 is revised to read as follows:

§ 0.17 Bureau of Consumer Protection.

The Bureau investigates unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act as well as potential violations of numerous special statutes which the Commission is charged with enforcing. It prosecutes before the agency's administrative law judges alleged violations of law after issuance of a complaint by the Commission or obtains through negotiation consented-to orders, which must be accepted and issued by the Commission. The bureau participates in trade regulation rulemaking proceedings under section 18(a)(1)(B) of the Federal Trade Commission Act and other rulemaking proceedings under other statutory authority. It investigates compliance with final orders and trade regulation rules and seeks civil penalties or consumer redress for their violation. In addition, the bureau seeks to educate both consumers and the business community about the laws it enforces.

PART 1—GENERAL PROCEDURES

Subpart B [Amended]

6. The title of Subpart B is revised to read as follows: Subpart B—Rules and Rulemaking Under Section 18(a)(1)(B) of the FTC Act.

7. Section 1.7 is revised to read as follows:

§ 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. 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.

8. Section 1.8 is revised to read as follows:

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

(a) 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.

(b) 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.

9. Section 1.9 is revised to read as follows:

§ 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 §§ 1.10, 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.

10. Section 1.10 is revised to read as follows:

§ 1.10 Advance notice of proposed rulemaking.

(a) Prior to the initiation of any trade regulation rule proceeding, the Commission shall publish in the **Federal Register** an advance notice of such proposed proceeding.

(b) The advance notice shall: (1) contain a brief description of the area of inquiry under consideration, the objectives which the Commission seeks to achieve, and possible regulatory alternatives under consideration by the Commission; and (2) invite the response of interested persons with respect to such proposed rulemaking, including any suggestions or alternative methods for achieving such objectives.

(c) The advance notice shall be submitted to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives.

(d) The Commission may, in addition to publication of the advance notice, use such additional mechanisms as it considers useful to obtain suggestions regarding the content of the area of inquiry before publication of an initial notice of proposed rulemaking pursuant to § 1.11.

11. Section 1.11 is revised to read as follows:

1.11 Commencement of a rulemaking proceeding.

(a) *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** not sooner than 30 days after it has been submitted to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives. The initial notice shall include: (1) the text of the proposed rule including any alternatives which the Commission proposes to promulgate; (2) reference to the legal authority under which the rule is proposed; (3) a statement describing with particularity the reason for the proposed rule; (4) an invitation to all interested persons to propose issues which meet the criteria of § 1.13(d)(1)(i) for consideration in accordance with § 1.13(d)(5) and (d)(6); (5) an invitation to all interested persons to comment on the proposed rule; and (6) a statement of the manner in which the public may obtain copies of the preliminary regulatory analysis.

(b) *Preliminary regulatory analysis.*—Except as otherwise provided by statute, the Commission shall, when commencing a rulemaking proceeding, issue a preliminary regulatory analysis which shall contain:

(1) a concise statement of the need for, and the objectives of, the proposed rule;

(2) a description of any reasonable alternatives to the proposed rule which may accomplish the stated objective of the rule in a manner consistent with applicable law;

(3) for the proposed rule, and for each of the alternatives described in the analysis, a preliminary analysis of the projected benefits and any adverse economic effects and any other effects, and of the effectiveness of the proposed rule and each alternative in meeting the stated objectives of the proposed rule; and

(4) the information required by section 603 of the Regulatory Flexibility Act, Pub. L. 96–354.

12. Section 1.13 is amended by revising paragraphs (a), (b), (c)(1) and (2), and (c)(3), and by removing the word "and" at the end of paragraph (c)(2)(vii), changing the period at the end of paragraph (c)(2)(viii) to "; and" by adding a new paragraph (c)(2)(ix) and revising paragraph (d)(6) to read as follows:

§ 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. The initial notice shall specify the deadline for filing written comments under this subsection.

(b) *Comments proposing issues subject to the procedures of § 1.13(d)(5) and (d)(6).*—Interested persons may propose issues for consideration in accordance with § 1.13(d)(5) and (d)(6) until thirty (30) days after the close of the written comment period or such other period as the Commission may establish in the initial notice.

(c) *Presiding officer.*—(1) *Assignment.*—Upon commencement of a proposed trade regulation rule proceeding, a presiding officer shall be appointed by the Chief Presiding Officer or, when the Commission or one or more of its members serves as presiding officer, by the Commission.

