Hampshire, New Jersey, New York, Rhode Island, Vermont, Puerto Rico, and the U.S. Virgin Islands.

(2) Southeast Region (located in Atlanta, Georgia), covering Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee.

(3) East Central Region (located in Cleveland, Ohio), covering Delaware, District of Columbia, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia.

(4) Midwest Region (located in Chicago, Illinois), covering Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin.

(5) Southwest Region (located in Dallas, Texas), covering Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

(6) Northwest Region (located in Seattle, Washington), covering Alaska, Idaho, Montana, Oregon, Washington, and Wyoming.

(7) Western Region Los Angeles (located in Los Angeles, California), covering Arizona, Hawaii, Southern California, Southern Nevada, Guam, the Northern Mariana Islands, and American Samoa.

(8) Western Region San Francisco (located in San Francisco, California), covering Colorado, Northern California, Northern Nevada, and Utah.

(c) Each of the regional offices is supervised by a Regional Director and an Assistant Regional Director, who are available for conferences with attorneys, consumers, and other members of the public on matters relating to the Commission's activities.

[86 FR 38547, July 22, 2021]

§ 0.20 Office of International Affairs.

The Office of International Affairs (OIA) is responsible for the agency's international antitrust and international consumer protection missions in coordination and consultation with the appropriate Bureaus, including the design and implementation of the Commission's international program. OIA provides support to the Bureaus of Competition and Consumer Protection with regard to the international aspects of investigation and prosecution of unlawful conduct; builds cooperative relationships between the Commission and foreign authorities; cooperates with foreign authorities on investigations and enforcement; works closely with the Bureaus to recommend agency policies to the Commission; works, through bilateral relationships, multilateral organizations, and trade fora to promote Commission priorities and policies; participates in the United States government interagency process to promote agency views on international issues within the FTC's mandate; and coordinates staff exchanges and internships at the FTC for staff of non-U.S. competition, consumer protection, and privacy agencies. OIA also assists young agencies around the world to build capacity to promote sound competition and consumer protection law enforcement.

[86 FR 38547, July 22, 2021]

PART 1—GENERAL PROCEDURES

Subpart A—Industry Guidance

ADVISORY OPINIONS

INDUSTRY GUIDES

Subpart B—Rules and Rulemaking Under Section 18(a)(1)(B) of the FTC Act

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

SOURCE: 32 FR 8444, June 13, 1967, unless otherwise noted.

Subpart A—Industry Guidance

AUTHORITY: 15 U.S.C. 46, unless otherwise noted.

ADVISORY OPINIONS

§ 1.1 Policy.

(a) Any person, partnership, or corporation may request advice from the Commission with respect to a course of action which the requesting party proposes to pursue. The Commission will consider such requests for advice and inform the requesting party of the Commission's views, where practicable, under the following circumstances.

(1) The matter involves a substantial or novel question of fact or law and there is no clear Commission or court precedent; or

(2) The subject matter of the request and consequent publication of Commission advice is of significant public interest.

(b) The Commission has authorized its staff to consider all requests for advice and to render advice, where practicable, in those circumstances in which a Commission opinion would not be warranted. Hypothetical questions will not be answered, and a request for advice will ordinarily be considered inappropriate where:

(1) The same or substantially the same course of action is under investigation or is or has been the subject of a current proceeding involving the Commission or another governmental agency, or

(2) An informed opinion cannot be made or could be made only after extensive investigation, clinical study, testing, or collateral inquiry.

[44 FR 21624, Apr. 11, 1979; 44 FR 23515, Apr. 20, 1979, as amended at 54 FR 14072, Apr. 7, 1989]

§ 1.2 Procedure.

(a) Application. The request for advice or interpretation should be submitted in writing (one original and two copies) to the Secretary of the Commission and should: (1) State clearly the question(s) that the applicant wishes resolved; (2) cite the provision of law under which the question arises; and (3) state all facts which the applicant believes to be material. In addition, the identity of the companies and other persons involved should be disclosed. Letters relating to unnamed companies or persons may not be answered. Submittal of additional facts may be requested prior to the rendering of any advice.

(b) Compliance matters. If the request is for advice as to whether the proposed course of action may violate

an outstanding order to cease and desist issued by the Commission, such request will be considered as provided for in §2.41 of this chapter.

[44 FR 21624, Apr. 11, 1979, as amended at 44 FR 40638, July 12, 1979]

§ 1.3 Advice.

(a) On the basis of the materials submitted, as well as any other information available, and if practicable, the Commission or its staff will inform the requesting party of its views.

(b) Any advice given by the Commission is without prejudice to the right of the Commission to reconsider the questions involved and, where the public interest requires, to rescind or revoke the action. Notice of such rescission or revocation will be given to the requesting party so that he may discontinue the course of action taken pursuant to the Commission's advice. The Commission will not proceed against the requesting party with respect to any action taken in good faith reliance upon the Commission's advice under this section, where all the relevant facts were fully, completely, and accurately presented to the Commission and where such action was promptly discontinued upon notification of rescission or revocation of the Commission's approval.

(c) Advice rendered by the staff is without prejudice to the right of the Commission later to rescind the advice and, where appropriate, to commence an enforcement proceeding.

[44 FR 21624, Apr. 11, 1979]

§ 1.4 Public disclosure.

Written advice rendered pursuant to this section and requests therefor, including names and details, will be placed in the Commission's public record immediately after the requesting party has received the advice, subject to any limitations on public disclosure arising from statutory restrictions, the Commission's rules, and the public interest. A request for confidential treatment of information submitted in connection with the questions should be made separately.

[44 FR 21624, Apr. 11, 1979]

INDUSTRY GUIDES

§ 1.5 Purpose.

Industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry. Failure to comply with the guides may result in corrective action by the Commission under applicable statutory provisions. Guides may relate to a practice common to many industries or to specific practices of a particular industry.

§ 1.6 How promulgated.

Industry guides[1] are promulgated by the Commission on its own initiative or pursuant to petition filed with the Secretary pursuant to §1.31, by any interested person or group, when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission. In connection with the promulgation of industry guides, the Commission at any time may conduct such investigations, make such studies, and hold such conferences or hearings as it may deem appropriate. All or any part of any such investigation, study, conference, or hearing may be conducted under the provisions of subpart A of part 2 of this chapter.

[86 FR 59852, Oct. 29, 2021]

Subpart B—Rules and Rulemaking Under Section 18(a)(1)(B) of the FTC Act

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

[1] In the past, certain of these have been promulgated and referred to as trade practice rules.

§ 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 (15 U.S.C. 57a(a)(1)(B)). Such rules will be known as trade regulation rules. All other rulemaking proceedings will be governed by the rules in subpart C of this part, except as otherwise required by law or as otherwise specified in this chapter.

[86 FR 38547, July 22, 2021]

§ 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 that are unfair or deceptive acts or practices in or affecting commerce. Trade regulation rules may include requirements prescribed for the purpose of preventing such acts or practices. A violation of a rule constitutes an unfair or deceptive act or practice in violation of section 5(a)(1) of that Act (15 U.S.C. 45(a)(1)), unless the Commission otherwise expressly provides in its rule. The respondents in an adjudicative proceeding may show that the alleged conduct does not violate the rule or assert any other defense to which they are 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 part 2, subpart A of this chapter.

[86 FR 38547, July 22, 2021]

§ 1.9 Petitions to commence trade regulation rule proceedings.

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. Such petitions will be handled in the same manner and pursuant to the same procedures as prescribed in §1.31 of this chapter.

[86 FR 59852, Oct. 29, 2021]

§ 1.10 Advance notice of proposed rulemaking.

(a) Prior to the commencement of any trade regulation rule proceeding, the Commission must publish in the FEDERAL REGISTER an advance notice of such proposed proceeding.

(b) The advance notice must:

(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 must be submitted to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and 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 a notice of proposed rulemaking pursuant to §1.11.

[86 FR 38547, July 22, 2021]

§ 1.11 Commencement of a rulemaking proceeding.

(a) *Notice of proposed rulemaking.* A trade regulation rule proceeding will commence with a notice of proposed rulemaking (NPRM). An NPRM will 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 Energy and Commerce of the House of Representatives.

(b) *Contents of NPRM.* The NPRM will include:

(1) A statement containing, with particularity, 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 the reason for the proposed rule;

(4) An invitation to comment on the proposed rule, as provided in paragraph (d) of this section;

(5) A list of disputed issues of material fact designated by the Commission as necessary to be resolved, if any;

(6) An explanation of the opportunity for an informal hearing and instructions for submissions relating to such a hearing, as provided in paragraph (e) of this section; and

(7) A statement of the manner in which the public may obtain copies of the preliminary regulatory analysis, if that analysis is not in the notice.

(c) *Preliminary regulatory analysis.* Except as otherwise provided by statute, the Commission must, when commencing a rulemaking proceeding, issue a preliminary regulatory analysis, which must 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 the Regulatory Flexibility Act, 5 U.S.C. 601–612, and the Paperwork Reduction Act, 44 U.S.C. 3501–3520, if applicable.

(d) *Written comments.* The Commission will accept written submissions of data, views, and arguments on all issues of fact, law, and policy. The Commission may in its discretion provide for a separate rebuttal period following the comment period. The subject matter of any rebuttal comments must be confined to subjects and issues identified by the Commission in its notice or by other interested persons in comments and must not introduce new issues into the record. The NPRM will establish deadlines for filing written comments and for filing rebuttal comments on the proposed rule.

(e) *Opportunity for hearing.* The Commission will provide an opportunity for an informal hearing if an interested person requests to present their position orally or if the Commission in its discretion elects to hold an informal hearing. Any such request regarding an informal hearing must be submitted to the Commission no later than the close of the written comment period, including a rebuttal period, if any, and must include:

(1) A request to make an oral submission, if desired;

(2) A statement identifying the interested person's interests in the proceeding; and

(3) Any proposals to add disputed issues of material fact beyond those identified in the notice.

[86 FR 38548, July 22, 2021]

§ 1.12 Notice of informal hearing and designations.

(a) *Initial notice of informal hearing.* If an informal hearing has been requested under §1.11(e), a notice of informal hearing will be published in the FEDERAL REGISTER. The initial notice of informal hearing will include:

(1) The designation of a presiding officer, pursuant to §1.13(a)(1);

(2) The time and place of the informal hearing;

(3) A final list of disputed issues of material fact necessary to be resolved during the hearing, if any;

(4) A list of the interested persons who will make oral presentations;

(5) A list of the groups of interested persons determined by the Commission to have the same or similar interests in the proceeding;

(6) An invitation to interested persons to submit requests to conduct or have conducted cross-examination or to present rebuttal submissions, pursuant to §1.13(b)(2), if desired; and

(7) Any other procedural rules necessary to promote the efficient and timely determination of the disputed issues to be resolved during the hearing.

(b) *Requests to conduct cross-examination or present rebuttal submissions.*

Cross-examination and rebuttal submissions at an informal hearing are available only to address disputed issues of material fact necessary to be resolved. Requests for an opportunity to cross-examine or to present rebuttal submissions must be accompanied by a specific justification therefor. In determining whether to grant such requests, the presence of the following circumstances indicate that such requests should be granted:

(1) An issue for cross-examination or the presentation of rebuttal submissions, is an issue of specific fact in contrast to legislative fact;

(2) A full and true disclosure with respect to the issue can be achieved only through cross-examination rather than through rebuttal submissions or the presentation of additional oral submissions; and

(3) The particular cross-examination or rebuttal submission is required for the resolution of a disputed issue.

(c) *Final notice of informal hearing.* Based on requests submitted in response to the initial notice of public hearing, the Commission will publish a final notice of informal hearing in the FEDERAL REGISTER. The final notice of public hearing will include:

(1) A list of the interested persons who will conduct cross-examination regarding disputed issues of material fact;

(2) A list of any groups of interested persons with the same or similar interests in the proceeding who will be required to choose a single representative to conduct cross-examination on behalf of the group, as provided in paragraph (d) of this section; and

(3) A list of the interested persons who will be permitted to make rebuttal submissions regarding disputed issues of material fact.

(d) *Designation of group representatives for cross-examination.* After consideration of any submissions under §1.11(e), the Commission will, if appropriate, identify groups of interested persons with the same or similar interests in the proceeding. The Commission may require any group of interested persons with the same or similar interests in the proceeding to select a single representative to conduct cross-examination on behalf of the group.

[86 FR 38548, July 22, 2021]

§ 1.13 Conduct of informal hearing by the presiding officer.

(a) *Presiding officer*—(1) *Designation.* In a trade regulation rule proceeding in which the Commission determines an informal hearing will be conducted, the initial notice of informal hearing must designate a presiding officer, who will be appointed by the Chief Presiding Officer specified in §0.8 of this chapter.

