Central Depository for Real Property Documents at National Aeronautics and Space Administration, Office of Strategic Infrastructure, Facilities and Real Estate Division, Washington, DC 20546.

■ 4. Revise § 1204.504 to read as follows:

§ 1204.504 Delegation of authority to grant leaseholds, permits, and licenses in real property.

(a) *Delegation of authority.* The National Aeronautics and Space Act, as amended, authorizes NASA to grant agreements for the use of NASA-owned and/or -controlled real property. This authority is delegated to the Assistant Administrator for the Office of Strategic Infrastructure and the Director, Facilities Real Estate Division.

(b) *Definition. Real Property* refers to land, buildings, structures (including relocatable structures), air space, utility systems, improvements, and appurtenances annexed to land referred to as real property assets. For purposes of NASA use, the term real property also includes related personal property, also known as collateral equipment.

(c) *Redelegation.* (1) The Real Estate Branch Chief may, subject to the restrictions in paragraph (d) of this section, grant a leasehold, permit, or license to any person or organization, including other Government agencies, a State, or political subdivision or agency thereof. This authority may not be exercised with respect to real property which is proposed for use by a NASA exchange and subject to the provisions of NASA Policy Directive 9050.6, NASA Exchange and Morale Support Activities.

(2) The Real Estate Branch Chief may redelegate this authority to the appropriate warranted Real Estate Contracting Officer, in accordance with the requirements set forth in NPR 8800.15.

(d) *Restrictions.* Except as otherwise specifically provided, no leasehold, permit, or license shall be granted under the authority stated in paragraph (c) of this section unless:

(1) The Real Estate Contracting Officer determines:

(i) That the interest or rights to be granted are not required for a NASA program.

(ii) That the interests or rights to be granted will not be adverse to the interests of the United States nor interfere with NASA operations.

(2) That, in the case of leaseholds fair market value monetary consideration is received by NASA.

(3) The instrument granting the leasehold, permit, or license in real property is on a form or template approved by or directed to be used by the Real Estate Branch Chief, and provides, at a minimum:

(i) For unilateral termination by NASA in the event of:

(A) Default by the grantee; or

(B) Abandonment of the property by the grantee; or

(C) Force majeure circumstances including a determination by Congress, the President, or the NASA Administrator that the interest of the national space program, the national defense, or the public welfare require the termination of the interest granted, with a suitable notice provided to the grantee.

(ii) A liability waiver, indemnification requirements, environmental requirements, and insurance provisions as needed to suitably protect the United States from damages arising from the grantee's use of NASA real property.

(iii) That restoration provisions are provided for in the agreement that protect the interests of the United States and ensure the grantee is responsible for removal of any and all improvements in or on NASA real property.

(iv) Such other reservations, exceptions, limitations, benefits, burdens, terms, or conditions as are set forth in the forms and templates for leaseholds, permits, and licenses in real property approved by and directed for use by the Real Estate Branch Chief.

(e) *Waivers.* If, in connection with a proposed grant, the Real Estate Contracting Officer determines that a waiver from any of the restrictions set forth in paragraph (d) of this section is appropriate, a request may be submitted to the Associate Administrator for the Office of Strategic Infrastructure or the Director, Facilities Real Estate Division.

(f) *Distribution of documents.* One copy of each document granting an interest in real property will be filed in the Central Depository for Real Property Documents at: National Aeronautics and Space Administration, Office of Strategic Infrastructure, Washington, DC 20546.

Nanette Smith,

Team Lead, NASA Directives and Regulations.

[FR Doc. 2023–14042 Filed 7–3–23; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Parts 0, 1, 2, 3 and 4

Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its rules of practice to reflect the creation of the agency's new Office of Technology. The Commission is also amending, its rules of practice for adjudicative proceedings so that administrative law judges presiding over an administrative hearing render a ''recommended'' decision rather than an ''initial'' decision. Additionally, the Commission is amending its rules of practice to reflect new procedures for making *Touhy* and Privacy Act requests. Finally, the Commission is amending certain provisions in its rules of practice to fix misspellings and cross-references and make other ministerial changes.

DATES: This rule is effective on June 5, 2023. The rules of practice for adjudicative proceedings that were in effect before June 5, 2023 will govern all currently pending Commission adjudicative proceedings.