(2) *Powers of the presiding officer.*—The presiding officer shall be responsible for the orderly conduct of the rulemaking proceeding and the maintenance of the rulemaking and public records until the close of the postrecord comment period. He shall have all powers necessary to that end including the following: * * *; and (ix) to rule upon all motions or petitions of

interested persons, which motions or petitions must be filed with the presiding officer until the close of the postrecord comment period.

(3) *Review of rulings by the presiding officer.* (i) *Review after certification by the presiding officer.*—Except as otherwise provided in subsection (ii), applications for review of a ruling will not be entertained by the Commission prior to its review of the record pursuant to § 1.14, unless the presiding officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate review of the ruling may materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy. Within five (5) days after a ruling by the presiding officer, any interested person may petition the presiding officer for certification of that ruling to the Commission. Certification of a ruling shall not stay the rulemaking proceeding unless the presiding officer or the Commission shall so order. Submissions to the Commission not to exceed fifteen (15) pages may be made within ten (10) days of the presiding officer's certification. All such filings shall be a part of the rulemaking record. The Commission may thereupon, in its discretion, permit the appeal. Commission review, if permitted, will be based on the application for review and any additional submissions, without oral argument or further briefs, unless otherwise ordered by the Commission.

* * * * *

(d) * * *

(6) *Requests to compel the attendance of persons or the production of documents or to obtain responses to written questions.*—During the course of the rulemaking proceeding, the presiding officer shall entertain requests from the Commission's staff or any interested person to compel the attendance of persons or the production of documents or to obtain responses to written questions. Requests to compel the attendance of persons or the production of documents or to obtain responses to written questions shall contain a statement showing the general relevancy of the material, information or presentation, and the reasonableness of the scope of the request, together with a showing that such material, information or presentation is not available by voluntary methods and cannot be obtained through examination, including cross-examination, of oral presentations or the presentation of rebuttal submissions, and is appropriate and required for a full and true disclosure with respect to the issues designated for consideration in accordance with paragraphs (d)(5) and (d)(6) of this section. If the presiding officer determines that a request should be granted, he shall transmit his determination to the Commission which shall determine whether to issue a civil investigative demand under § 2.7(b). Information received in response to such a demand may be disclosed in the rulemaking proceeding subject to an *in camera* order under § 1.18(b).

* * * * *

13. Section 1.14 is amended by revising paragraphs (a), (a) (1) and (2), and (c) and (d) to read as follows:

§ 1.14 Promulgation.

(a) The Commission, after review of the rulemaking record, may issue, modify, or decline to issue any rule. Where it believes that it should have further information or additional views of interested persons, it may withhold final action pending the receipt of such additional information or views. If it determines not to issue a rule, it may adopt and publish an explanation for not doing so.

(1) *Statement of Basis and Purpose.*—If the Commission determines to promulgate a rule, it shall adopt a Statement of Basis and Purpose to accompany the rule which shall include: (i) a statement as to the prevalence of the acts or practices treated by the rule; (ii) a statement as to the manner and context in which such acts or practices are unfair or deceptive; (iii) a statement as to the economic effect of the rule, taking into account the effect on small businesses and consumers; (iv) a statement as to the effect of the rule on State and local laws; and (v) a statement of the manner in which the public may obtain copies of the final regulatory analysis.

(2) *Final Regulatory Analysis.*—Except as otherwise provided by statute, if the Commission determines to promulgate a final rule, it shall issue a final regulatory analysis relating to the final rule. Each final regulatory analysis shall contain—

(i) a concise statement of the need for, and the objectives of, the final rule;

(ii) a description of any alternatives to the final rule which were considered by the Commission;

(iii) an analysis of the projected benefits and any adverse economic effects and any other effects of the final rule;

(iv) an explanation of the reasons for the determination of the Commission that the final rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen;

(v) a summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues; and

(vi) the information required by section 604 of the Regulatory Flexibility Act.

* * * * *

(c) The final rule and Statement of Basis and Purpose shall be published in the **Federal Register.** A rule issued under this subpart shall be deemed promulgated at 3:00 PM Eastern Standard Time on the fourth day after the date on which the final rule and Statement of Basis and Purpose are published in the **Federal Register.** In the event such day is a Saturday, Sunday or national holiday, then the rule is deemed promulgated at 3:00 PM Eastern Standard Time on the following business day.