(2) *Powers of the presiding officer.* The presiding officer is responsible for the orderly conduct of the informal hearing. The presiding officer has all powers necessary or useful to that end, including the following:

(i) To issue any public notice that may be necessary for the orderly conduct of the informal hearing;

(ii) To modify the location, format, or time limits prescribed for the informal hearing, except that the presiding officer may not increase the time allotted for an informal hearing beyond a total of five hearing days over the course of a thirty-day period, unless the Commission, upon a showing of good cause, extends the number of days for the hearing;

(iii) To prescribe procedures or issue rulings to avoid unnecessary costs or delay, including, but not limited to, the imposition of reasonable time limits on the number and duration of oral presentations from individuals or groups with the same or similar interests in the proceeding and requirements that any cross-examination, which a person may be entitled to conduct or have conducted, be conducted by the presiding officer on behalf of that person in such a manner as the presiding officer determines to be appropriate and to be required for a full and true disclosure with respect to any issue designated for consideration in accordance with §1.13(b)(1);

(iv) To issue rulings selecting or modifying the designated representatives of groups of interested persons, as provided in paragraph (a)(3) of this section;

(v) To require that oral presentations at the informal hearing be under oath;

(vi) To require that oral presentations at the informal hearing be submitted in writing in advance of presentation; and

(viii) To rule on all requests of interested persons made during the course of the informal hearing.

(3) *Selection or modification of group representatives.* If a group of interested persons designated by the Commission under §1.12(d) to select a group representative is unable to agree upon a representative, the presiding officer may select a representative for the group. The presiding officer may entertain requests by a member of a group of interested persons to conduct or have conducted cross-examination under paragraph (b)(2) of this section if, after good-faith effort, the person is unable to agree upon a single representative with other group members and is able to demonstrate that the group representative will not adequately represent the person's interests. If the presiding officer finds that there are substantial and relevant issues or data that will not be adequately presented by the group representative, then the presiding officer may allow that person to conduct or have conducted any appropriate cross-examination on issues affecting the person's particular interests.

(4) *Organization.* In the performance of their rulemaking functions, presiding officers are responsible to the chief presiding officer who must not be responsible to any other officer or employee of the Commission.

(5) *Ex parte communications.* Except as required for the disposition of ex parte matters as authorized by law, no presiding officer may consult any person or party with respect to any fact in issue unless such officer gives notice and opportunity for all parties to participate.

(b) *Additional procedures when there are disputed issues of material fact.* If requested under §1.11(e), an informal hearing with the opportunity for oral presentations will be conducted by the presiding officer. In addition, if the Commission determines that there are disputed issues of material fact that are material and necessary to resolve, the informal hearing on such issues will be conducted in accordance with §1.13(b)(2).

(1) *Nature of issues for consideration in accordance with §1.13(b)(2)*—(i) *Issues that must be considered in accordance with §1.13(b)(2).* The only issues that must be designated for consideration in accordance with paragraphs (b)(2) of this section are disputed issues of fact that are determined by the Commission to be material and necessary to resolve.

(ii) *Addition or modification of issues for consideration in accordance with §1.13(b)(2).* The presiding officer may at any time on the presiding officer's own motion or pursuant to a written petition by interested persons, add or modify any issues designated pursuant to §1.12(a). No such petition shall be considered unless good cause is shown why any such proposed issue was not proposed pursuant to §1.11(e). In the event that new issues are designated, the presiding officer may determine whether interested persons may conduct cross-examination or present rebuttal submissions with respect to each new issue, as provided in §1.12(b), and may select or modify group representatives for cross examination with respect to each new issue, as provided in paragraph (a)(3) of this section.

(2) *Cross-examination and the presentation of rebuttal submissions by interested persons.* The presiding officer will conduct or allow to be conducted cross-examination of oral presentations and the presentation of rebuttal submissions relevant to the disputed issues of material fact designated for consideration during the informal hearing. For that purpose, the presiding officer may require submission of written requests for presentation of questions to any person making oral presentations and will determine whether to ask such questions or any other questions. All requests for presentation of questions will be placed in the rulemaking record. The presiding officer will also allow the presentation of rebuttal submissions as appropriate and required for a full and true disclosure with respect to the disputed issues of material fact designated for consideration during the informal hearing.

(c) *Written transcript.* A verbatim transcript will be made of the informal

hearing and placed in the rulemaking record.

(d) *Recommended decision.* The presiding officer will make a recommended decision based on their findings and conclusions as to all relevant and material evidence. The recommended decision will be made by the presiding officer who presided over the informal hearing except that such recommended decision may be made by another officer if the officer who presided over the hearing is no longer available to the Commission. The recommended decision must be rendered within sixty days of the completion of the hearing. If a petition for review of a ruling by the presiding officer has been filed under paragraph (e) of this section, the recommended decision must be rendered within sixty days following the resolution of that petition or any rehearing required by the Commission. The presiding officer's recommended decision will be limited to explaining the presiding officer's proposed resolution of disputed issues of material fact.

(e) *Post-hearing review by the Commission of rulings by the presiding officer.* (1) Within ten days of the completion of the informal hearing, any interested person may petition the Commission for review of a ruling by the presiding officer denying or limiting the petitioner's ability to conduct cross-examination or make rebuttal submissions upon a showing that the ruling precluded disclosure of a disputed material fact that was necessary for fair determination by the Commission of the rulemaking proceeding as a whole. Such petitions must not exceed eight thousand words. This word count limitation includes headings, footnotes, and quotations, but does not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, or proposed form of order. A petition hereunder will not stay the rulemaking proceeding unless the Commission so orders. All petitions filed under this paragraph will be a part of the rulemaking record.

(2) The Commission may, in its discretion, hear the appeal. Commission review, if granted, will be based on the petition and anything on the rulemaking record, without oral argument or further briefs, unless otherwise ordered by the Commission. If the Commission grants review, it will render a decision within thirty days of the announcement of its decision to review unless, upon a showing of good cause, the Commission extends the number of days for review.

[86 FR 38549, July 22, 2021, as amended at 88 FR 42874, July 5, 2023]

§ 1.14 Promulgation.

(a) The Commission, after review of the rulemaking record, may issue, modify, or decline to issue any rule. If the Commission wants 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 will adopt a statement of basis and purpose to accompany the rule, which must include:

(i) A statement regarding 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; and

(iii) A statement as to the economic effect of the rule, taking into account the effect on small businesses and consumers.

(2) *Final regulatory analysis.* Except as otherwise provided by statute, if the Commission determines to promulgate a final rule, it will issue a final regulatory analysis relating to the final rule. Each final regulatory analysis must 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 that 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, 5 U.S.C. 601–612, and the Paperwork Reduction Act, 44 U.S.C. 3501–3520, if applicable.

(3) *Small entity compliance guide.* For each rule for which the Commission must prepare a final regulatory flexibility analysis, the Commission will publish one or more guides to assist small entities in complying with the rule. Such guides will be designated as ''small entity compliance guides.''

(b) If 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(b)(2), will 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 will be published in the FEDERAL REGISTER and will include the Statement of Basis and Purpose for the rule or provide an explanation of the manner in which the public may obtain copies of that document.

[86 FR 38550, July 22, 2021]

§ 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.

[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. Petitions for exemptions will be handled in the same manner and pursuant to the same procedures as prescribed in §1.31 of this chapter.

[86 FR 59852, Oct. 29, 2021]

§ 1.17 [Reserved]

§ 1.18 Rulemaking record.

(a) *Definition.* For purposes of these rules the term rulemaking record includes the final rule, its statement of basis and purpose, the verbatim transcripts of the informal hearing, if any, written submissions, the recommended decision of the presiding officer, any communications placed on the rulemaking record pursuant to §1.18(c), and any other information the Commission considers relevant to the rule.

(b) *Public availability.* The rulemaking record will be publicly available except when the Commission, for good cause shown, determines that it is in the public interest to allow any submission to be received in camera subject to the provisions of §4.9 of this chapter.

(c) *Communications to Commissioners and Commissioners' personal staffs*—(1) *Communications by outside parties.* Except as otherwise provided in this subpart or by the Commission, after the Commission votes to issue a notice of proposed rulemaking, comment on the proposed rule should be directed as provided in the notice. Communications with respect to the merits of that proceeding from any outside party to any Commissioner or Commissioner's advisor will be subject to the following treatment:

(i) *Written communications.* Written communications, including written communications from members of Congress, received within the period for acceptance of initial or rebuttal written comments or other written submissions will be placed on the rulemaking record. Written communications received outside of the time periods designated for acceptance of written comments or other written submissions will be placed on public record unless

the Commission votes to place them on the rulemaking record.

(ii) *Oral communications.* Oral communications to a Commissioner or Commissioner's advisor are permitted only when advance notice of such oral communications is published by the Commission's Office of Public Affairs in its Weekly Calendar and Notice of ''Sunshine'' Meetings. A Commissioner's advisor will ensure such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made and promptly placed on the rulemaking record. Memoranda summarizing such oral communications must list all persons attending or otherwise participating in the meeting at which the oral communication was made, and summarize all data presented and arguments made during the meeting.

(iii) *Congressional communications.* The provisions of paragraph (c)(1)(ii) of this section do not apply to communications from Members of Congress. Memoranda prepared by the Commissioner or Commissioner's advisor setting forth the contents of any oral congressional communications will be placed on the public record. If the communication occurs within the comment period and is transcribed verbatim or summarized, the transcript or summary will be promptly placed on the rulemaking record. A transcript or summary of any oral communication which occurs after the time period for acceptance of written comments will be placed promptly on the public record.

(2) *Communications by certain officers, employees, and agents of the Commission.* After the Commission votes to issue a notice of proposed rulemaking, any officer, employee, or agent of the Commission with investigative or other responsibility relating to any rulemaking proceeding within any operating bureau of the Commission is prohibited from communicating or causing to be communicated to any Commissioner or to the personal staff of any Commissioner any fact which is relevant to the merits of such proceeding and which is not on the rulemaking record of such proceeding, unless such communication is made available to the public and is included in the rulemaking record. The provisions of this subsection do not apply to any communication to the extent such communication is required for the disposition of ex parte matters as authorized by law.

[86 FR 38550, July 22, 2021]

§ 1.19 Modification of a rule by the Commission at the time of judicial review.

If a reviewing court orders, under section 18(e)(2) of the Federal Trade Commission Act (15 U.S.C. 57a(e)(2)), further submissions and presentations on the rule, the Commission may modify or set aside its rule or make a new rule by reason of the additional submissions and presentations. Such modified or new rule will then be filed with the court together with an appropriate statement of basis and purpose and the return of such submissions and presentations.

[86 FR 38551, July 22, 2021]

§ 1.20 Alternative procedures.

If the Commission determines at the commencement of a rulemaking proceeding to employ procedures other than those established in this subpart, it may do so by announcing those procedures in the FEDERAL REGISTER notice commencing the rulemaking proceeding.

[86 FR 38551, July 22, 2021]

Subpart C—Rules Promulgated Under Authority Other Than Section 18(a)(1)(B) of the FTC Act

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

§ 1.21 Scope of the rules in this subpart.

This subpart sets forth procedures for the promulgation of rules under authority other than section 18(a)(1)(B) of the FTC Act except as otherwise required by law or otherwise specified in the rules of this chapter. This subpart does not apply to the promulgation of industry guides, general statements of policy, rules of agency organization,

procedure, or practice, or rules governed by subpart B of this part.

[50 FR 53304, Dec. 31, 1985]

§ 1.22 Rulemaking.

(a) *Nature and authority.* For the purpose of carrying out the provisions of the statutes administered by it, the Commission is empowered to promulgate rules and regulations applicable to unlawful trade practices. Such rules and regulations express the experience and judgment of the Commission, based on facts of which it has knowledge derived from studies, reports, investigations, hearings, and other proceedings, or within official notice, concerning the substantive requirements of the statutes which it administers.

(b) *Scope.* Rules may cover all applications of a particular statutory provision and may be nationwide in effect, or they may be limited to particular areas or industries or to particular product or geographic markets, as may be appropriate.

(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.

[40 FR 15232, Apr. 4, 1975, as amended at 88 FR 42874, July 5, 2023]

§ 1.23 Quantity limit rules.

Quantity limit rules are authorized by section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. These rules have the force and effect of law.

[32 FR 8444, June 13, 1967. Redesignated at 40 FR 15232, Apr. 4, 1975]

§ 1.24 Rules applicable to wool, fur, and textile fiber products and rules promulgated under the Fair Packaging and Labeling Act.

Rules having the force and effect of law are authorized under section 6 of the Wool Products Labeling Act of 1939, section 8 of the Fur Products Labeling Act, section 7 of the Textile Fiber Products Identification Act, and sections 4, 5, and 6 of the Fair Packaging and Labeling Act.

[40 FR 15233, Apr. 4, 1975]

§ 1.25 Initiation of rulemaking proceedings—petitions.