FOR FURTHER INFORMATION CONTACT: Josephine Liu, (202) 326–2170, or Michael Lezaja, (202) 326–2661, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission is revising certain rules in parts 0 through 4 of its rules of practice, 16 CFR parts 0 through 4. These revisions fall into four categories: (1) revisions in parts 0 and 2 to reflect the creation of the agency's new Office of Technology; (2) revisions in part 3 so that the administrative law judge (ALJ) will issue a ''recommended'' decision after each administrative hearing rather than an ''initial'' decision, and so that each recommended decision will be subject to automatic Commission review; (3) revisions in part 4 to amend the procedures for *Touhy* and Privacy Act requests; and (4) revisions to parts 1 and 3 to make ministerial changes such as updating cross-references and fixing misspellings.

Because these rule revisions relate solely to agency procedure and practice, publication for notice and comment is not required under the Administrative Procedure Act. 5 U.S.C. 553(b).[1]

I. Revisions to Part 0—Organization

The Commission recently created a new Office of Technology. Consequently, the Commission is adding new 16 CFR 0.8(f) to include

[1] For this reason, the requirements of the Regulatory Flexibility Act are also inapplicable. 5 U.S.C. 601(2), 604(a). Likewise, the amendments do not modify any FTC collections of information within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

information about the new Office of Technology.

II. Revisions to Part 1—General Procedures

The Commission is revising part 1 of its rules to fix cross-references in §§ 1.13(b) and 1.26(b)(5), fix misspellings in §§ 1.22(c) and 1.73(b)(1), correct an outdated reference to the ''Division of Credit Practices'' in § 1.71, and eliminate redundant use of both spelled-out numbers and Roman numerals in § 1.73(b)(1).

III. Revisions to Part 2—Investigative, Settlement, and Compliance Procedures

As noted above, the Commission recently created the new Office of Technology. The Commission is revising §§ 2.7(l) and 2.10(a)(5) to add the Chief Technology Officer and Deputy Chief Technology Officer to the list of officials who have delegated authority to modify the terms of compliance with compulsory process and extend certain deadlines relating to compulsory process. This change will put the Chief Technology Officer and Deputy Chief Technology Officer on equal footing with other designated officials like the Director and Deputy Director of the Office of Policy Planning who already have this delegated authority.

IV. Revisions to Part 3—Rules of Practice for Adjudicative Proceedings

The Commission is revising part 3 so that the ALJ will issue a ''recommended'' decision after each administrative hearing, rather than an ''initial'' decision. Under the Administrative Procedure Act, an ALJ who presides at the reception of evidence in an adjudicative proceeding can either (1) render an ''initial decision,'' or (2) ''recommend a decision'' to the agency and ''certify'' the ''entire record'' to the agency for a decision. 5 U.S.C. 557(b). When the ALJ issues an ''initial decision,'' that ''becomes the decision of the agency without further proceedings'' unless a party seeks review of the initial decision before the agency or the agency, on its own initiative, elects to review the initial decision. *Id.* A ''recommended decision,'' by contrast, is issued in cases where the agency will automatically review the recommended decision. In evaluating the recommended decision, the agency may affirm the recommended decision in full or may reject the ALJ's recommended decision, in whole or in part, and issue its own decision adopting different findings of fact or conclusions of law. Before the agency can take action on an ALJ's recommended decision, the agency must provide the parties with a ''reasonable opportunity to submit exceptions'' to the recommended decision and ''supporting reasons for the exceptions.'' 5 U.S.C. 557(c). In addition, the agency must rule on each exception presented. *Id.*

Section 3.24: Summary Decisions

In § 3.24, the Commission is deleting the language about referring motions for summary decision to the ALJ. The granting of summary decision indicates that there is no genuine issue as to any material fact regarding liability or relief, and it results in the issuance of a final decision and order. Because the Commission is amending its rules of practice so that the ALJ will issue only recommended decisions, not initial decisions, the Commission is revising § 3.24 to eliminate the ALJ's ability to rule on motions for summary decision. In addition, as a practical matter, the Commission has not referred any motions for summary decision to the ALJ since § 3.24 was revised in 2009 to permit the Commission to resolve dispositive motions in the first instance unless referred by the Commission to the ALJ. *See* 74 FR 1804, 1811 (2009).

