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16 CFR Ch. I (1–1–24 Edition)

(5)(i) Any application to modify either:

(A) An agreement that has been approved by the Commission pursuant to paragraph (f) of this section, or

(B) An agreement incorporated by reference into a final order of the Commission issued in connection with a merger, acquisition, or similar transaction shall be subject to review and approval in the manner described in paragraphs (f)(1) through (4) of this section, except as provided in paragraph (f)(5)(ii) of this section.

(ii) If the application establishes that the proposed modification is purely ministerial, or unlikely under any plausible facts to affect achieving the remedial purposes of the order at issue, the Commission has delegated to the Director, Deputy Directors, and Assistant Director for Compliance of the Bureau of Competition, without power of redelegation, for good cause shown, the authority.

(A) To waive the approval requirement of paragraph (f)(5)(i) of this section; and

(B) To shorten, eliminate, extend or reopen the comment period pursuant to paragraph (f)(2) of this section.

(iii) Any agreement containing a modification approved, or for which the approval requirement is waived, pursuant to this paragraph (f)(5), shall be subject to any outstanding Commission order to the same extent as was the original agreement.

[32 FR 8449, June 13, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 2.41, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

Subpart E—Requests To Reopen

§ 2.51 Requests to reopen.

(a) *Scope.* Any person, partnership, or corporation subject to a Commission decision containing a rule or order which has become effective, or an order to cease and desist which has become final, may file with the Secretary a request that the Commission reopen the proceeding to consider whether the rule or order, including any affirmative relief provision contained therein,

should be altered, modified, or set aside in whole or in part.

(b) *Contents.* A request under this section shall contain a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified or set aside, in whole or in part, or that the public interest so requires.

(1) This requirement shall not be deemed satisfied if a request is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail:

(i) The nature of the changed conditions and the reasons why they require the requested modifications of the rule or order; or

(ii) The reasons why the public interest would be served by the modification.

(2) Each affidavit shall set forth facts that would be admissible in evidence and shall show that the affiant is competent to testify to the matters stated therein. All information and material that the requester wishes the Commission to consider shall be contained in the request at the time of filing.

(c) *Opportunity for public comment.* A request under this section shall be placed on the public record except for material exempt from public disclosure under rule 4.10(a). Unless the Commission determines that earlier disposition is necessary, the request shall remain on the public record for thirty (30) days after a press release on the request is issued. Bureau Directors are authorized to publish a notice in the FEDERAL REGISTER announcing the receipt of a request to reopen at their discretion. The public is invited to comment on the request while it is on the public record.

(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 paragraph (b) of this section 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

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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.

(Sec. 6(g), 38 Stat. 721 (15 U.S.C. 46(g)); 80 Stat. 383, as amended, 81 Stat. 54 (5 U.S.C. 552))

[45 FR 36344, May 29, 1980, as amended at 46 FR 26291, May 12, 1981; 47 FR 33251, Aug. 2, 1982; 50 FR 53305, Dec. 31, 1985; 53 FR 40868, Oct. 19, 1988; 65 FR 50637, Aug. 21, 2000]

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AUTHORITY: 15 U.S.C. 46.

SOURCE: 32 FR 8449, June 13, 1967, unless otherwise noted.

Subpart A—Scope of Rules; Nature of Adjudicative Proceedings

§ 3.1 Scope of the rules in this part; expedition of proceedings.

The rules in this part govern procedure in formal adjudicative proceedings. To the extent practicable and consistent with requirements of law, the Commission's policy is to conduct such proceedings expeditiously. In the