Proceedings for the issuance, amendment, or repeal of rules issued pursuant to authorities other than Section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(1)(B)), including proceedings for exemption of products or classes of products from statutory requirements, may be commenced by the Commission upon its own initiative or pursuant to petition. Such petitions will be handled in the same manner and pursuant to the same procedures as prescribed in §1.31 of this chapter.

[86 FR 59852, Oct. 29, 2021]

§ 1.26 Procedure.

(a) *Investigations and conferences.* In connection with any rulemaking proceeding, 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.

(b) *Notice.* General notice of proposed rulemaking will be published in the FEDERAL REGISTER and, to the extent practicable, otherwise made available to interested persons except when the Commission for good cause finds that notice and public procedure relating to the rule are impractical, unnecessary or contrary to the public interest and incorporates such finding and a brief statement of the reasons therefor in the rule. If the rulemaking proceeding was instituted pursuant to petition, a copy of the notice will be served on the petitioner. Such notice will include:

(1) A statement of the time, place, and nature of the public proceedings;

(2) Reference to the authority under which the rule is proposed;

(3) Either the terms or substance of the proposed rule or description of the subjects and issues involved;

(4) An opportunity for interested persons to participate in the proceeding through the submission of written data, views, or arguments; and

(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.

(c) *Oral hearings.* Oral hearing on a proposed rule may be held within the discretion of the Commission, unless otherwise expressly required by law. Any such hearing will be conducted by the Commission, a member thereof, or a member of the Commission's staff. At the hearing interested persons may appear and express their views as to the proposed rule and may suggest such amendments, revisions, and additions thereto as they may consider desirable and appropriate. The presiding officer may impose reasonable limitations upon the length of time allotted to any person. If by reason of the limitations imposed the person cannot complete the presentation of his suggestions, he may within twenty-four (24) hours file a written statement covering those relevant matters which he did not orally present.

(d) *Promulgation of rules or orders.* The Commission, after consideration of all relevant matters of fact, law, policy, and discretion, including all relevant matters presented by interested persons in the proceeding, will adopt and publish in the FEDERAL REGISTER an appropriate rule or order, together with a concise general statement of its basis and purpose and any necessary findings, or will give other appropriate public notice of disposition of the proceeding. The FEDERAL REGISTER publication will contain the information required by the Paperwork Reduction Act, 44 U.S.C. 3501–3520, and the Regulatory Flexibility Act, 5 U.S.C. 601–612, if applicable. For each rule for which the Commission must prepare a final regulatory flexibility analysis, the Commission will publish one or more guides to assist small entities in complying with the rule. Such guides will be designated as ''small entity compliance guides.''

(e) *Effective date of rules.* Except as provided in paragraphs (f) and (g) of this section, the effective date of any rule, or of the amendment, suspension, or repeal of any rule will be as specified in a notice published in the FEDERAL REGISTER, which date will be not less than thirty (30) days after the date of such publication unless an earlier effective date is specified by the Commission upon good cause found and published with the rule.

(f) *Effective date of rules and orders under Fair Packaging and Labeling Act.* The effective date of any rule or order under the Fair Packaging and Labeling Act will be as specified by order published in the FEDERAL REGISTER, but shall not be prior to the day following the last day on which objections may be filed under paragraph (g) of this section.

(g) *Objections and request for hearing under Fair Packaging and Labeling Act.* On or before the thirtieth (30th) day after the date of publication of an order in the FEDERAL REGISTER pursuant to paragraph (f) of this section, any person who will be adversely affected by the order if placed in effect may file objections thereto with the Secretary of the Commission, specifying with particularity the provisions of the order deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such objections. Objections will be deemed sufficient to warrant the holding of a public hearing only:

(1) If they establish that the objector will be adversely affected by the order;

(2) If they specify with particularity the provisions of the order to which objection is taken; and

(3) If they are supported by reasonable grounds which, if valid and factually supported, may be adequate to justify the relief sought.

Anyone who files objections which are not deemed by the Commission sufficient to warrant the holding of a public hearing will be promptly notified of that determination. As soon as practicable after the time for filing objections has expired, the Commission will publish a notice in the FEDERAL REGISTER specifying those parts of the

order which have been stayed by the filing of objections or, if no objections sufficient to warrant the holding of a hearing have been filed, stating that fact.

[32 FR 8444, June 13, 1967. Redesignated at 40 FR 15232, Apr. 4, 1975, as amended at 44 FR 16368, Mar. 19, 1979; 50 FR 53304, Dec. 31, 1985; 63 FR 36340, July 6, 1998; 88 FR 42874, July 5, 2023]

Subpart D—Petitions for Rulemaking or Exemption

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

SOURCE: 86 FR 59852, Oct. 29, 2021, unless otherwise noted.

§ 1.31 Procedures for addressing petitions.

(a) *Petitions for rulemaking.* An interested person may petition for the issuance, amendment, or repeal of a rule, administered by the Commission pursuant to Section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(1)(B)) or other statutory authorities. A request to issue, amend, or repeal an interpretive rule, including an industry guide, may also be submitted by petition. For purposes of this section, a ''petition'' means a written request to issue, amend, or repeal a rule or interpretive rule administered by the Commission or a petition seeking an exemption from the coverage of a rule.

(b) *Requirements.* Petitions must include the following information:

(1) The petitioner's full name, address, telephone number, and email address (if available), along with an explanation of how the petitioner's interests would be affected by the requested action;

(2) A full statement of the action requested by the petitioner, including the text and substance of the proposed rule or amendment, or a statement identifying the rule proposed to be repealed, and citation to any existing Commission rules that would be affected by the requested action;

(3) A full statement of the factual and legal basis on which the petitioner relies for the action requested in the petition, including all relevant facts, views, argument, and data upon which the petitioner relies, as well as information known to the petitioner that is unfavorable to the petitioner's position. The statement should identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.

(c) *Supporting data.* If an original research report is used to support a petition, the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal. If quantitative data are used to support a petition, the presentation of the data should include a complete statistical analysis using conventional statistical methods. Sources of information appropriate to use in support of a petition include, but are not limited to:

(1) Professional journal articles,
(2) Research reports,
(3) Official government statistics,
(4) Official government reports,
(5) Industry data, and
(6) Scientific textbooks.

(d) *Filing.* A petition should be submitted via email to *electronicfilings@ftc.gov* or sent via postal mail or commercial delivery to Federal Trade Commission, Office of the Secretary, Suite CC–5610, 600 Pennsylvania Avenue NW, Washington, DC 20580. If the petition meets the requirements for Commission consideration described in this section, the Secretary will assign a docket number to the petition. Once a petition has been docketed, the FTC will notify the petitioner in writing and provide the petitioner with the number assigned to the petition and an agency contact for inquiries relating to the petition. The petition number should be referenced by the petitioner in all contacts with the agency regarding the petition.

(e) *Confidential treatment.* If a petition contains material for which the petitioner seeks confidential treatment, the petitioner must file a request for confidential treatment that complies with §4.9(c) of this chapter and two versions of the petition and all supporting materials, consisting of a confidential and a public version. Every page of each such document shall be clearly and accurately labeled ''Public'' or ''Confidential.'' In the confidential version, the petitioner must use

brackets or similar conspicuous markings to indicate the material for which it is claiming confidential treatment. In the public version, the petitioner must redact all material for which it seeks confidential treatment in the petition and supporting materials or all portions thereof for which confidential treatment is requested. The written request for confidential treatment that accompanies the petition must include a description of the material for which confidential treatment is requested and the factual and legal basis for the request. Requests for confidential treatment will only be granted if the General Counsel grants the request in accordance with the law and the public interest, pursuant to §4.9(c) of this chapter.

(f) *Notice and public comment.* After a petition has been docketed as described in paragraph (d) of this section, the Office of the Secretary will provide public notice of the petition on behalf of the Commission in the FEDERAL REGISTER and publish the document online for public comment for 30 days through the Federal eRulemaking portal at *https://www.regulations.gov*. Any person may file a statement in support of or in opposition to a petition prior to Commission action on the petition by following the instructions provided in the FEDERAL REGISTER notice inviting comment on the petition. All comments on a petition will become part of the public record.

(g) *Resolution of petitions.* The Commission may grant or deny a petition in whole or in part. If the Commission determines to commence a rulemaking proceeding in response to a petition, the Commission will publish a rulemaking notice in the FEDERAL REGISTER and will serve a copy of the notice initiating the rulemaking proceeding on the petitioner. If the petition is deemed by the Commission as insufficient to warrant commencement of a rulemaking proceeding, the Commission will make public its determination and notify the petitioner, who may be given the opportunity to submit additional data. Petitions that are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

[86 FR 59852, Oct. 29, 2021]

Subpart E—Export Trade Associations

§ 1.41 Limited antitrust exemption.

The Export Trade Act authorizes the organization and operation of export trade associations, and extends to them certain limited exemptions from the Sherman Act and the Clayton Act. It also extends the jurisdiction of the Commission under the Federal Trade Commission Act to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

§ 1.42 Notice to Commission.

To obtain the exemptions afforded by the Act, an export trade association is required to file with the Commission, within thirty (30) days after its creation, a verified written statement setting forth the location of its offices and places of business, names, and addresses of its officers, stockholders, or members, and copies of its documents of incorporation or association. On the first day of January of each year thereafter, each association must file a like statement and, when required by the Commission to do so, must furnish to the Commission detailed information as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals.

§ 1.43 Recommendations.

Whenever the Commission has reason to believe that an association has violated the prohibitions of section 2 of the Act, it may conduct an investigation. If, after investigation, it concludes that the law has been violated, it may make to such association recommendations for the readjustment of its business. If the association fails to comply with the recommendations, the Commission will refer its findings and recommendations to the Attorney General for appropriate action.

Subpart F—Trademark Cancellation Procedure

§ 1.51 Applications.

Applications for the institution of proceedings for the cancellation of registration of trade, service, or certification marks under the Trade-Mark Act of 1946 may be filed with the Secretary of the Commission. Such applications shall be in writing, signed by or in behalf of the applicant, and should identify the registration concerned and contain a short and simple statement of the facts constituting the alleged basis for cancellation, the name and address of the applicant, together with all relevant and available information. If, after consideration of the application, or upon its own initiative, the Commission concludes that cancellation of the mark may be warranted, it will institute a proceeding before the Commissioner of Patents for cancellation of the registration.

Subpart G—Injunctive and Condemnation Proceedings

§ 1.61 Injunctions.

In those cases where the Commission has reason to believe that it would be to the interest of the public, the Commission will apply to the courts for injunctive relief, pursuant to the authority granted in section 13 of the Federal Trade Commission Act.

[40 FR 15233, Apr. 4, 1975]

§ 1.62 Ancillary court orders pending review.

Where petition for review of an order to cease and desist has been filed in a U.S. court of appeals, the Commission may apply to the court for issuance of such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite.

§ 1.63 Injunctions: Wool, fur, and textile cases.

In those cases arising under the Wool Products Labeling Act of 1939, Fur Products Labeling Act, and Textile Fiber Products Identification Act, where it appears to the Commission that it would be to the public interest for it to do so, the Commission will apply to the courts for injunctive relief, pursuant to the authority granted in such Acts.

[32 FR 8444, June 13, 1967, as amended at 41 FR 4814, Feb. 2, 1976]

§ 1.64 Condemnation proceedings.

In those cases arising under the Wool Products Labeling Act of 1939 and Fur Products Labeling Act, and where it appears to the Commission that the public interest requires such action, the Commission will apply to the courts for condemnation, pursuant to the authority granted in such Acts.

[32 FR 8444, June 13, 1967, as amended at 41 FR 4814, Feb. 2, 1976]

Subpart H—Administration of the Fair Credit Reporting Act

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

§ 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. Any interested person may obtain copies of the Act and these procedures and rules of practice upon request to the Secretary of the Commission, Washington, DC 20580.

[36 FR 9293, May 22, 1971, as amended at 36 FR 18788, Sept. 22, 1971; 38 FR 32438, Nov. 26, 1973; 46 FR 26290, May 12, 1981; 88 FR 42874, July 5, 2023]

§ 1.72 Examination, counseling and staff advice.

The Commission maintains a staff to carry out on-the-scene examination of records and procedures utilized to comply with the Fair Credit Reporting Act and to carry out industry counseling. Requests for staff interpretation of the Fair Credit Reporting Act should be directed to the Division of Credit Practices, Bureau of Consumer Protection. Such interpretations represent informal staff opinion which is advisory in nature and is not binding upon the

Commission as to any action it may take in the matter. Administrative action to effect correction of minor infractions on a voluntary basis is taken in those cases where such procedure is believed adequate to effect immediate compliance and protect the public interest.

[36 FR 9293, May 22, 1971, as amended at 36 FR 18788, Sept. 22, 1971; 38 FR 32438, Nov. 26, 1973; 46 FR 26290, May 12, 1981]

§ 1.73 Interpretations.

