

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).

(e) *Written transcript.* A verbatim transcript shall be made of the informal hearing which transcript shall be placed in the rulemaking record.

(f) *Staff recommendations.* The staff shall make recommendations to the Commission in a report on the rulemaking record. Such report shall contain its analysis of the record and its recommendations as to the form of the final rule.

(g) *Recommended decision.* After publication of the staff report, the presiding officer shall make a recommended decision based upon his or her findings and conclusions as to all relevant and material evidence, and taking into account the staff report. The recommended decision shall be made by the presiding officer who presided over the rulemaking proceeding except that such recommended decision may be made by another officer if the officer who presided over the proceeding is no longer available to the Commission.

(h) *Postrecord comment.* The staff report and the presiding officer's recommended decision shall be the subject of public comment for a period to be prescribed by the presiding officer at the time the recommended decision is placed in the rulemaking record. The comment period shall be no less than sixty (60) days. The comments shall be confined to information already in the record and may include requests for review by the Commission of determinations made by the presiding officer.

(i) *Commission review of the rulemaking record.* The Commission shall review the rulemaking record to determine

what form of rule, if any, it should promulgate. During this review process, the Commission may allow persons who have previously participated in the proceeding to make oral presentations to the Commission, unless it determines with respect to that proceeding that such presentations would not significantly assist it in its deliberations. Presentations shall be confined to information already in the rulemaking record. Requests to participate in an oral presentation must be received by the Commission no later than the close of the comment period under § 1.13(h). The identity of the participants and the format of such presentations will be announced in advance by the Office of Public Information in the Commission's *Weekly Calendar and Notice of "Sunshine" Meetings* and in accordance with the applicable provisions of 5 U.S.C. 552(b) and § 4.15 of the Commission's Rules of Practice. Such presentations will be transcribed verbatim or summarized at the discretion of the Commission and a copy of the transcript or summary and copies of any written communications and summaries of any oral communications relating to such presentations shall be placed on the rulemaking record.

[40 FR 33966, Aug. 13, 1975, as amended at 43 FR 39084, Sept. 1, 1978; 45 36341, May 29, 1980; 45 FR 78628, Nov. 26, 1980; 46 FR 14888, Mar. 3, 1981; 46 FR 26288, May 12, 1981; 50 FR 53303, Dec. 31, 1985; 54 FR 19886, May 9, 1989]

#### § 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;

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(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 the Regulatory Flexibility Act at 5 U.S.C. 604.

(b) In the event the Commission determines, upon its review of the rulemaking record, to propose a revised rule for further proceedings in accordance with this subpart, such proceedings, including the opportunity of interested persons to avail themselves of the procedures of § 1.13 (d)(5) and (d)(6), shall be limited to those portions of the revised rule, the subjects and issues of which were not substantially the subject of comment in response to a previous notice of proposed rulemaking.

(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 p.m. 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 p.m. Eastern Standard Time on the following business day.

[40 FR 33966, Aug. 13, 1975, as amended at 46 FR 26289, May 12, 1981; 50 FR 53304, Dec. 31, 1985]

### § 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 non-substantive amendment to a rule by announcing the amendment in the FEDERAL REGISTER.

[46 FR 26289, May 12, 1981]

### § 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.

[40 FR 33966, Aug. 13, 1975]

### § 1.17 [Reserved]

### § 1.18 Rulemaking record.

(a) *Definition.* For purposes of these rules the term *rulemaking record* includes the rule, its Statement of Basis and Purpose, the verbatim transcripts of the informal hearing, written submissions, the recommended decision of the presiding officer, and the staff recommendations as well as any public comment thereon, verbatim transcripts or summaries of oral presentations to the Commission any communications placed on the rulemaking record pursuant to § 1.18c and any other information which the Commission considers relevant to the rule.