Section 3.51: Recommended Decision

This section—previously named ''Initial decision''—is being renamed to reflect the ALJ's new role in issuing recommended decisions.

The Commission is also deleting outdated language in § 3.51(a) about the initial decision becoming the decision of the Commission unless a party perfects an appeal or the Commission places the case on its own docket for review. That language is inapplicable to recommended decisions, which are automatically reviewed by the Commission.

Under the APA, when an ALJ issues a recommended decision, the ALJ must also ''certify'' the ''entire record'' to the agency for a decision. 5 U.S.C. 557(b). In new § 3.51(a)(2), the Commission is adding language to explain what constitutes the record of the proceeding—*i.e.,* the recommended decision; any transcripts from prehearing conferences; all hearing transcripts; all rulings; all exhibits; and the pleadings, motions, briefs, memoranda, and other supporting papers filed in connection with the proceeding. The Commission is also requiring the ALJ to provide an index of each exhibit identified but not received into evidence, to help ensure that the Commission does not inadvertently rely upon an exhibit that was never admitted.

Section 3.52: Exceptions to Recommended Decision

Under the APA, parties must be given a ''reasonable opportunity to submit exceptions'' to the recommended decision and ''supporting reasons for the exceptions.'' 5 U.S.C. 557(c). The Commission is renaming § 3.52—previously named ''Appeal from initial decision''—to be consistent with this terminology and also to eliminate the reference to initial decisions.

Section 3.52(a) will continue to govern the timing of Commission review for cases in which the Commission sought preliminary relief in federal court; § 3.52(b) will continue to govern the timing of Commission review for all other cases.

In § 3.52(b)(1), the Commission is eliminating the requirement that parties first file a notice of appeal and then perfect their appeal by filing an opening appeal brief. Under the revised rule, parties will file their exceptions to the recommended decision simply by filing an opening brief.

In new § 3.52(b)(2), the Commission is adding a paragraph to explain the procedures that will govern when no party files exceptions to the recommended decision. As stated in new § 3.52(b)(2), the Commission may in its discretion hold oral argument within 30 days after the deadline for the filing of exceptions. The Commission will issue its final decision within 100 days after oral argument; or, if no oral argument is scheduled, the Commission will issue its final decision within 100 days after the deadline for the filing of exceptions.

Section 3.53: Review of Recommended Decision in Absence of Exceptions

The Commission is renaming this section—previously named ''Review of recommended decision in absence of appeal''—to be consistent with the terminology used elsewhere in the revised rules.

As explained in § 3.53, if no party files exceptions to the recommended decision, the Commission will enter an order placing the case on its own docket for review. The Commission's order will set forth the scope of such review and the issues to be considered. The order will also provide for the filing of briefs if appropriate.

Section 3.54: Commission Decision After Review of Recommended Decision

The Commission is renaming this section—previously named ''Decision on appeal or review''—to be consistent with the terminology used elsewhere in the revised rules.

The Commission is deleting old § 3.54(a). The old language about the powers of the Commission during an appeal from or review of an initial decision is no longer needed, given that the entire record is now being certified to the Commission for a decision.

Sections 3.1, 3.21(c)(2), 3.38(c), 3.42(c)(9), 3.46(e), 3.82(d)(3), and 3.83(g)–(h)

In these rules, the Commission is changing language that mentions ''initial decisions'' so that the language instead mentions ''recommended decisions.'' The Commission is also correcting other provisions that are inconsistent with the recommended decision procedure.

Ministerial Changes

Finally, the Commission is eliminating redundant use of both spelled-out numbers and Roman numerals in § 3.42(e) and (g)(2).

V. Revisions to Part 4—Miscellaneous Rules

The Commission is revising § 4.11(e) to clarify the procedures that apply to *Touhy* requests seeking records or testimony from the Commission Office of Inspector General, and revising its Privacy Act rules in § 4.13 to conform with the CASES Act and implementing OMB guidance.

Section 4.11(e): Requests for Testimony, Pursuant to Compulsory Process or Otherwise, and Requests for Material Pursuant to Compulsory Process, in Cases or Matters to Which the Commission is Not a party

In § 4.11(e), the Commission is adding language to clarify that where there is a request under § 4.11(e) for records or testimony from the Commission Office of Inspector General, the Inspector General—rather than the General Counsel—will consider and act upon these requests.