(a) *Nature and purpose.* (1) The Commission issues and causes to be published in the FEDERAL REGISTER interpretations of the provisions of the Fair Credit Reporting Act on its own initiative or pursuant to the application of any person when it appears to the Commission that guidance as to the legal requirements of the Act would be in the public interest and would serve to bring about more widespread and equitable observance of the Act.

(2) The interpretations are not substantive rules and do not have the force or effect of statutory provisions. They are guidelines intended as clarification of the Fair Credit Reporting Act, and, like industry guides, are advisory in nature. They represent the Commission's view as to what a particular provision of the Fair Credit Reporting Act means for the guidance of the public in conducting its affairs in conformity with that Act, and they provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry. Failure to comply with such interpretations may result in corrective action by the Commission under applicable statutory provisions.

(b) *Procedure.* (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.

(2) The issuance of such interpretations is within the discretion of the Commission and the Commission at any time may conduct such investigations and hold such conferences or hearings as it may deem appropriate. Any interpretation issued pursuant to this chapter is without prejudice to the right of the Commission to reconsider the interpretation, and where the public interest requires, to rescind, revoke, modify, or withdraw the interpretation, in which event notification of such action will be published in the FEDERAL REGISTER.

(c) *Applicability of interpretations.* Interpretations issued pursuant to this subpart may cover all applications of a particular statutory provision, or they may be limited in application to a particular industry, as appropriate.

[36 FR 9293, May 22, 1971, as amended at 88 FR 42874, July 5, 2023]

Subpart I—Procedures for Implementation of the National Environmental Policy Act of 1969

AUTHORITY: 15 U.S.C. 46(g), 42 U.S.C. 4321 *et seq.*

SOURCE: 47 FR 3096, Jan. 22, 1982, unless otherwise noted.

§ 1.81 Authority and incorporation of CEQ Regulations.

This subpart is issued pursuant to 102(2) of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*). Pursuant to Executive Order 11514 (March 5, 1970, as amended by Executive Order 11991, May 24, 1977) and the Environmental Quality Improvement Act of 1980, as amended (42 U.S.C. 4371 *et seq.*) the Council on

Environmental Quality (CEQ) has issued comprehensive regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500 through 1508) (''CEQ Regulations''). Although it is the Commission's position that these regulations are not binding on it, the Commission's policy is to comply fully with the CEQ Regulations unless it determines in a particular instance or for a category of actions that compliance would not be consistent with the requirements of law. With this caveat, the Commission incorporates into this subpart the CEQ Regulations. The following are supplementary definitions and procedures to be applied in conjunction with the CEQ Regulations.

[47 FR 3096, Jan. 22, 1982, as amended at 50 FR 53304, Dec. 31, 1985]

§ 1.82 Declaration of policy.

(a) Except for actions which are not subject to the requirements of section 102(2)(C) of NEPA, no Commission proposal for a major action significantly affecting the quality of the human environment will be instituted unless an environmental impact statement has been prepared for consideration in the decisionmaking. All relevant environmental documents, comments, and responses as provided in this subpart shall accompany such proposal through all review processes. ''Major actions, significantly affecting the quality of the human environment'' referred to in this subpart ''do not include bringing judicial or administrative civil or criminal enforcement actions'' CEQ Regulation (40 CFR 1508.18(a)). In the event that the Commission in an administrative enforcement proceeding actively contemplates the adoption of standards or a form of relief which it determines may have a significant effect on the environment, the Commission will, when consistent with the requirements of law, provide for the preparation of an environmental assessment or an environmental impact statement or such other action as will permit the Commission to assess alternatives with a view toward avoiding or minimizing any adverse effect upon the environment.

(b) No Commission proposal for legislation significantly affecting the quality of the human environment and concerning a subject matter in which the Commission has primary responsibility will be submitted to Congress without an accompanying environmental impact statement.

(c) When the Commission finds that emergency action is necessary and an environmental impact statement cannot be prepared in conformance with the CEQ Regulations, the Commission will consult with CEQ about alternative arrangements in accordance with CEQ Regulation (40 CFR 1506.11).

§ 1.83 Whether to commence the process for an environmental impact statement.

(a) The Bureau responsible for submitting a proposed rule, guide, or proposal for legislation to the Commission for agency action shall, after consultation with the Office of the General Counsel, initially determine whether or not the proposal is one which requires an environmental impact statement. Except for matters where the environmental effects, if any, would appear to be either (1) clearly significant and therefore the decision is made to prepare an environmental impact statement, or (2) so uncertain that environmental analysis would be based on speculation, the Bureau should normally prepare an ''environmental assessment'' CEQ Regulation (40 CFR 1508.9) for purposes of providing sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. The Bureau should involve environmental agencies to the extent practicable in preparing an assessment. An environmental assessment shall be made available to the public when the proposed action is made public along with any ensuing environmental impact statement or finding of no significant impact.

(b) If the Bureau determines that the proposal is one which requires an environmental impact statement, it shall commence the ''scoping process'' CEQ Regulation (40 CFR 1501.7) except that the impact statement which is part of a proposal for legislation need not go through a scoping process but shall conform to CEQ Regulation (40 CFR 1506.8). As soon as practicable after its decision to prepare an environmental

impact statement and before the scoping process, the Bureau shall publish a notice of intent as provided in CEQ Regulations (40 CFR 1501.7 and 1508.22).

(c) If, on the basis of an environmental assessment, the determination is made not to prepare a statement, a finding of ''no significant impact'' shall be made in accordance with CEQ Regulation (40 CFR 1508.3) and shall be made available to the public as specified in CEQ Regulation (40 CFR 1506.6).

§ 1.84 Draft environmental impact statements: Availability and comment.

Except for proposals for legislation, environmental impact statements shall be prepared in two stages: Draft statement and final statement.

(a) *Proposed rules or guides.* (1) An environmental impact statement, if deemed necessary, shall be in draft form at the time a proposed rule or guide is published in the FEDERAL REGISTER and shall accompany the proposal throughout the decisionmaking process.

(2) The major decision points with respect to rules and guides are:

(i) Preliminary formulation of a staff proposal;

(ii) The time the proposal is initially published in the FEDERAL REGISTER as a Commission proposal;

(iii) Presiding officer's report (in trade regulation rule proceedings);

(iv) Submission to the Commission of the staff report or recommendation for final action on the proposed guide or rule;

(v) Final decision by the Commission. The decision on whether or not to prepare an environmental impact statement should occur at point (a)(2)(i) of this section. The publication of any draft impact statement should occur at point (a)(2)(ii) of this section. The publication of the final environmental impact statement should occur at point (a)(2)(iv) of this section.

(b) *Legislative proposals.* In legislative matters, a legislative environmental impact statement shall be prepared in accordance with CEQ Regulation (40 CFR 1506.8).

(c) In rule or guide proceedings the draft environmental impact statement shall be prepared in accordance with CEQ Regulation (40 CFR 1502.9) and shall be placed in the public record to which it pertains; in legislative matters, the legislative impact statement shall be placed in a public record to be established, containing the legislative report to which it pertains; these will be available to the public through the Office of the Secretary and will be published in full with the appropriate proposed rule, guide, or legislative report; such statements shall also be filed with the Environmental Protection Agency's (EPA) Office of Environmental Review (CEQ Regulation (40 CFR 1506.9)) for listing in the weekly FEDERAL REGISTER Notice of draft environmental impact statements, and shall be circulated, in accordance with CEQ Regulations (40 CFR 1502.19, 1506.6) to appropriate federal, state and local agencies.

(d) Forty-five (45) days will be allowed for comment on the draft environmental impact statement, calculated from the date of publication in the EPA's weekly FEDERAL REGISTER list of draft environmental impact statements. The Commission may in its discretion grant such longer period as the complexity of the issues may warrant.

§ 1.85 Final environmental impact statements.

(a) After the close of the comment period, the Bureau responsible for the matter will consider the comments received on the draft environmental impact statement and will put the draft statement into final form in accordance with the requirements of CEQ Regulation (40 CFR 1502.9(b)), attaching the comments received (or summaries if response was exceptionally voluminous).

(b) Upon Bureau approval of the final environmental impact statement the final statement will be

(1) Filed with the EPA;

(2) Forwarded to all parties which commented on the draft environmental impact statement and to other interested parties, if practicable;

(3) Placed in the public record of the proposed rule or guide proceeding or legislative matter to which it pertains;

(4) Distributed in any other way which the Bureau in consultation with CEQ deems appropriate.

(c) In rule and guide proceedings, at least thirty (30) days will be allowed for comment on the final environmental impact statement, calculated from the date of publication in the EPA's weekly FEDERAL REGISTER list of final environmental impact statements. In no event will a final rule or guide be promulgated prior to ninety (90) days after notice of the draft environmental impact statement, except where emergency action makes such time period impossible.

§ 1.86 Supplemental statements.

Except for proposals for legislation, as provided in CEQ Regulation (40 CFR 1502.9(c)), the Commission shall publish supplements to either draft or final environmental statements if:

(a) The Commission makes substantial changes in the proposed action that are relevant to environmental concerns; or

(b) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action and its impacts. In the course of a trade regulation rule proceeding, the supplement will be placed in the rulemaking record.

§ 1.87 NEPA and agency decision-making.

In its final decision on the proposed action or, if appropriate, in its recommendation to Congress, the Commission shall consider all the alternatives in the environmental impact statement and other relevant environmental documents and shall prepare a concise statement which, in accordance with CEQ Regulation §1505.2, shall:

(a) Identify all alternatives considered by the Commission in reaching its decision or recommendation, specifying the alternatives which were considered to be environmentally preferable;

(b) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.

§ 1.88 Implementing procedures.

(a) The General Counsel is designated the official responsible for coordinating the Commission's efforts to improve environmental quality. He will provide assistance to the staff in determining when an environmental impact statement is needed and in its preparation.

(b) The Commission will determine finally whether an action complies with NEPA.

(c) The Directors of the Bureaus of Consumer Protection and Competition will supplement these procedures for their Bureaus to assure that every proposed rule and guide is reviewed to assess the need for an environmental impact statement and that, where need exists, an environmental impact statement is developed to assure timely consideration of environmental factors.

(d) The General Counsel will establish procedures to assure that every legislative proposal on a matter for which the Commission has primary responsibility is reviewed to assess the need for an environmental impact statement and that, where need exists, and environmental impact statement is developed to assure timely consideration of environmental factors.

(e) Parties seeking information or status reports on environmental impact statements and other elements of the NEPA process, should contact the Assistant General Counsel for Litigation and Environmental Policy.

§ 1.89 Effect on prior actions.

It is the policy of the Commission to apply these procedures to the fullest extent possible to proceedings which are already in progress.

Subpart J—Economic Surveys, Investigations and Reports

§ 1.91 Authority and purpose.

General and special economic surveys, investigations, and reports are made by the Bureau of Economics under the authority of the various laws which the Federal Trade Commission administers. The Commission may in

any such survey or investigation invoke any or all of the compulsory processes authorized by law.

[32 FR 8444, June 13, 1967. Redesignated at 40 FR 15233, Apr. 4, 1975]

Subpart K—Penalties for Violation of Appliance Labeling Rules

SOURCE: 45 FR 67318, Oct. 10, 1980, unless otherwise noted.

§ 1.92 Scope.

The rules in this subpart apply to and govern proceedings for the assessment of civil penalties for the violation of section 332 of the Energy Policy and Conservation Act, 42 U.S.C. 6302, and the Commission's Rules on Labeling and Advertising of Consumer Appliances, 16 CFR part 305, promulgated under sections 324 and 326 of the Energy Policy and Conservation Act, 42 U.S.C. 6294 and 6296.

§ 1.93 Notice of proposed penalty.

(a) *Notice.* Before issuing an order assessing a civil penalty under this subpart against any person, the Commission shall provide to such person notice of the proposed penalty. This notice shall:

(1) Inform such person of the opportunity to elect in writing within 30 days of receipt of the notice of proposed penalty to have procedures of §1.95 (in lieu of those of §1.94) apply with respect to such assessment; and

(2) Include a copy of a proposed complaint conforming to the provision of §3.11(b) (1) and (2) of the Commission's Rules of Practice, or a statement of the material facts constituting the alleged violation and the legal basis for the proposed penalty; and

(3) Include the amount of the proposed penalty; and

(4) Include a statement of the procedural rules that the Commission will follow if respondent elects to proceed under §1.94 unless the Commission chooses to follow subparts B, C, D, E, and F of part 3 of this chapter.

(b) *Election.* Within 30 days of receipt of the notice of proposed penalty, the respondent shall, if it wishes to elect to have the procedures of §1.95 apply, notify the Commission of the election in writing. The notification, to be filed in accordance with §4.2 of this chapter, may include any factual or legal reasons for which the proposed assessment order should not issue, should be reduced in amount, or should otherwise be modified.