(d) After promulgating a final rule, the Commission shall submit such rule to the Congress for review in accordance with section 21 of the Federal Trade Commission Improvements Act of 1980. After the conclusion of the legislative review process, the Commission shall publish a notice in the **Federal Register** announcing the effective date of the rule which shall be at least 30 days thereafter unless the Commission, for good cause found and published, sets an earlier effective date.

14. Section 1.15 is revised to read as follows:

§ 1.15 Amendment or repeal of a rule.

(a) *Substantive amendment or repeal of a rule.* The procedures for substantive amendment to or repeal of a rule are the same as for the issuance thereof.

(b) *Nonsubstantive amendment of a rule.* The Commission may make a nonsubstantive amendment to a rule by announcing the amendment in the **Federal Register.**

15. Section 1.17 is amended by revising paragraph (e)(2) and by adding paragraph (f) and (g) to read as follows:

§ 1.17 Compensation for representation in rulemaking proceedings.

* * * * *

(e) *Payment of compensation.*—(1)

* * *

(2) Effective until the end of fiscal year 1982, the amount of compensation which may be paid to any applicant approved for reimbursement of participation costs may not exceed $75,000 per rulemaking proceeding; the

aggregate amount of compensation paid in any fiscal year for all rulemaking proceedings to any such person may not exceed $50,000. Computation of these limits shall begin with funds approved May 28, 1980, after the effective date of the FTC Improvements Act of 1980.

(f) *Participation of small businesses.*—To ensure a fair determination in rulemaking proceedings, the Commission solicits public comment from small businesses whose views otherwise would not be adequately represented. The Commission encourages small business participation in the compensation program by disseminating to small businesses information which explains the procedures and requirements applicable to the receipt of compensation.

(g) *Funds set aside for persons who would be regulated by proposed rules.*—The Commission reserves an amount equal to 25 percent of the annual fiscal appropriations for participation costs under this program. This reserved amount is available for reimbursement only to persons who (1) would be regulated by the proposed rule involved or (2) represent persons who would be so regulated.

§ 1.32 [Amended]

16. Section 1.32 is amended by changing "Division of Special Statutes" to read "Division of Energy and Product Information."

§ 1.71 [Amended]

17. Section 1.71 is amended by changing "Division of Special Statutes" to read "Division of Credit Practices."

§ 1.72 [Amended]

18. Section 1.72 is amended by changing "Division of Special Statutes" to read "Division of Credit Practices."

§ 1.83 [Amended]

19. Section 1.83(b)(2) is amended by changing "Office of the Assistant Secretary for Legal and Public Records" to read "Public Reference Branch."

PART 2—NONADJUDICATIVE PROCEDURES

20. Section 2.6 is revised to read as follows:

§ 2.6 Notification of purpose.

Any person under investigation compelled or requested to furnish information or documentary evidence shall be advised of the purpose and scope of the investigation and of the nature of the conduct constituting the alleged violation which is under investigation and the provisions law applicable to such violation.

21. Section 2.7(a) is revised to read as follows:

§ 2.7 Compulsory process in investigations.

(a) *In general.*—The Commission or any member thereof may, pursuant to a Commission resolution, issue a subpoena or a civil investigative demand directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence, or both, or, in the case of a civil investigative demand, to provide a written report or answers to questions relating to any matter under investigation by the Commission. Material for which a civil investigative demand has been issued shall be made available for inspection and copying at the principal place of business of the person or at such other place or in such other manner as the person and the custodian designated pursuant to § 2.16 agree.

* * * * *

22. Section 2.9(b)(2) is revised to read as follows:

§ 2.9 Rights of witnesses in investigations.

* * * * *

(b) * * *

(2) Where it is claimed that the testimony or other evidence sought from a witness is outside the scope of the investigation, or that the witness is privileged to refuse to answer a question or to produce other evidence, the witness or counsel for the witness may object on the record to the question or requirement and may state briefly and precisely the ground therefor. The witness and his counsel shall not otherwise object to or refuse to answer any question, and they shall not otherwise interrupt the oral examination.

* * * * *

23. Section 2.11(b), (c) and (d) is revised to read as follows:

§ 2.11 Orders requiring access.