Section 4.13: Privacy Act Rules

In § 4.13(d), the Commission is clarifying when persons submitting written requests are required to verify their identity. This change complies with the requirements of the Creating Advanced Streamlined Electronic Services for Constituents Act of 2019 (''CASES Act''), Public Law 116–50, 133 Stat. 1074 (codified at 5 U.S.C. 552a note), and OMB M–21–04, Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act (Nov. 12, 2020). Under the CASES Act and implementing OMB guidance, agencies must accept remote identity-proofing and authentication for the purposes of allowing an individual to request access to their records or to provide prior written consent authorizing disclosure of their records under the Privacy Act. Specifically, the changes to § 4.13(d) clarify that persons submitting Privacy Act requests are required to verify their identity, and that the deciding official will require additional verification of a requester's identity when reasonably necessary to protect against improper disclosure of records.

List of Subjects

16 CFR Parts 0, 1, 2 and 3

Administrative practice and procedure.

16 CFR Part 4

Administrative practice and procedure, Freedom of information, Public record, Sunshine Act.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A of the Code of Federal Regulations as follows:

PART 0—ORGANIZATION

■ 1. The authority for Part 0 continues to read as follows:

Authority: 5 U.S.C. 552(a)(1); 15 U.S.C. 46(g).

■ 2. In § 0.8, revise paragraphs (d) and (e) and add paragraph (f) to read as follows:

§ 0.8 The Chair.

* * * * *

(d) The Office of Policy Planning, which assists the Commission to develop and implement long-range competition and consumer protection policy initiatives;

(e) The Office of Public Affairs, which furnishes information concerning Commission activities to news media and the public; and

(f) The Office of Technology, which employs expertise in technology to strengthen and support law enforcement investigations and actions, advise and engage with FTC staff and the Commission on policy and research initiatives, and engage the public and relevant experts to understand trends and to advance the Commission's work.

PART 1—GENERAL PROCEDURES

■ 3. The authority for subpart B of Part 1 continues to read as follows:

Authority: 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 552; 5 U.S.C. 601 note.

■ 4. In § 1.13, amend paragraph (b) introductory text by revising the first sentence to read as follows:

§ 1.13 Conduct of informal hearing by the presiding officer.

* * * * *

(b) * * * If requested under § 1.11(e), an informal hearing with the opportunity for oral presentations will be conducted by the presiding officer. * * *

* * * * *

■ 5. The authority for subpart C of Part 1 continues to read as follows:

Authority: 15 U.S.C. 46; 5 U.S.C. 601 note.

■ 6. In § 1.22, revise paragraph (c) to read as follows:

§ 1.22 Rulemaking.

* * * * *

(c) *Use of rules in adjudicative proceedings.* When a rule is relevant to any issue involved in an adjudicative proceeding thereafter instituted, the Commission may rely upon the rule to resolve such issue, provided that the respondent shall have been given a fair hearing on the applicability of the rule to the particular case.

■ 7. In § 1.26, revise paragraph (b)(5) to read as follows:

§ 1.26 Procedure.

* * * * *

(b) * * *

(5) A statement setting forth such procedures for treatment of communications from persons not employed by the Commission to Commissioners or Commissioner Advisors with respect to the merits of the proceeding as will incorporate the requirements of § 1.18(c), including the transcription of oral communications required by § 1.18(c)(1)(ii), adapted in such form as may be appropriate to the circumstances of the particular proceeding.

* * * * *

■ 8. The authority for subpart H of Part 1 continues to read as follows:

Authority: 84 Stat. 1128, 15 U.S.C. 1681 *et seq.*

■ 9. In § 1.71, revise the first sentence to read as follows:

§ 1.71 Administration.

The general administration of the Fair Credit Reporting Act (Title VI of the Consumer Credit Protection Act of 1968; enacted October 26, 1970; Pub. L. 91–508, 82 Stat. 146, 15 U.S.C. 1601 *et seq.*) is carried out by the Bureau of Consumer Protection, Division of Privacy and Identity Protection. * * *

■ 10. In § 1.73, revise paragraph (b)(1) to read as follows:

§ 1.73 Interpretations.