§ 1.94 Commission proceeding to assess civil penalty.

If the respondent fails to elect to have the procedures of §1.95 apply, the Commission shall determine whether to issue a complaint and thereby commence an adjudicative proceeding in conformance with section 333(d)(2)(A) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(d)(2)(A). If the Commission votes to issue a complaint, the proceeding shall be conducted in accordance with subparts B, C, D, E and F of part 3 of this chapter, unless otherwise ordered in the notice of proposed penalty. In assessing a penalty, the Commission shall take into account the factors listed in §1.97.

§ 1.95 Procedures upon election.

(a) After receipt of the notification of election to apply the procedures of this section pursuant to §1.93, the Commission shall promptly assess such penalty as it deems appropriate, in accordance with §1.97.

(b) If the civil penalty has not been paid within 60 calendar days after the assessment order has been issued under paragraph (a) of this section, the General Counsel, unless otherwise directed, shall institute an action in the appropriate district court of the United States for an order enforcing the assessment of the civil penalty.

(c) Any election to have this section apply may not be revoked except with the consent of the Commission.

§ 1.96 Compromise of penalty.

The Commission may compromise any penalty or proposed penalty at any time, with leave of court when necessary, taking into account the nature and degree of violation and the impact of a penalty upon a particular respondent.

§ 1.97 Amount of penalty.

All penalties assessed under this subchapter shall be in the amount per violation as described in section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a), adjusted for inflation pursuant to §1.98, unless the Commission otherwise directs. In considering the amount of penalty, the Commission shall take into account:

(a) Respondent's size and ability to pay;

(b) Respondent's good faith;

(c) Any history of previous violations;

(d) The deterrent effect of the penalty action;

(e) The length of time involved before the Commission was made aware of the violation;

(f) The gravity of the violation, including the amount of harm to consumers and the public caused by the violation; and

(g) Such other matters as justice may require.

[32 FR 8444, June 13, 1967, as amended at 61 FR 54548, Oct. 21, 1996]

Subpart L—Civil Penalty Adjustments Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended

AUTHORITY: 28 U.S.C. 2461 note.

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission's jurisdiction. The following maximum civil penalty amounts apply only to penalties assessed after January 10, 2024, including those penalties whose associated violation predated January 10, 2024.

(a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—$51,744;

(b) Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*)—$27,491;

(c) Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*)—$51,744;

(d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—$51,744;

(e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—$51,744;

(f) Section 10 of the FTC Act, 15 U.S.C. 50—$680;

(g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—$680;

(h) Section 6(b) of the Wool Products Labeling Act, 15 U.SC. 68d(b)—$680;

(i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—$680;

(j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—$680;

(k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—$560;

(l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—$27,491 and $51,744, respectively;

(m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)—$4,857;

(n) Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, as amended by Public Law 115–263, 21 U.S.C. 355 note—$18,293;

(o) Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304—$1,472,546; and

(p) Civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of this section, as applicable.

[89 FR 1447, Jan. 10, 2024]

Subpart M—Submissions Under the Small Business Regulatory Enforcement Fairness Act

AUTHORITY: 5 U.S.C. 801–804.

§ 1.99 Submission of rules, guides, interpretations, and policy statements to Congress and the Comptroller General.

Whenever the Commission issues or substantively amends a rule or industry guide or formally adopts an interpretation or policy statement that constitutes a ''rule'' within the meaning of 5 U.S.C. 804(3), a copy of the final rule, guide, interpretation or statement, together with a concise description, the proposed effective date, and a statement of whether the rule, guide, interpretation or statement is a ''major

rule'' within the meaning of 5 U.S.C. 804(2), will be transmitted to each House of Congress and to the Comptroller General. The material transmitted to the Comptroller General will also include any additional relevant information required by 5 U.S.C. 801(a)(1)(B). This provision generally applies to rules issued or substantively amended pursuant to §1.14(c), §1.15(a), §1.19, or §1.26(d); industry guides issued pursuant to §1.6; interpretations and policy statements formally adopted by the Commission; and any rule of agency organization, practice or procedure that substantially affects the rights or obligations of non-agency parties.

[63 FR 36340, July 8, 1998]

Subpart N—Administrative Wage Garnishment

§ 1.100 Administrative wage garnishment.

(a) *General.* The Commission may use administrative wage garnishment for debts, including those referred to Bureau of the Fiscal Service, Department of Treasury, for cross-servicing. Regulations in 31 CFR 285.11 govern the collection of delinquent nontax debts owed to federal agencies through administrative garnishment of non-Federal wages. Whenever the Bureau of the Fiscal Service collects such a debt for the Commission using administrative wage garnishment, the statutory administrative requirements in 31 CFR 285.11 will govern.

(b) *Hearing official.* Any hearing required to establish the Commission's right to collect a debt through administrative wage garnishment shall be conducted by a qualified individual selected at the discretion of the Chairman of the Commission, as specified in 31 CFR 285.11.

[75 FR 68418, Nov. 8, 2010, as amended at 81 FR 2742, Jan. 19, 2016]

Subpart O—OMB Control Numbers for Commission Information Collection Requirements

AUTHORITY: 44 U.S.C. 3501–3521.

§ 1.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays control numbers assigned by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 to information collection requirements in rules issued or enforced by the Commission. A response to an information collection is not required unless the collection of information displays a valid OMB control number. This part fulfills the mandate (44 U.S.C. 3507(a)(3), 44 U.S.C. 3512) that agencies display the current control number assigned by the OMB Director to agency information collection requirements and inform affected persons that they need not respond to a collection of information unless it displays a valid control number.

(b) *Display.*

Current OMB control number (all numbers begin with 3084–)	16 CFR part where the information collection requirement is located (or alternate part(s) if issued by another agency, co-enforced by the Federal Trade Commission)
0005	801–803.
0025	453.
0068	306.
0069	305.
0085	12 CFR part 205; 12 CFR part 1005.
0086	12 CFR part 213; 12 CFR part 1013.
0087	12 CFR part 202; 12 CFR part 1002.
0088	12 CFR part 226; 12 CFR part 1026.
0094	309.
0097	310.
0099	301.
0100	300.
0101	303.
0102	308.
0103	423.
0104	425.
0105	432.
0106	435.
0107	436.

Current OMB control number (all numbers begin with 3084–)	16 CFR part where the information collection requirement is located (or alternate part(s) if issued by another agency, co-enforced by the Federal Trade Commission)
0108	455.
0109	460.
0110	500–503.
0111	701.
0112	702.
0113	703.
0117	312.
0121	313.
0127	315.
0128	12 CFR 1022.136; 12 CFR 1022.137.
0131	680; 12 CFR 1022.20.
0132	642; 12 CFR 1022.54.
0137	641; 681.
0142	437.
0144	660; 12 CFR 1022.42; 12 CFR 1022.43.
0145	640; 12 CFR 1022.70.
0150	318.
0156	12 CFR part 1014.
0157	12 CFR part 1015.

[78 FR 65558, Nov. 1, 2013]

§§ 1.102–1.109 [Reserved]

Subpart P—Administrative Debt Collection, Including Administrative Offset

AUTHORITY: 31 U.S.C. 3701 *et seq.*

SOURCE: 81 FR 2742, Jan. 19, 2016, unless otherwise noted.

§ 1.110 Application of Government-wide administrative claims collections standards and adoption of administrative offset regulations.

(a) The Commission shall apply the Federal Claims Collection Standards (FCCS), 31 CFR parts 900–904, in the administrative collection, offset, compromise, suspension, termination, and referral of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statutes or regulations apply to such activities or, as provided for by Title 11 of the United States Code, when the claims involve bankruptcy. The Commission shall also follow Department of Treasury regulations set forth at 31 CFR part 285, as applicable, for administrative debt collection, including centralized offset of federal payments to collect non-tax debts that may be owed to the Commission, 31 CFR 285.5. Nothing in this subpart shall be construed to supersede or require the Commission to provide additional notice or other procedures that may have already been provided or afforded to a debtor in the course of administrative or judicial litigation or otherwise.

(b) For purposes of 31 U.S.C. 3716(b)(1), the Commission adopts without change the regulations on collection by administrative offset set forth at 31 CFR 901.3 and other relevant sections of the FCCS applicable to such offset.

§§ 1.111–1.119 [Reserved]

Subpart Q—Tax Refund Offset

AUTHORITY: 31 U.S.C. 3716 and 3720A, 31 CFR 285.2(c).

SOURCE: 81 FR 2742, Jan. 19, 2016, unless otherwise noted.

§ 1.120 Purpose.

This subpart establishes procedures for the Commission's referral of past-due legally enforceable debts to the Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service) for offset against the tax refund payments of the debtor, consistent with applicable Fiscal Service regulations and definitions set forth in 31 CFR 285.2 and 285.5.

§ 1.121 Notification of intent to collect.

(a) *Notification before tax refund offset.* Reduction of a tax refund payment will be made only after the Commission

makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notice of the intent to collect by tax refund offset.

(b) *Contents of notice.* The Commission's notice of intent to collect by tax refund offset will state:

(1) The amount of the debt;

(2) That unless the debt is repaid within 60 days from the date of the notice, the Commission intends to collect the debt by requesting a reduction of any amounts payable to the debtor as a Federal tax refund payment by an amount equal to the amount of the debt and all accumulated interest and other charges;

(3) That the debtor, within 60 days from the date of the notice, has an opportunity to make a written agreement to repay the amount of the debt, unless such opportunity has previously been provided;

(4) A mailing address for forwarding any written correspondence and a contact name and a telephone number for any questions; and

(5) That the debtor may present evidence to the Commission that all or part of the debt is not past due or legally enforceable by:

(i) Sending a written request for a review of the evidence to the address provided in the notice;

(ii) Stating in the request the amount disputed and the reasons why the debtor believes that the debt is not past due or is not legally enforceable; and

(iii) Including in the request any documents that the debtor wishes to be considered or stating that the additional information will be submitted within the remainder of the 60-day period.

(c) A debtor may dispute the existence or amount of the debt or the terms of repayment, except with respect to debts established by a judicial or administrative order. In those cases, the debtor may not dispute matters or issues already settled, litigated, or otherwise established by such order, including the amount of the debt or the debtor's liability for that debt, except to the extent that the debtor alleges that the amount of the debt does not reflect payments already made to repay the debt in whole or part.

§ 1.122 Commission action as a result of consideration of evidence submitted in response to the notice of intent.

(a) *Consideration of evidence.* If, in response to the notice provided to the debtor under §1.121, the Commission is notified that the debtor will submit additional evidence, or the Commission receives additional evidence from the debtor within the prescribed time, tax refund offset will be stayed until the Commission can:

(1) Consider the evidence presented by the debtor;

(2) Determine whether all or a portion of the debt is still past due and legally enforceable; and

(3) Notify the debtor of its determination, as set forth in paragraph (b) of this section.

(b) *Commission action on the debt.* (1) If, after considering any additional evidence from the debtor, the Commission determines that the debt remains past-due and legally enforceable, the Commission will notify the debtor of its intent to refer the debt to the Fiscal Service for offset against the debtor's Federal tax refund payment, including whether the amount of the debt remains the same or is modified; or

(2) If, after considering any additional evidence from the debtor, the Commission determines that no part of the debt remains past-due and legally enforceable, the Commission will so notify the debtor and will not refer the debt to the Fiscal Service for offset against the debtor's Federal tax refund payment.

§ 1.123 Change in notification to Bureau of the Fiscal Service.

After the Commission sends the Fiscal Service notification of a debtor's liability for a debt, the Commission will promptly notify the Fiscal Service if the Commission:

(a) Determines that there is a material error or other material change in the information contained in the notification, including in the amount of the debt, subject to any additional due process requirements, where applicable, under this subpart or the Federal

Claims Collection Standards, if the amount of debt has increased;

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to Fiscal Service for offset; or

(c) Otherwise concludes that such notification is appropriate or necessary.

§ 1.124 Interest, penalties, and costs.

To the extent permitted or required by 31 U.S.C. 3717 or other law, regulation, or order, all interest, penalties, and costs applicable to the debt or incurred in connection with its referral for collection by tax refund offset will be assessed on the debt and thus increase the amount of the offset.

§§ 1.125–1.129 [Reserved]

Subpart R—Policy With Regard to Indemnification of FTC Employees

AUTHORITY: 15 U.S.C. 46.

SOURCE: 82 FR 30966, July 5, 2017, unless otherwise noted.

§ 1.130 Policy on employee indemnification.

(a) The Commission may indemnify, in whole or in part, its employees (which for the purpose of this regulation includes former employees) for any verdict, judgment, or other monetary award which is rendered against any such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her employment with the Federal Trade Commission and that such indemnification is in the interest of the Federal Trade Commission, as determined as a matter of discretion by the Commission, or its designee.