* * * * *

(b) Any petition to limit or quash an order requiring access shall be filed with the Secretary of the Commission within twenty (20) days after service of the order, or, if the date for compliance is less than twenty (20) days after service of the order, then before the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the order requiring access, including all appropriate argument, affidavits and other supporting documentation. All petitions to limit or quash orders requiring access shall be ruled upon by the Commisssion itself, but the above-designated Directors, Deputy Directors, Assistant Directors, Regional Directors and Assistant Regional Directors are delegated, without power of redelegation, the authority to rule upon motions for extensions of time within which to file petitions to limit or quash orders requiring access.

(c) The timely filing of any petition to limit or quash such an order shall stay the requirement of compliance if the Commission has not ruled upon the motion by the date of compliance. If it rules on or subsequent to the date required for compliance and its ruling denies the petition in whole or in part, the Commission shall specify a new date of compliance.

(d) All petitions to limit or quash orders requiring access, and the Commission's responses thereto, are part of the public records of the Commission, except for information exempt from disclosure under § 4.10(a) of this chapter.

24. Section 2.12(d), (e) and (f) is revised to read as follows:

§ 2.12 Reports.

* * * * *

(d) Any petition to limit or quash an order requiring a report or answer to specific questions shall be filed with the Secretary of the Commission within twenty (20) days after service of the order, or, if the date for compliance is less than twenty (20) days after service of the order, then before the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the order requiring a report or answer to specific questions, including all appropriate arguments, affidavits and other supporting documentation. All petitions to limit or quash orders requiring reports or answers to questions shall be ruled upon by the Commission itself, but the above-designated Directors, Deputy Directors, Assistant Directors, Regional Directors and Assistant Regional Directors are delegated, without power of redelegation, the authority to rule upon motions for extensions of time within which to file petitions to limit or quash orders requiring reports or answers to questions.

(e) Except as otherwise provided by the Commission, the timely filing of any petition to limit or quash such an order shall stay the requirement of return on the portion challenged if the Commission has not ruled upon the petition by the return date. If it rules on or subsequent to the return date and its

ruling denies the petition in whole or in part, the Commission shall specify a new return date.

(f) All petitions to limit or quash orders requiring a report or answers to specific questions, and the Commission's responses thereto, are part of the public records of the Commission, except for information exempt from disclosure under § 4.10(a) of this chapter.

25. Section 2.16(a) and (c) is revised to read as follows:

§ 2.16 Custodians.

(a) *Designation.*—The Commission shall designate a custodian and one or more deputy custodians for material to be delivered pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission. The custodian shall have the powers and duties prescribed by section 21 of the FTC Act. Deputy custodians may perform all of the duties assigned to custodians. The appropriate Bureau Directors, Deputy Directors, Assistant Directors, Regional Directors or Assistant Regional Directors shall take the actions required by section 21(b)(7) of the FTC Act if it is necessary to replace a custodian or deputy custodian.

* * * * *

(c) Material produced pursuant to the Federal Trade Commission Act, while in the custody of the custodian, shall be for the official use of the Commission in accordance with the Act; but such material shall upon reasonable notice to the custodian be made available for examination by the person who produced such material, or his duly authorized representative, during regular office hours established for the Commission.

26. Section 2.51(d) is revised to read as follows:

§ 2.51 Requests to reopen.

* * * * *

(d) Determination.—After the period for public comments on a request under this section has expired and no later than one hundred and twenty (120) days after the date of the filing of the request, the Commission shall determine whether the request complies with subsection (b) and whether the proceeding shall be reopened and the rule or order should be altered, modified, or set aside as requested. In doing so, the Commission may, in its discretion, issue an order reopening the proceeding and modifying the rule or order as requested, issue an order to show cause pursuant to § 3.72, or take such other action as is appropriate: *Provided, however,* That any action under § 3.72 or otherwise shall be concluded within the specified 120-day period.

PART 4—MISCELLANEOUS RULES

27. Section 4.10 is amended by revising the introductory text of paragraph (a), revising paragraph (a)(2), (a)(8) and (9), and paragraph (d), paragraphs (a)(10) and (e), (f) and (g) are added to read as follows:

§ 4.10 Nonpublic information.

(a) The following records of the Commission are exempt from availability for public inspection and copying pursuant to 5 U.S.C. 552.

* * * * *

(2) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. As provided in section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), this exemption applies to competitively sensitive information, such as costs or various types of sales statistics and inventories. It includes trade secrets in the nature of formulas, patterns, devices, and processes of manufacture, as well as names of customers in which there is a proprietary or highly competitive interest.