* * * * *

(b) * * *

(1) Requests for Commission interpretations should be submitted in writing to the Secretary of the Federal Trade Commission stating the nature of the interpretation requested and the reasons and justification therefor. If the request is granted, as soon as practicable thereafter, the Commission will publish a notice in the **Federal Register** setting forth the text of the proposed interpretation. Comments, views, or objections, together with the grounds therefor, concerning the proposed interpretation may be submitted to the Secretary of the Commission within 30 days of public notice thereof. The proposed interpretation will automatically become final after the expiration of 60 days from the date of public notice thereof, unless upon consideration of written comments submitted as hereinabove provided, the Commission determines to rescind, revoke, modify, or withdraw the proposed interpretation, in which event notification of such determination will be published in the **Federal Register**.

* * * * *

PART 2—NONADJUDICATIVE PROCEDURES

■ 11. The authority for Part 2 continues to read as follows:

Authority: 15 U.S.C. 46.

■ 12. In § 2.7, amend paragraph (l) by revising the first sentence to read as follows:

§ 2.7 Compulsory process in investigations.

* * * * *

(l) * * * The Directors of the Bureaus of Competition, Consumer Protection, and Economics and the Office of Policy Planning, their Deputy Directors, the Assistant Directors of the Bureaus of Competition and Economics, the Associate Directors of the Bureau of Consumer Protection, the Regional Directors, the Assistant Regional Directors, the Chief Technology Officer, and the Deputy Chief Technology Officer are all authorized to modify and, in writing, approve the terms of compliance with all compulsory process, including subpoenas, CIDs, reporting programs, orders requiring reports, answers to questions, and orders requiring access. * * *

■ 13. In § 2.10, revise paragraph (a)(5) to read as follows:

§ 2.10 Petitions to limit or quash Commission compulsory process.

(a) * * *

(5) *Extensions of time.* The Directors of the Bureaus of Competition, Consumer Protection, and Economics and the Office of Policy Planning, their Deputy Directors, the Assistant Directors of the Bureaus of Competition and Economics, the Associate Directors of the Bureau of Consumer Protection, the Regional Directors, the Assistant Regional Directors, the Chief Technology Officer, and the Deputy Chief Technology Officer are delegated, without power of redelegation, the authority to rule upon requests for extensions of time within which to file petitions to limit or quash Commission compulsory process.

* * * * *

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

■ 14. The authority for Part 3 continues to read as follows:

Authority: 15 U.S.C. 46.

■ 15. In § 3.1, revise the last sentence to read as follows:

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

* * * The Commission, at any time, or the Administrative Law Judge at any time prior to the filing of his or her recommended decision, may, with the consent of the parties, shorten any time limit prescribed by these Rules of Practice.

■ 16. In § 3.21, amend paragraph (c)(2), by revising the third sentence to read as follows:

§ 3.21 Prehearing procedures.

* * * * *

(c) * * *

(2) * * * In determining whether to grant the motion, the Administrative Law Judge shall consider any extensions already granted, the length of the proceedings to date, the complexity of the issues, and the need to conclude the evidentiary hearing and render a recommended decision in a timely manner. * * *

* * * * *

■ 17. In § 3.24, revise paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (b)(1), and (b)(2) to read as follows:

§ 3.24 Summary decisions.

(a) * * *

(2) Any other party may, within 14 days after service of the motion, file opposing affidavits. The opposing party shall include a separate and concise statement of those material facts as to which the opposing party contends there exists a genuine issue for trial, as provided in § 3.24(a)(3). The parties may file memoranda of law in support of, or in opposition to, the motion consistent with § 3.22(c). If a party includes in any such brief or memorandum information that has been granted in camera status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the party shall file 2 versions of the document in accordance with the procedures set forth in § 3.45(e). If the Commission determines that there is no genuine issue as to any material fact regarding liability or relief, it shall issue a final decision and order. A summary decision, interlocutory in character and in compliance with the procedures set forth in § 3.51(c), may be rendered on the issue of liability alone although there is a genuine issue as to relief.

(3) Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Commission may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary decision is made and supported as provided in this rule, a party opposing the motion may not rest upon the mere allegations or denials of his or her pleading; the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of material fact for trial. If no such response is filed, summary decision, if appropriate, shall be rendered.