(b) The Commission may settle or compromise a personal damage claim against its employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the scope of employment and that such settlement or compromise is in the interest of the Federal Trade Commission, as determined as a matter of discretion by the Commission, or its designee.

(c) Absent exceptional circumstances, as determined by the Commission or its designee, the Commission will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or monetary award.

(d) When an employee of the Federal Trade Commission becomes aware that an action may be or has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee shall immediately notify his or her supervisor that such an action is pending or threatened. The supervisor shall promptly thereafter notify the Office of the General Counsel. Employees may be authorized to receive legal representation by the Department of Justice in accordance with 28 CFR 50.15.

(e)(1) The employee may, thereafter, request either:

(i) Indemnification to satisfy a verdict, judgment or award entered against the employee; or

(ii) Payment to satisfy the requirements of a settlement proposal.

(2) The employee shall submit a written request, with documentation including copies of the verdict, judgment, award, or settlement proposal, as appropriate, to the head of his or her division or office, who thereupon shall submit to the General Counsel, in a timely manner, a recommended disposition of the request. The General Counsel may also seek the views of the Department of Justice. The failure of an employee to provide notification under paragraph (d) of this section or make a request under this paragraph (e) shall not impair the agency's ability to provide indemnification or payment under this section if it determines it is appropriate to do so.

(f) Any amount paid under this section either to indemnify a Federal Trade Commission employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the Federal Trade Commission.

Subpart S—Procedures for Submissions Under the Horseracing Integrity and Safety Act

AUTHORITY: 15 U.S.C. 3053.

SOURCE: 86 FR 54823, Oct. 5, 2021, unless otherwise noted.

§ 1.140 Definitions.

When used in relation to the Horseracing Integrity and Safety Act, 15 U.S.C. 3051 through 3060, and this subpart—

Act means the Horseracing Integrity and Safety Act, 15 U.S.C. 3051 through 3060.

Breeder means a person who is in the business of breeding covered horses.

Commission means the Federal Trade Commission.

Covered horse means any Thoroughbred horse, or any other horse made subject to the Act by election of the applicable State racing commission or the breed governing organization for such horse under 15 U.S.C. 3054(*l*), during the period—

(1) Beginning on the date of the horse's first timed and reported workout at a racetrack that participates in covered horseraces or at a training facility; and

(2) Ending on the date on which the Authority receives written notice that the horse has been retired.

Covered horserace means any horserace involving covered horses that has a substantial relation to interstate commerce, including any Thoroughbred horserace that is the subject of interstate off-track or advance deposit wagers.

Covered persons means all trainers, owners, breeders, jockeys, racetracks, veterinarians, persons (legal and natural) licensed by a State racing commission and the agents, assigns, and employees of such persons and other horse support personnel who are engaged in the care, training, or racing of covered horses.

HISA Guidance means Horseracing Integrity and Safety Authority (Authority) guidance issued under 15 U.S.C. 3054(g)(1), which does not have the force of law.

Horseracing anti-doping and medication control program means the anti-doping and medication program established under 15 U.S.C. 3055(a).

Horseracing Integrity and Safety Authority or *Authority* means the private, independent, self-regulatory, nonprofit corporation recognized for purposes of developing and implementing a horseracing anti-doping and medication control program and a racetrack safety program for covered horses, covered persons, and covered horseraces.

Interstate off-track wager has the meaning given such term in Section 3 of the Interstate Horseracing Act of 1978, 15 U.S.C. 3002.

Jockey means a rider or driver of a covered horse in covered horseraces.

Owner means a person who holds an ownership interest in one or more covered horses.

Proposed rule means any rule proposed by the Authority pursuant to the Act.

Proposed rule modification or *modification* means:

(1) Any proposed modification to a rule or proposed rule change; or

(2) Any interpretation or statement of policy or practice relating to an existing rule of the Authority that is not HISA Guidance and would have the force of law if approved as a final rule.

Racetrack means an organization licensed by a State racing commission to conduct covered horseraces.

Racetrack safety program means the program established under 15 U.S.C. 3056(a).

State racing commission means an entity designated by State law or regulation that has jurisdiction over the conduct of horseracing within the applicable State.

Trainer means an individual engaged in the training of covered horses.

Training facility means a location that is not a racetrack licensed by a State racing commission that operates primarily to house covered horses and conduct official timed workouts.

Veterinarian means a licensed veterinarian who provides veterinary services to covered horses.

Workout means a timed running of a horse over a predetermined distance not associated with a race or its first qualifying race, if such race is made subject to the Act by election under 15

U.S.C. 3054(*l*) of the horse's breed governing organization or the applicable State racing commission.

§ 1.141 Required submissions.

The Authority must submit to the Commission any proposed rule, or proposed rule modification, of the Authority relating to—

(a) The bylaws of the Authority;

(b) A list of permitted and prohibited medications, substances, and methods, including allowable limits of permitted medications, substances, and methods;

(c) Laboratory standards for accreditation and protocols;

(d) Standards for racing surface quality maintenance;

(e) Racetrack safety standards and protocols;

(f) A program for injury and fatality data analysis;

(g) A program of research and education on safety, performance, and anti-doping and medication control;

(h) A description of safety, performance, and anti-doping and medication control rule violations applicable to covered horses and covered persons;

(i) A schedule of civil sanctions for violations;

(j) A process or procedures for disciplinary hearings;

(k) A formula or methodology for determining assessments described in 15 U.S.C. 3052(f); and

(l) Any other proposed rule or modification the Act requires the Authority to submit to the Commission for approval.

§ 1.142 Submission of proposed rule or modification.

(a) *Contents of submission*. In order for a submission to qualify as a proposed rule or proposed rule modification under 15 U.S.C. 3053(a), the Authority must submit to the Commission a complete draft of the FEDERAL REGISTER document for the proposed rule or proposed rule modification, which includes the text of the rule and a statement of the purpose of, and statutory basis for, the proposed rule or modification (''statement of basis and purpose''). The statement of basis and purpose must contain:

(1) The reasons for adopting the proposed rule or modification.

(2) Any problems the proposed rule or modification is intended to address and how the proposed rule or modification will resolve those problems.

(3) A description of any reasonable alternatives to the proposed rule or modification that may accomplish the stated objective and an explanation of the reasons the Authority chose the proposed rule or modification over its alternatives.

(4) How the proposed rule or modification will affect covered persons, covered horses, and covered horseraces.

(5) Why the proposed rule or modification is consistent with the requirements of the Act and any rules and regulations applicable to the Authority, including the following:

(i) *Anti-doping and medication control program.* When proposing a rule or modification to the horseracing anti-doping and medication control program, the Authority must explain how it considered the factors in 15 U.S.C. 3055, including:

(A) Under 15 U.S.C. 3055(a)(2), the unique characteristics of a breed of horse made subject to the Act by election of a State racing commission or breed governing organization for such horse pursuant to 15 U.S.C. 3054(*l*);

(B) The factors listed in 15 U.S.C. 3055(b); and

(C) The baseline anti-doping and medication control rules identified in 15 U.S.C. 3055(g)(2)(A). For a proposed rule, the Authority must state whether its proposed rule adopts the baseline standards identified in 15 U.S.C. 3055(g)(2)(A). If there is a conflict in any baseline standards identified in 15 U.S.C. 3055(g)(2)(A), the Authority must identify the conflict and state whether the standard it adopted is the most stringent standard. For a proposed rule modification, the Authority must explain whether the modification renders an anti-doping and medication control rule less stringent than the baseline anti-doping and medication control rules described in 15 U.S.C. 3055(g)(2)(A), and state whether the anti-doping and medication control enforcement agency has approved of the change.

(ii) *Racetrack safety program.* When proposing a rule or modification to any rule regarding the racetrack safety

program required under 15 U.S.C. 3056(a)(1), the Authority must explain how the proposed rule or modification meets the requirements in 15 U.S.C. 3056(b). The Authority must explain how it considered and whether it adopted the safety standards in 15 U.S.C. 3056(a)(2). If any horseracing safety standards in 15 U.S.C. 3056(a)(2) were considered but not adopted or were modified, the Authority must explain why it decided not to adopt or why it decided to modify such standard.

(iii) *Other rules.* To the extent the Act requires the Authority to consider any factors or standards not specifically referenced in this section, the Authority must explain whether and how it considered those factors when proposing a rule or modification. For instance, when proposing a civil sanctions rule or modification pursuant to 15 U.S.C. 3057(d)(1), the Authority must explain how the rule or modification meets the requirements of 15 U.S.C. 3057(d)(2).

(6) If written comments were solicited, the Authority's draft FEDERAL REGISTER document must include a summary of the substance of all comments received and the Authority's written response to all significant issues raised in such comments.

(7) The date that the Authority proposes for the FEDERAL REGISTER to publish its proposed rule or modification.

(b) *Supporting documentation.* The Authority's submission to the Commission required under paragraph (a) of this section must also include copies of the pertinent factual information underlying the Authority's development of the proposed rule or modification, including a copy of existing standards used as a reference for the development of the proposed rule or modification and scientific data, studies, or analysis underlying the development of the proposed rule or modification. Supporting documentation must be attached as exhibits, and each exhibit must clearly identify the proposed rule or modification it supports.

(c) *Redline document for proposed rule modification.* For proposed rule modifications, the Authority must also provide, in a document separate from the FEDERAL REGISTER document, a redline version of the existing rule that will enable the Commission to immediately identify any proposed changes.

(d) *Timing of submission.* To qualify as a proposed rule or proposed modification under 15 U.S.C. 3053(a), the Authority's submission must provide the information in paragraphs (a), (b), and (c) of this section at least 90 days in advance of the proposed date for the FEDERAL REGISTER to publish a proposed rule or modification for public comment pursuant to 15 U.S.C. 3053(b)(1). The Secretary may waive the 90-day requirement in this section if the Authority demonstrates such waiver is necessary to meet statutory deadlines.

(e) *Conclusory statements and failure to provide requisite analysis.* Information required to be submitted under this section must be sufficiently detailed and contain sufficient analysis to support a Commission finding that a proposed rule or modification satisfies the statutory requirements. For instance, a mere assertion or conclusory statement that a proposed rule or modification is consistent with the requirements of the Act is insufficient. Failure to describe and justify the proposed rule or modification in the manner described in this section or failure to submit the information required by this section may result in the Commission's having insufficient information to make an affirmative finding that the proposed rule or modification is consistent with the Act and the applicable rules approved by the Commission.

(f) *Public comments.* The Authority is encouraged to solicit public comments on its proposed rule or modification in advance of making a submission to the Commission pursuant to this section. If the Authority solicits public comments, it must attach a copy of the comments as an exhibit to its submission. By soliciting public comments and addressing significant issues raised therein, the Authority facilitates the Commission's review and approval of the Authority's proposed rule or modification.

§ 1.143 Submissions to the Secretary.

(a) *Electronic submission.* All submissions from the Authority to the Commission pursuant to the provisions of subpart S or U of this part, and all submissions to the Commission pursuant to 15 U.S.C. 3053(a) (proposed rules or rule modifications), 15 U.S.C. 3052(f)(1)(C)(iv) (proposed rate increases), or 15 U.S.C. 3054(g)(2) (guidance) must be emailed to the Secretary of the Commission at *electronicfilings@ftc.gov*. The subject line of the email must begin with ''HISA Submission:'' followed by a brief description of the submission.

(b) *Format for submissions*—(1) *Electronic format.* All documents submitted to the Secretary under this section must be submitted in .pdf format or in some other electronic format specified by the Office of the Secretary. The proposed text of FEDERAL REGISTER publications must also be submitted in a Microsoft Word or .rtf format.

(2) *Table of contents.* Submissions with more than one attachment must contain a table of contents in the body of the email with a brief description of each item.

(3) *Contact information.* The Authority must provide the name, telephone number, and email address of a person on the staff of the Authority responsible for responding to questions and comments on the submission in the body of the email.

(4) *Draft* FEDERAL REGISTER *documents.* Draft FEDERAL REGISTER documents must follow the relevant format and editorial requirements for regulatory documents under 1 CFR parts 18, 21, and 22 (see Office of Federal Register's Document Drafting Handbook). The Document Drafting Handbook specifies that draft FEDERAL REGISTER documents (see 1 CFR 15.10) must:

(i) Contain proper preamble captions and content;

(ii) State the purpose of, and basis for, the proposed rule or modification;

(iii) Set forth regulatory text, headings, and authority citations;

(iv) Use correct numbering, structure, and amendatory language; and

(v) Conform to the style and formatting established by the Office of the Federal Register and Government Publishing Office. (See, specifically, section 2.17 (proposed rules) of the Office of the Federal Register's Document Drafting Handbook.)

(c) *Confidential information.* If a document filed with the Secretary contains confidential information, the Secretary must be so informed, and a request for confidential treatment must be submitted in accordance with 16 CFR 4.9.