* * * * *

(8) Material (including transcripts of oral testimony) which is received by the Commission (i) in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and (ii) which is provided pursuant to any compulsory process under the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*, or which is provided voluntarily in place of compulsory process in such an investigation. This material is exempt from disclosure under the Freedom of Information Act, by virtue of section 21(f) of the Federal Trade Commission Act.

(9) Material (including transcripts of oral testimony) which is received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission. This material is exempt from disclosure under the Freedom of Information Act by virtue of section 21(b)(3)(C) of the Federal Trade Commission Act.

(10) Such other records of the Commission as may from time to time by designated by the Commission as confidential pursuant to statute or Executive Order. This exempts from disclosure any information which has been designated nonpublic pursuant to criteria and procedures prescribed by Executive Order and which has not been subsequently declassified in accordance with applicable procedures. The exemption also preserves the full force and effect of statutes which restrict public access to specific government records.

* * * * *

(d) Except as provided in paragraphs (f) and (g) and in § 411 (b), (c), and (d), no material (including transcripts of oral testimony) which is marked or otherwise identified as confidential and which is within the scope of subsection 4.10(a)(8) and no material (including transcripts of oral testimony) which is within the scope of subsection 4.10(a)(9) which is not otherwise public shall be made available to any individual other than a duly authorized officer or employee of the Commission or a consultant or contractor retained by the Commission who has agreed in writing not to disclose the information without the consent of the person who produced the material. All other Commission records may be made available to a requester under the procedures set forth in § 4.11 or may be disclosed by the Commission except where prohibited by law.

(e) Except as provided in paragraphs (f) and (g) and in § 4.11 (b), (c), and (d), material (including transcripts of oral testimony) not within the scope of § 4.10(a)(8) or 4.10(a)(9) which is received by the Commission and is marked or otherwise identified as confidential may be disclosed only if it is determined that the material is not within the scope of § 4.10(a)(2), and only if the submitter is provided at least 10 days' notice of the intent to disclose the material involved.

(f) Nonpublic material (including transcripts of oral testimony) obtained by the Commission may be disclosed to persons other than the submitter in connection with the taking of oral testimony without the consent of the submitter only if the material or transcript is not within the scope of § 4.10(a)(2). If the material is marked confidential, the submitter will be provided 10 days' notice of the intended disclosure or will be afforded an opportunity to seek an appropriate protective order.

(g) Material (including transcripts of oral testimony) obtained by the Commission may be disclosed in Commission administrative or court proceedings subject to appropriate

Commission or court protective or *in camera* orders. See §§ 1.18(b) and 3.45 of this chapter. Prior to disclosing material or transcripts under this subsection the submitter will be afforded an opportunity to seek an appropriate protective or *in camera* order.

28. Section 4.11 (b), (c), (d) and (e) is revised to read as follows:

§ 4.11 Requests for disclosure of records.

* * * * *

(b) *Requests from congressional committees and subcommittees.*—Requests from congressional committees and subcommittees shall be referred to the General Counsel for presentation to the Commission, subject to the provisions in 5 U.S.C. 552(c) and FTC Act 21(b) that neither the Freedom of Information Act, 5 U.S.C. 552, nor the Federal Trade Commission Act, 15 U.S.C. 41, et seq., is authority to withhold information from Congress. Upon receipt of a request from a congressional committee or subcommittee, the General Counsel will notify the submitter of any material marked confidential, or any material within the scope of § 4.10(a)(9), that is responsive to the request that the request has been received. No other notice need be provided prior to granting the request. The Commission will inform the committee or subcommittee that the submitter considers such information confidential.

* * * * *

(c) *Requests from Federal and State law enforcement agencies.*—Requests from law enforcement agencies of the Federal Government should be addressed to the liaison officer for the requesting agency, or if there is none, to the General Counsel. Requests from state agencies should be addressed to the General Counsel. The appropriate liaison officer or the General Counsel may grant the request or where appropriate may authorize the custodian to grant the request, or refer it to the Commission for determination. Prior to granting access under this section to any material submitted to the Commission, the General Counsel or liaison officer will obtain from the requester a certification that such information will be maintained in confidence and will be used only for official law enforcement purposes. The certificate will also describe the nature of the law enforcement activity and the anticipated relevance of the information to that activity.