(4) Should it appear from the affidavits of a party opposing the motion that it cannot, for reasons stated, present by affidavit facts essential to justify its opposition, the Commission may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or make such other order as is appropriate and a determination to that effect shall be made a matter of record.

(5) If on motion under this rule a summary decision is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Commission shall issue an order specifying the facts that appear without substantial controversy and directing further proceedings in the action. The facts so specified shall be deemed established.

(b) * * *

(1) Should it appear to the satisfaction of the Commission at any time that any of the affidavits presented pursuant to this rule are presented in bad faith, or solely for the purpose of delay, or are patently frivolous, the Commission shall enter a determination to that effect upon the record.

(2) If upon consideration of all relevant facts attending the submission of any affidavit covered by paragraph (b)(1) of this section, the Commission concludes that action to suspend or remove an attorney from the case is warranted, it shall take action as specified in § 3.42(d).

■ 18. In § 3.38, amend paragraph (c) by revising the first sentence to read as follows:

§ 3.38 Motion for order compelling disclosure or discovery; sanctions.

* * * * *

(c) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in a recommended decision of the Administrative Law Judge or an order or opinion of the Commission. * * *

■ 19. In § 3.42, revise paragraphs (c)(9) and (e) and the second sentence of paragraph (g)(2) to read as follows:

§ 3.42 Presiding officials.

* * * * *

(c) * * *

(9) To make and file recommended decisions;

* * * * *

(e) *Substitution of Administrative Law Judge.* In the event of the substitution of a new Administrative Law Judge for the one originally designated, any motion predicated upon such substitution shall be made within 5 days thereafter.

* * * * *

(g) * * *

(2) * * * If the Administrative Law Judge does not disqualify himself within 10 days, he shall certify the motion to the Commission, together with any statement he may wish to have considered by the Commission. * * *

* * * * *

■ 20. In § 3.46, revise paragraph (e) to read as follows:

§ 3.46 Proposed findings, conclusions, and order.

* * * * *

(e) *Rulings.* The record shall show the Administrative Law Judge's recommended ruling on each proposed finding and conclusion, except when the proposed order disposing of the proceeding otherwise informs the parties of the action taken.

■ 21. Revise § 3.51 to read as follows:

§ 3.51 Recommended decision.

(a) *When filed, content.* (1) *Filing of recommended decision.* The Administrative Law Judge shall file a recommended decision within 70 days after the filing of the last filed initial or reply proposed findings of fact, conclusions of law and order pursuant to § 3.46, or within 85 days of the closing the hearing record pursuant to § 3.44(c) where the parties have waived the filing of proposed findings. The Administrative Law Judge may extend any of these time periods by up to 30 days for good cause. The Commission may further extend any of these time periods for good cause.

(2) *Certification of the record.* At the same time the Administrative Law Judge files the recommended decision, the Administrative Law Judge will also certify to the Commission the record of the proceeding. The record must include the Administrative Law Judge's recommended decision; any transcripts from prehearing conferences; all hearing transcripts; all rulings; all exhibits; and the pleadings, motions, briefs, memoranda, and other supporting papers filed in connection with the proceeding. The Administrative Law Judge must also furnish to the Commission an index of each exhibit identified but not received in evidence.

(b) *Exhaustion of administrative remedies.* A recommended decision shall not be considered final agency action subject to judicial review under 5 U.S.C. 704. Any objection to a ruling by the Administrative Law Judge, or to a finding, conclusion or a provision of the order in the recommended decision, which is not made a part of any exceptions filed with the Commission shall be deemed to have been waived.

(c) *Content, format for filing.* (1) A recommended decision shall be based on a consideration of the whole record relevant to the issues decided, and shall be supported by reliable and probative evidence. The recommended decision shall include a statement of recommended findings of fact (with specific page references to principal supporting items of evidence in the record) and recommended conclusions of law, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record (or those designated under paragraph (c)(2) of this section) and an appropriate proposed rule or order. Rulings containing information granted in camera status pursuant to § 3.45 shall be filed in accordance with § 3.45(f).

(2) The recommended decision shall be prepared in a common word processing format, such as WordPerfect or Microsoft Word, and shall be filed by the Administrative Law Judge with the Office of the Secretary in both electronic and paper versions.

(3) When more than one claim for relief is presented in an action, or when multiple parties are involved, the Administrative Law Judge may direct the entry of a recommended decision as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of recommended decision.