(d) *Date of filing.* If the conditions of this section are otherwise satisfied, all filings submitted electronically on or before 5:30 p.m. Eastern Time, on a business day, will be deemed filed on that business day, and all filings submitted after 5:30 p.m. Eastern Time, will be deemed filed on the next business day.

(e) *Authority to reject documents for filing.* The Secretary of the Commission may reject a document for filing that fails to comply with the Commission's rules.

(f) FEDERAL REGISTER *publication.* For submissions required to be published in the FEDERAL REGISTER, if the conditions set forth in this section and § 1.142 have been satisfied, the Commission will publish the Authority's submission in the FEDERAL REGISTER.

[86 FR 54823, Oct. 5, 2021, as amended at 89 FR 8531, Feb. 8, 2024]

§ 1.144 Approval or disapproval of proposed rules and proposed rule modifications.

(a) *Commission decision.* The Commission will approve or disapprove a proposed rule or modification by issuing an order within 60 days of the date the proposed rule or modification was published in the FEDERAL REGISTER for public comment.

(b) *Standard of review.* The Commission will approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with the Act and the applicable rules approved by the Commission. If the Commission disapproves a rule or modification, it will make recommendations to the Authority to modify the proposed rule or modification within 30 days of such disapproval.

(c) *Effect.* A proposed rule or modification will not take effect unless it has been approved by the Commission.

Subpart T—Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act

AUTHORITY: 15 U.S.C. 3058.

SOURCE: 87 FR 60079, Oct. 4, 2022, unless otherwise noted.

§ 1.145 Submission of notice of civil sanctions.

(a) *Requirement to file.* If the Horseracing Integrity and Safety Authority (Authority) imposes a final civil sanction under 15 U.S.C. 3057(d) for a covered person's violation of a rule of the Authority, the Authority must submit notice of the sanction to the Federal Trade Commission (Commission) no later than two days after the sanction has been issued for the sanction to be enforceable.

(b) *Format and procedure for submission of notice.* The notice submitted to the Commission must:

(1) Be emailed to the Secretary of the Commission (Secretary) at *electronicfilings@ftc.gov;*

(2) Contain the subject line ''HISA Civil Sanction Notice'';

(3) Clearly indicate that it relates to a civil sanction imposed on a covered person resulting from a violation of an Authority rule;

(4) Include contact information for an employee at the Authority responsible for communications regarding review of the civil sanction;

(5) Be sent in portable document format (or .PDF) or such other format as the Secretary may permit;

(6) Contain only public information; and

(7) Be served the same day upon the person aggrieved by the sanction in accordance with 16 CFR 4.4(b) as made applicable to review proceedings under this part.

§ 1.146 Review of civil sanction by an Administrative Law Judge.

(a) *Application for review.* An application for review of a final civil sanction imposed by the Authority may be filed by the Commission or by the person aggrieved by the civil sanction. Any such application must: be filed within 30 days of the submission of the notice of civil sanctions under §1.145; state the civil sanction imposed; include a copy of the final Authority decision imposing the sanction; and be served on the Authority (and, if filed by the Commission, served on the aggrieved person) in accordance with 16 CFR 4.4(b) as made applicable to review proceedings in this part.

(1) *Application by aggrieved person.* An application filed by an aggrieved person also must state in no more than 1,000 words the reasons for challenging the sanction and whether the person requests an evidentiary hearing conducted by the Administrative Law Judge; if a hearing is requested, the applicant must state whether the hearing is sought to supplement or to contest facts in the record found by the Authority. Each issue must be plainly and concisely stated. Further, the applicant must provide support for each issue raised, citing to the Authority's record when assignments of error are based on the record, and citing to the principal legal authorities the applicant relies upon, whether statutes, regulations, cases, or other authorities. Except for good cause shown, no assignment of error by the aggrieved party may rely on any question of fact or law not presented to the Authority. Within 10 days of being served with the application, the Authority may file a response limited to no more than 1,000 words stating the reasons the sanction should be upheld and whether an evidentiary hearing conducted by the Administrative Law Judge is either unnecessary, or necessary to supplement or to contest facts in the record found by the Authority.

(2) *Application by the Commission.* When the Commission on its own initiative files an application, the application must identify matters that the Commission finds material to the Administrative Law Judge's review of the civil sanction imposed by the Authority, whether or not raised by the aggrieved person or the Authority. Notice to the parties of the opportunity for further factual development of the record through an evidentiary hearing conducted by the Administrative Law Judge under paragraph (c) of this section shall be given when the Commission believes that supplementation of

the record would significantly aid the decisional process.

(b) *Nature of review by the Administrative Law Judge.* Under 15 U.S.C. 3058(b)(2)(A), the Administrative Law Judge must determine when reviewing matters under this subpart:

(1) Whether the person has engaged in such acts or practices, or has omitted such acts or practices, as the Authority has found the person to have engaged in or omitted. In making this determination, the Administrative Law Judge may rely on the factual record developed before the Authority and may supplement that record by evidence presented in an administrative hearing under paragraph (c) of this section;

(2) Whether such acts, practices, or omissions are in violation of the Horseracing Integrity and Safety Act, 15 U.S.C. 3051 through 3060, or the rules of the Authority as approved by the Commission. The Administrative Law Judge will make this determination de novo; and

(3) Whether the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, prejudicial, the result of a conflict of interest, or otherwise not in accordance with law. The Administrative Law Judge will make this determination de novo.

(c) *Administrative hearings*—(1) *Duties and powers of the Administrative Law Judge and rights of the parties.* (i) The Administrative Law Judge has the duty and is granted the necessary powers to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. To effectuate those goals, the hearing conducted by the Administrative Law Judge under 15 U.S.C. 3058(b)(2)(B) shall include (but is not limited to):

(A) Administering oaths and affirmations;

(B) Issuing orders requiring answers to questions;

(C) Compelling admissions, upon request of a party or on its own initiative;

(D) Ruling upon offers of proof and receiving evidence;

(E) Regulating the course of the hearing;

(F) Holding conferences for settlement, simplification of the issues, or other proper purposes;

(G) Ruling on procedural and other motions; and

(H) Issuing a decision.

(ii) All parties are entitled to the right of due notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing consistent with 5 U.S.C. 556.

(2) *The factual record.* In reviewing the final civil sanction and decision of the Authority, the Administrative Law Judge may rely in full or in part on the factual record developed before the Authority through the disciplinary process under 15 U.S.C. 3057(c) and disciplinary hearings under Authority Rule Series 8300. The record may be supplemented by an evidentiary hearing conducted by the Administrative Law Judge to ensure each party receives a fair and impartial hearing. Within 20 days of the filing of an application for review, based on the application submitted by the aggrieved party or by the Commission and on any response by the Authority, the Administrative Law Judge will assess whether:

(i) The parties do not request to supplement or contest the facts found by the Authority;

(ii) The parties do not seek to contest any facts found by the Authority, but at least one party requests to supplement the factual record;

(iii) At least one party seeks to contest any facts found by the Authority;

(iv) The Commission, if it filed the application for review, seeks supplementation of the record; or

(v) In the Administrative Law Judge's view, the factual record is insufficient to adjudicate the merits of the review proceeding.

(3) *Hearings for which neither a party nor the Commission requests to supplement or contest the facts found by the Authority and whose record the Administrative Law Judge deems sufficient.* When neither a party nor the Commission requests to supplement or alter the factual record before the Authority, and the Administrative Law Judge has not determined the factual record is insufficient, the factual record will be deemed closed, and no evidentiary

hearing will be held. In such cases, the administrative hearing conducted by the Administrative Law Judge will be limited to briefing by the parties, unless the Administrative Law Judge elects to hear oral argument. Within 30 days of the application for review, each party will concurrently file with the Secretary for consideration by the Administrative Law Judge proposed findings of fact, conclusions of law, and a proposed order, together with a supporting legal brief providing the party's reasoning. Such filings, limited to 7,500 words, must be served on the other party and contain references to the record and authorities on which they rely. Reply findings of fact, conclusions of law, and briefs, limited to 2,500 words, may be filed by each party within 10 days of service of the initial filings.

(4) *Hearings for which no party contests facts found by the Authority but at least one party or the Commission seeks to supplement the record or for which the Administrative Law Judge determines that supplementation is necessary*. When a party or the Commission seeks to supplement the record, or when the Administrative Law Judge determines the factual record is insufficient, the factual record developed before the Authority will be considered the initial record before the Administrative Law Judge. The record will be supplemented by evidence presented in a hearing before the Administrative Law Judge.

(i) The Administrative Law Judge will conduct an evidentiary hearing lasting no more than 8 hours for each party or the Commission seeking supplementation. The hearing may be extended by request of a party, the Commission, or on the Administrative Law Judge's own initiative, for good cause. When a party seeks to supplement the record, the hearing will be limited to:

(A) An opening statement by the party requesting supplementation of no more than 15 minutes;

(B) Direct examination by the party requesting supplementation, with opportunity for cross-examination by the other party; and

(C) The admission of documentary evidence. When the Administrative Law Judge or the Commission seek supplementation of the record, the Administrative Law Judge or the Commission may issue an order allowing the consideration of additional evidence, describing the additional evidence sought, and prescribing the procedures for holding the hearing before the Administrative Law Judge.

(ii) Within 30 days of the hearing's conclusion, each party will concurrently file with the Secretary for consideration by the Administrative Law Judge proposed findings of fact, conclusions of law, and a proposed order, and a supporting legal brief explaining the party's reasoning. Such filings, limited to 7,500 words, must be served upon the other party and contain references to the record and authorities on which they rely. Reply briefs, limited to 2,500 words, may be filed by each party within 10 days of service of the initial filings.

(iii) The Administrative Law Judge must hear closing statements from the parties within 10 days of the date on which reply briefs are due if either party, in its reply brief, requests the opportunity to make a closing statement.

(5) *Hearings in which a party seeks to supplant facts found by the Authority*. (i) In an application for review, an aggrieved person may request an extended hearing before the Administrative Law Judge to supplant facts found by the Authority. The extended hearing may last up to 40 hours. To receive an extended hearing, the aggrieved person must make a proffer of weighty, probative, and substantial evidence and compelling argument in support of its contention that the disciplinary process before the Authority failed to comply with the requirements of 15 U.S.C. 3057(c) or of the Authority's Rule Series 8300, or that prejudicial errors, procedural irregularities, or conflicts of interest were present in, or committed during, the Authority's proceeding and resulted in a failure to provide the ''adequate due process'' required under section 3057(c)(3). Extended hearings are disfavored and granted only in these circumstances. For applications for review in which applicants request an extended hearing, the total application is limited to 2,500 words (instead of the ordinary 1,000 words).

(ii) The Authority may file a response to the request for an extended hearing within 10 days of being served with the application for review, limited to 2,500 words (instead of the ordinary 1,000 words). The Authority may, in its response, elect to concede that the contention of procedural inadequacy has substantial evidence in support of it. Presented with such a concession, the Administrative Law Judge must order the final civil sanction set aside without prejudice and remand the matter to the Authority.

(iii) The Administrative Law Judge will issue a decision resolving the request for an extended hearing within 10 days of the date on which the Authority's response is due. If the request for an extended hearing is granted in part or in full, the extended hearing will be limited to the same elements listed in paragraph (c)(4) of this section, adjusted as deemed necessary by the Administrative Law Judge.

(iv) The final factual record will consist of:

(A) Those facts found by the Authority that, in the determination of the Administrative Law Judge, were found in a process that was consistent with 15 U.S.C. 3057(c), the Authority's Rule Series 8300, and adequate due process; as well as

(B) Any new facts adduced at the hearing and found by the Administrative Law Judge.

(6) *Evidence*—(i) *Burden of proof.* The burden of proof is on the Authority to show, by a preponderance of the evidence, that the covered person has violated a rule issued by the Authority, but the proponent of any factual proposition is required to sustain the burden of proof with respect thereto.

(ii) *Admissibility.* Only relevant, material, and reliable evidence will be admitted. Evidence, even if relevant, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues, or if the evidence would be misleading, cause undue delay, waste time, or present duplicative evidence. Evidence that constitutes hearsay may be admitted if it is relevant, material, and bears satisfactory indicia of reliability.

(iii) *Presentation of evidence.* A party is entitled to present its case or defense by sworn oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Administrative Law Judge, may be required for a full and true disclosure of the facts. The Administrative Law Judge must exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the presentation effective for the ascertainment of the truth while avoiding needless consumption of time and to protect witnesses from harassment or undue embarrassment.

(iv) *Adverse witnesses.* Adverse parties, or officers, agents, or employees thereof, and any witnesses who appears to be hostile, unwilling, or evasive, may be interrogated by leading questions and may also be contradicted and impeached by the party calling them.

(v) *Objections.* Objections to evidence must be timely and must briefly state the grounds relied upon. The transcript must not include argument or debate thereon except as ordered by the Administrative Law Judge. Rulings on all objections must appear in the record.