A copy of the certificate will be forwarded to the submitter of the information at the time the request is granted unless the agency requests that the submitter not be notified.

(d) *Requests from Federal and State agencies for purposes other than law enforcement.*—Requests from Federal and State agencies for access not related to law enforcement should be addressed to the General Counsel. Disclosure of nonpublic information will be made consistent with sections 6(f) and 21 of the FTC Act.

(e) *Information requested by subpoena.*—Any employee of the Commission who is served with a subpoena or other compulsory process, except a subpoena issued within the scope of § 3.36 of this chapter, requiring the production of any document or record or the disclosure of any information which, under § 4.10, is exempt from availability for public inspection and copying, shall promptly advise the General Counsel of the service of such subpoena or other compulsory process, the nature of the documents or information sought, and all relevant facts and circumstances. If the employee so served has not received instructions from the General Counsel prior to the return date of the subpoena or other compulsory process, he shall appear in response thereto and respectfully decline to produce the documents or records or to disclose the information called for, basing his refusal upon this paragraph. The General Counsel will consider and act upon compulsory process under this section with due regard for statutory restrictions, the Commission's rules and the public interest, and the established legal standards for determining whether justification exists for the disclosure of confidential information and records.

29. Section 4.12 is revised to read as follows:

§ 4.12 Disposition of documents submitted to the Commission.

(a) *Documents submitted to the Commission.*—Any person who has submitted documentary material to the Commission (including transcripts of oral testimony) may obtain, on request, the return of material submitted to the Commission which has not been received into evidence (1) after the close of the proceeding in connection with which the documents were submitted or (2) when no proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all such material and other information assembled in the course of the investigation. Such request shall be in writing, addressed to the custodian designated pursuant to § 2.16 or the Secretary of the Commission in all other circumstances, and shall reasonably describe the documents requested. A request for return of documents may be filed at any time, but documents will not be returned nor will commitments to return documents be undertaken prior to the time described in this subsection.

(b) *Commission-made copies of documents submitted to the Commission.*—The Commission will not return to the submitter copies of documents made by the Commission unless, upon a showing of extraordinary circumstances, the Commission determines that return would be required in the public interest.

(c) *Disposition of documents not returned.*—Subsequent to the time prescribed in subsection (a), the staff will examine all submitted documents and Commission-made copies located in a reasonable search of the Commission's files and will determine, pursuant to the Federal Records Act, 44 U.S.C. 3301, which documents are appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Commission or because of the information value of data in them. The Commission will dispose of all documents determined not to be appropriate for preservation in accordance with applicable regulations of the General Services Administration.

§ 4.13 [Amended]

30. Section 4.13 is amended by changing each reference to "Civil Service Commission" to read "Office of Personnel Management."

PART 5—STANDARDS OF CONDUCT

§ 5.2 [Amended]

Section 5.2 is amended by changing "Civil Service Commission" to read "Office of Personnel Management."

§ 5.9 [Amended]

31. Section 5.9 is amended by changing "Civil Service Commission" to read "Office of Personnel Management."

§ 5.12 [Amended]

32. Section 5.12(c) is amended by changing "Civil Service Commission" to read "Office of Personnel Management."

33. Section 5.31 is revised to read as follows:

§ 5.31 Form and contents of statements.

Financial disclosure reports filed by Commissioners and employees subject to the requirements of Title II of the Ethics in Government Act of 1978 shall be placed on the public record. Employees in the positions described in § 5.32 who are not required to file

reports by that Act shall submit nonpublic statements of employment and financial interests containing the information required by the formats prescribed by the Office of Personnel Management.

34. In § 5.32 paragraphs (a), (c), and (d) are revised, paragraphs (f), (g), (h), and (i) are redesignated as (g), (h), (i), and (j) and a new paragraph (f) is added to read as follows:

§ 5.32 Employees required to submit statements.

(a) The following employees, whether or not serving in an acting capacity, shall submit statements to the Executive Director:

(1) The Secretary of the Commission;
(2) The Director of the Office of Policy Planning;
(3) The Director and Deputy Director of the Office of Public Information;
(4) The General Counsel;
(5) The Director of the Bureau of Competition;
(6) The Director of the Bureau of Consumer Protection;
(7) The Director of the Bureau of Economics;
(8) The Chief Administrative Law Judge;
(9) The Chief Presiding Officer;
(10) The Deputy Executive Director;
(11) The Director of Equal Employment Opportunity;
(12) The Director, Office of Congressional Relations;
(13) The Assistant to the Executive Director;
(14) Directors of the Regional Offices;
(15) Advisors to the Commissioners and the Assistant to the Chairman, except that each Commissioner in the Commissioner's discretion may direct otherwise.