(d) *By whom made.* The recommended decision shall be made and filed by the Administrative Law Judge who presided over the hearings, except when he or she shall have become unavailable to the Commission.

(e) *Reopening of proceeding by Administrative Law Judge; termination of jurisdiction.*

(1) At any time from the close of the hearing record pursuant to § 3.44(c) until the filing of his or her recommended decision, an Administrative Law Judge may reopen the proceeding for the reception of further evidence for good cause shown.

(2) Except for the correction of clerical errors or pursuant to an order of remand from the Commission, the jurisdiction of the Administrative Law Judge is terminated upon the filing of his or her recommended decision with respect to those issues decided pursuant to paragraph (c)(1) of this section.

■ 22. In § 3.52, revise the section heading and paragraphs (a), (b), and (c) to read as follows:

§ 3.52 Exceptions to recommended decision.

(a) *Timing of Commission review for cases in which the Commission sought preliminary relief in federal court.* (1) For proceedings with respect to which the Commission has sought preliminary relief in federal court under 15 U.S.C. 53(b), any party may file exceptions to the recommended decision or order of the Administrative Law Judge by filing its opening brief, subject to the requirements in paragraph (c) of this section, within 20 days of the issuance of the recommended decision. Any party may respond to any exceptions filed by another party by filing an answering brief, subject to the requirements of paragraph (d) of this section, within 20 days of service of the opening brief. Any party may file a reply to an answering brief, subject to the requirements of paragraph (e) of this section, within 5 days of service of the answering brief. Unless the Commission orders that there shall be no oral argument, it will hold oral argument within 10 days after the deadline for the filing of any reply briefs. The Commission will issue its final decision pursuant to § 3.54 within 45 days after oral argument. If no oral argument is scheduled, the Commission will issue its final decision pursuant to § 3.54

within 45 days after the deadline for the filing of any reply briefs.

(2) If no exceptions to the recommended decision are filed, the Commission may in its discretion hold oral argument within 10 days after the deadline for the filing of exceptions, and will issue its final decision pursuant to § 3.54 within 45 days after oral argument. If no oral argument is scheduled, the Commission will issue its final decision pursuant to § 3.54 within 45 days after the deadline for the filing of exceptions.

(b) *Timing of Commission review in all other cases.* (1) In all cases other than those subject to paragraph (a) of this section, any party may file exceptions to the recommended decision of the Administrative Law Judge by filing its opening brief, subject to the requirements in paragraph (c) of this section, within 30 days of the issuance of the recommended decision. Any party may respond to the opening brief by filing an answering brief, subject to the requirements of paragraph (d) of this section, within 30 days of service of the opening brief. Any party may file a reply to an answering brief, subject to the requirements of paragraph (e) of this section, within 7 days of service of the answering brief. Unless the Commission orders that there shall be no oral argument, it will hold oral argument within 15 days after the deadline for the filing of any reply briefs. The Commission will issue its final decision pursuant to § 3.54 within 100 days after oral argument. If no oral argument is scheduled, the Commission will issue its final decision pursuant to § 3.54 within 100 days after the deadline for the filing of any reply briefs.

(2) If no exceptions to the recommended decision are filed, the Commission may in its discretion hold oral argument within 30 days after the deadline for the filing of exceptions, and will issue its final decision pursuant to § 3.54 within 100 days after oral argument. If no oral argument is scheduled, the Commission will issue its final decision pursuant to § 3.54 within 100 days after the deadline for the filing of exceptions.

(c) *Opening brief.* (1) The opening brief shall contain, in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(ii) A concise statement of the case, which includes a statement of facts relevant to the issues submitted for review, and a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(iii) A specification of the questions intended to be urged;

(iv) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and the legal or other material relied upon; and

(v) A proposed form of order for the Commission's consideration instead of the order contained in the recommended decision.

* * * * *

■ 23. Revise § 3.53 to read as follows:

§ 3.53 Review of recommended decision in absence of exceptions.

If no party files exceptions to the recommended decision of the Administrative Law Judge under § 3.52(a)(1) or § 3.52(b)(1), the Commission will enter an order placing the case on its own docket for review. The Commission's order will set forth the scope of such review and the issues which will be considered and will make provision for the filing of briefs if deemed appropriate by the Commission.