* * * * *

(c) The following employees of the Bureaus of Competition, Consumer Protection and Economics, whether or not serving in an acting capacity, shall submit statements to their Bureau Director:

(1) Deputy Directors;
(2) Assistant Directors;
(3) Deputy Assistant Directors;
(4) Associate Directors;
(5) Executive Assistants to the Director and Assistants to the Director;
(6) Assistants to the Deputy Director.

(d) The following employees, whether or not serving in an acting capacity, shall submit statements to the Deputy Executive Director:

(1) The Director of the Division of Administrative Services;
(2) The Director of the Division of Budget and Finance;
(3) The Director of the Data Processing and Information Systems Division;
(4) The Director of the Division of Personnel;
(5) The Director of the Library; and
(6) The Director of the Office of Procurement and Contracts.

* * * * *

(f) Presiding Officers designated under § 1.13(c) of Part 1 shall submit statements to the Chief Presiding Officer.

§ 5.32 [Amended]

35. Section 5.32(i), redesignated from paragraph (h), is amended by changing "Civil Service Commission" to read "Office of Personnel Management."

§ 5.39 [Amended]

36. Section 5.39(b) is amended by changing "Assistant Executive Director for Management" to read "Deputy Executive Director," and by inserting after "Chief Administrative Law Judge," the phrase "the Chief Presiding Officer."

§ 5.40 [Amended]

37. Section 5.40 is amended by changing "Civil Service Commission" to read "Office of Personnel Management."

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-14228 Filed 5-11-81; 8:45 am]

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16 CFR Part 4

Participation in Commission Proceedings; Former Commission Members and Employees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is revising its rule governing participation in Commission proceedings by former Commission members and employees. The wording of the prior rule produced uncertainty about when the rule applied and what the standards for decisionmaking were. The revised rule clarifies the circumstances under which former members and employees must file an application for clearance to participate, specifies in greater detail the restrictions on postemployment participation, establishes deadlines for the processing of clearance applications, and establishes a new procedure for firms to participate in Commission proceedings through screening of disqualified former employees.

DATE: These amendments are effective on June 26, 1981.

FOR FURTHER INFORMATION CONTACT: Barry R. Rubin, Assistant General Counsel, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3520.

SUPPLEMENTARY INFORMATION: On August 4, 1978, the Commission published for comment (43 FR 35947) proposed revisions to § 4.1(b) of its Rules of Practice, 16 CFR 4.1(b), governing postemployment participation in Commission proceedings by former Commission members and employees. Subsequently, the Commission announced (44 FR 45179, Aug. 1, 1979) that it was deferring final action on this proposal until Congress decided whether further to amend the Ethics in Government Act and until the D.C. Court of Appeals acted on proposed "revolving door" amendments to Canon 9 of the Code of Professional Responsibility. The Ethics Act has been amended, and though the D.C. Court of Appeals has not taken final action, the Commission's final rule is compatible with the Court's previously announced proposed rule and further delay by the Commission appears to be unwarranted. The Commission is, therefore, now adopting a final rule. The Commission will reexamine its rule, as need be, after final action by the D.C. Court of Appeals.

The major elements of the revised rule are as follows: (1) The revised rule retains the basic procedure of its predecessor: If a former Commission member or employee (hereinafter "former employee") wishes to participate in a professional capacity in a Commission proceeding or investigation described in the rule, he or she must apply for permission to do so. However, the final rule differs from both the previous rule and the proposed rule in the details of this "clearance" mechanism. The old rule required filing if the proceeding or investigation was "pending in any manner," which commenters generally agreed was too vague a criterion. The proposed rule would have substituted a requirement for filing in all cases for a term of years after the end of an employee's tenure. However, the Commission believes that this approach is insufficiently linked to the substantive concerns that underlie the rule. Accordingly, the revised rule specifies the circumstances under which filing is required. These are the types of professional representation which, because of possible connections to the former employee's activities at the Commission, ought not to be undertaken without an agency determination that there is in fact no impropriety.

Advance permission must be obtained if the particular proceeding or investigation in which the former