■ 24. Amend § 3.54 by:

■ a. Revising the section heading;

■ b. Revising paragraph (a);

■ c. Removing paragraph (b);

■ d. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

The revisions read as follows:

§ 3.54 Commission decision after review of recommended decision.

(a) In rendering its decision, the Commission will adopt, modify, or set aside the recommended findings, recommended conclusions, and proposed rule or order contained in the recommended decision, and will include in the decision a statement of the reasons or basis for its action and any concurring and dissenting opinions.

* * * * *

■ 25. The authority for subpart I of Part 3 continues to read as follows:

Authority: 5 U.S.C. 504 and 5 U.S.C. 553(b).

■ 26. In § 3.82, revise paragraph (d)(3) to read as follows:

§ 3.82 Information required from applicants.

* * * * *

(d) * * *

(3) For purposes of this subpart, *final disposition* means the later of—

(i) The date that the Commission issues an order disposing of any petitions for reconsideration of the Commission's final order in the proceeding; or

(ii) The date that the Commission issues a final order or any other final resolution of a proceeding, such as a consent agreement, settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

■ 27. In § 3.83, revise paragraphs (g) and (h) to read as follows:

§ 3.83 Procedures for considering applicants.

* * * * *

(g) *Decision.* The Administrative Law Judge shall issue a recommended decision on the application within 30 days after closing proceedings on the application.

(1) *For a decision involving a prevailing party:* The decision shall include written recommended findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, recommended findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

(2) *For a decision involving an excessive agency demand:* The decision shall include written recommended findings and conclusions on the applicant's eligibility and an explanation of the reasons why the agency's demand was or was not determined to be substantially in excess of the decision of the adjudicative officer and was or was not unreasonable when compared with that decision. That decision shall be based upon all the facts and circumstances of the case. The decision shall also include, if at issue, recommended findings on whether the applicant has committed a willful violation of law or otherwise acted in bad faith, or whether special circumstances make an award unjust.

(h) *Agency review.* Either the applicant or complaint counsel may seek review of the recommended decision on the fee application by filing exceptions under § 3.52(a)(1), or the Commission may decide to review the decision on its own initiative, in accordance with § 3.53. The Commission will issue a final decision on the application or remand the application to the Administrative Law Judge for further proceedings.

* * * * *

PART 4—MISCELLANEOUS RULES

■ 28. The authority for Part 4 continues to read as follows:

Authority: 15 U.S.C. 46.

■ 29. Amend § 4.11(e)(1) by adding a sentence to the end of the paragraph to read as follows:

§ 4.11 Disclosure requests.

* * * * *

(e) * * *

(1) * * * Where a demand is made for Commission Office of Inspector General (''OIG'') records or OIG employee testimony, the term ''Inspector General'' will be substituted in this paragraph (e) for the term ''General Counsel.''

* * * * *

■ 30. In § 4.13, revise paragraph (d) to read as follows:

§ 4.13 Privacy Act rules.

* * * * *

(d) *Times, places, and requirements for identification of individuals making requests.* Verification of identity of persons making written requests to the deciding official (as designated by the General Counsel) will be required. The signature on such requests will be deemed a certification by the signatory that he or she is the individual to whom the record pertains or is the parent or guardian of a minor or the legal guardian of the individual to whom the record pertains. The deciding official (as designated by the General Counsel) will require additional verification of a requester's identity when such information is reasonably necessary to assure that records are not improperly disclosed; provided, however, that no verification of identity will be required if the records sought are publicly available under the Freedom of Information Act.

* * * * *

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2023–12630 Filed 7–3–23; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2022–0003; T.D. TTB–188; Ref: Notice No. 209]

RIN 1513–AC79

Establishment of the Long Valley–Lake County Viticultural Area and Modification of the High Valley and North Coast Viticultural Areas

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 7,605-acre ''Long Valley–Lake County'' viticultural area in Lake County, California. Additionally, TTB is expanding the boundary of the established 14,000-acre High Valley viticultural area by approximately 1,542 acres in order to create a contiguous border with the Long Valley–Lake County viticultural area. Finally, TTB is modifying the boundary of the North Coast viticultural area to eliminate a partial overlap with the Long Valley–Lake County viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective August 4, 2023.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administration and enforcement authorities to TTB through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;