(7) *In camera treatment of material.* (i) A party or third party may obtain *in camera* treatment for material, or portions thereof, offered into evidence only by motion to the Administrative Law Judge. The Administrative Law Judge has the authority to order such material, whether admitted or rejected, be placed *in camera* only after finding that its public disclosure will likely result in a clearly defined, serious injury to the party requesting *in camera* treatment or after finding that the material constitutes sensitive personal information. ''Sensitive personal information'' includes, but is not limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records.

(ii) Material made subject to an *in camera* order will be kept confidential and not placed on the public record.

Parties must not disclose information that has been granted *in camera* status or is subject to confidentiality protections pursuant to a protective order in the public version of proposed findings, briefs, or other documents. Parties who seek to use material obtained from a third party subject to confidentiality restrictions must show that the third party has been given at least 10 days' notice of the proposed use of such material.

(d) *Decision by the Administrative Law Judge*—(1) *When filed.* The Administrative Law Judge must file a decision within 30 days of closing statements or, if no closing statements are ordered, within 30 days of the date on which reply findings of fact, conclusions of law, and briefs are due. The Administrative Law Judge may extend this time period for up to 30 days for good cause. The decision must be filed within 60 days of the conclusion of the administrative hearing.

(2) *Content.* The decision by the Administrative Law Judge must be based on a consideration of the whole record relevant to the issues decided and must be supported by reliable and probative evidence. The decision must include a statement of findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law, explaining the reasons for the decision, and an appropriate order. Rulings containing information granted *in camera* status must be issued such that only counsel for the parties receive an unredacted confidential version of the ruling and that only a version of the ruling redacting confidential information is placed on the public record.

(3) *Disposition.* In the decision, the Administrative Law Judge may:

(i) Affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the final civil sanction of the Authority; and

(ii) Make any finding or conclusion that, in the judgment of the Administrative Law Judge, is proper and based on the record.

(4) *Final decision; waiver upon Commission review.* A decision by the Administrative Law Judge will constitute the final decision of the Commission subject to judicial review under 5 U.S.C. 704 without further proceedings unless a notice or an application for review to the Commission is timely filed under §1.147. Any objection to any ruling by the Administrative Law Judge or to any finding, conclusion, or a provision of the order in the decision of the Administrative Law Judge that is not made a part of an appeal to the Commission will be deemed to have been waived.

§1.147 Review by the Commission of the decision of the Administrative Law Judge.

(a) *Notice of review by the Commission.* The Commission may on its own motion review any decision of an Administrative Law Judge issued under §1.146 by providing written notice to the Authority and any other party within 45 days of the issuance of the decision. The order will set forth the scope of such review and the issues to be considered and will set a briefing schedule. If no party has filed an application for the Commission to review the decision of the Administrative Law Judge and the Commission does not initiate a review on its own motion, the decision of the Administrative Law Judge becomes the final decision of the Commission for purposes of 5 U.S.C. 704 without the need for further agency proceedings 46 days after its issuance.

(b) *Application for review and response*—(1) *Timing.* The Authority or a person aggrieved by the decision of the Administrative Law Judge under §1.146 may petition the Commission for review of such decision by filing an application for review with the Secretary of the Commission within 30 days of the issuance of the decision.

(2) *Contents of application and response.* (i) The application must specify the party or parties against whom the appeal is taken and specify the decision and order or parts thereof appealed from. The application, limited to 1,000 words, must provide the reasons it should be granted by addressing the matters the Commission considers in determining whether to grant the application under paragraph (b)(4)(i) of this section. Unless the application is denied, the applicant must perfect its application by filing its opening brief

consistent with the requirements in paragraph (c)(3)(i) of this section.

(ii) Any other party to the matter may respond to the application no later than 10 days after it is filed by providing the reasons, limited to 1,000 words, it should not be granted by addressing the matters the Commission considers in determining whether to grant the application under paragraph (b)(4)(i) of this section.

(3) *Effect of denial of application for review.* If an application for review is denied, the decision of the Administrative Law Judge becomes the final decision of the Commission for purposes of 5 U.S.C. 704 without the need for further agency proceedings.

(4) *Discretion of the Commission*—(i) *In general.* A decision whether to grant an application for review is subject to the sole discretion of the Commission. The Commission will issue an order resolving an application for its review as expeditiously as possible. The Commission may decide to grant review of only one issue or any subset of all the issues raised in the application for review.

(ii) *Matters to be considered.* In determining whether to grant an application for review, in full or in part, the Commission considers whether the application makes a reasonable showing that:

(A) A prejudicial error was committed in the conduct of the proceeding before the Administrative Law Judge; or

(B) The decision involved:

(*1*) An erroneous application of the anti-doping and medication control or racetrack safety rules approved by the Commission; or

(*2*) An exercise of discretion or a decision of law or policy that warrants review by the Commission.

(c) *Nature of review on the merits*—(1) *Standard of review.* The Commission reviews de novo the factual findings and conclusions of law made by the Administrative Law Judge.

(2) *Consideration of additional evidence.* In those cases in which the Commission believes it requires additional information or evidence before issuing a final decision, the Commission, in its discretion, may withhold issuing its decision until it obtains additional information or evidence.

(i) *Order by Commission.* The Commission may issue on its own motion an order allowing the consideration of additional evidence and prescribing the procedures for doing so.

(ii) *Motion by a party.* A party may file a motion to have the Commission consider additional evidence at any time before the issuance of a decision by the Commission. The motion must show, with particularity, that:

(A) Such additional evidence is material; and

(B) There were reasonable grounds for failure to submit the evidence previously.

(iii) *Commission determination.* Upon motion by a party, the Commission may:

(A) Accept or hear additional evidence itself; or

(B) Remand the proceeding to the Administrative Law Judge for the consideration of additional evidence.

(3) *Briefing schedule*—(i) *Opening brief.* If the Commission grants an application for review, the applicant must perfect its application by filing its opening brief, limited to 7,500 words (without leave of the Commission), within 30 days of the Commission's order granting the application for review. The opening brief must contain, in the following order:

(A) A subject index of the matter in the brief, with page references, and a table of cases with page references;

(B) 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;

(C) A list of the questions presented on appeal that the Commission has agreed to hear;

(D) The argument, clearly presenting 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

(E) A proposed order for the Commission's consideration.

(ii) *Answering brief.* The opposing party may respond to the opening brief by filing an answering brief, limited to

7,500 words (without leave of the Commission), within 30 days of service of the opening brief. The answering brief must contain a subject index, with page references, and a table of cases with page references, as well as arguments in response to the applicant's appeal brief.

(iii) *Reply brief*. The applicant may file a reply to an answering brief within 14 days of service of the answering brief. The reply brief, limited to 2,500 words, must be limited to rebuttal of matters in the answering brief and must not introduce new material. The Commission will not consider new arguments or matters raised in reply briefs that could have been raised earlier in the principal briefs. No further briefs may be filed except by leave of the Commission.

(iv) *Word count limitation*. The word count limitations in this section include headings, footnotes, and quotations, but do not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, and any proposed form of order. Extensions of word count limitations are disfavored and will only be granted when a party can make a strong showing that undue prejudice would result from complying with the existing limit.

(4) *Oral argument*. Oral arguments will be held in all cases on review to the Commission unless the Commission orders otherwise or upon request of any party made at the time of filing of its brief. Unless the Commission orders otherwise, argument will be held within 30 days of the deadline for filing reply briefs and will be limited to 20 minutes per side.

(5) *Decision*—(i) *Timing*. The Commission will issue its final decision within 30 days of oral argument or, if no argument is held, within 30 days of the deadline for the filing of reply briefs. The Commission may extend this time period by up to 30 days for good cause.

(ii) *Content; resolution*. The Commission will include in its decision a statement of the reasons or bases for its action and any concurring and dissenting opinions. Based on its decision, the Commission may:

(A) Affirm, reverse, modify, set aside, or remand for further proceedings before the Administrative Law Judge, in whole or in part, the decision of the Administrative Law Judge; and

(B) Make any finding or conclusion that, in the judgment of the Commission, is proper and based on the record.

§ 1.148 Stay of proceedings.

(a) *In general*. Review by an Administrative Law Judge or by the Commission under this subpart will not operate as a stay of a final civil sanction of the Authority unless the Administrative Law Judge or the Commission orders such a stay.

(b) *Application for a stay*—(1) *Before the Administrative Law Judge*. A person subject to a final civil sanction imposed by the Authority may apply to the Administrative Law Judge for a stay of all or part of that sanction pending review by the Administrative Law Judge. Any application for a stay is limited to 1,000 words, must be filed concurrently with the application for review of the sanction, and must be served on the Authority in accordance with the provisions of 16 CFR 4.4(b) that are applicable to service in review proceedings under this part. The Authority may file an opposition, limited to 1,000 words, within 7 days of being served with the application for a stay. The Administrative Law Judge must resolve the stay application within 10 days of the date on which the Authority's opposition is due.

(2) *Before the Commission*—(i) *Expedited application for a stay*. The party aggrieved by the sanction and denied a stay by the Administrative Law Judge under paragraph (b)(1) of this section may file an expedited application for a stay with the Commission within 3 days of the Administrative Law Judge's denial. An expedited application for a stay is limited to 1,000 words and must be served on the Authority in accordance with the provisions of 16 CFR 4.4(b) that are applicable to service in review proceedings under this part. The Authority may file an opposition, limited to 1,000 words, within 3 days of service of the expedited application. The application and opposition

should address the factors in paragraph (d) of this section the Commission considers in resolving a stay application. The Commission will issue its decision on the stay application as soon as practicable.

(ii) *Application for a stay after the Commission decides to review the Administrative Law Judge's decision.* If the Commission grants the application for review of the decision of the Administrative Law Judge, or orders review of the decision on its own motion, the person subject to the sanction may apply to the Commission for a stay of the sanction pending the Commission's decision. In this circumstance, the aggrieved person may seek a stay of the sanction before the Commission a second time under this paragraph (b)(2)(ii) even if the person was previously denied an expedited application for a stay under paragraph (b)(2)(i) of this section. The application for a stay, limited to 1,000 words, must be filed within 7 days of the Commission's order granting the application for review or ordering review under §1.147(a), and must be served on the Authority in accordance with the provisions of 16 CFR 4.4(b) that are applicable to service in review proceedings under this part. The Authority may file an opposition, limited to 1,000 words, within 7 days of being served with the stay application.

(c) *Content of stay application and opposition.* An application for a stay of the sanction, and any opposition to the application, must provide the reasons a stay is or is not warranted by addressing the factors described in paragraph (d) of this section, and the facts relied upon, and may include supporting affidavits or other sworn statements, and a copy of the relevant portions of the record.

(d) *Factors considered in deciding a stay application.* The parties, the Administrative Law Judge, and the Commission must address the following factors, in advocating for or against, or in resolving, a stay application:

(1) The likelihood of the applicant's success on review;

(2) Whether the applicant will suffer irreparable harm if a stay is not granted;

(3) The degree of injury to other parties or third parties if a stay is granted; and

(4) Whether the stay is in the public interest.

§ 1.149 Adoption of miscellaneous rules.

Part 4 of this subchapter is adopted into this subpart and governs proceedings under this subpart, and, within §§4.2 and 4.4, references to ''part 3'' shall include this subpart.

Subpart U—Oversight of the Horseracing Integrity and Safety Authority

AUTHORITY: 15 U.S.C. 3053(e).

89 FR 8532, Feb. 8, 2024, unless otherwise noted.

§ 1.150 Submission of the Authority's proposed budget submissions.

(a) *Mandatory annual submission.* The Authority must submit a proposed annual budget to the Commission every year, irrespective of whether there is a ''proposed increase in the amount required'' under 15 U.S.C. 3052(f)(1)(C)(iv). The submission of the proposed budget for the following year must be made by August 1 of the current year, following the procedures set forth in §1.143. The Authority's annual budget will use the calendar year as its fiscal year.

(b) *Consideration of public comments.* Before submitting its proposed budget to the Commission in August, the Authority must post the proposed budget on its website as early as practicable, with an invitation to the public to submit comments to the Authority on any aspect of the proposed budget. The Authority must post any pertinent comments it receives on its website, and it must review them to ascertain whether to revise the proposed budget in light of them.

(c) *Contents of submission.* The Authority's proposed budget submission to the Commission must include the following:

(1) *Indication of Board vote.* The Authority's proposed budget must be approved by a majority of its Board of Directors, or, in the case of a budget

that exceeds the preceding year's budget by 5 percent or more, a two-thirds supermajority. The Authority's submission to the Commission must state the Board vote on the motion to approve the budget.

(2) *Revenue information.* The proposed budget must identify both the estimated amount required from each State racing commission as calculated under 15 U.S.C. 3052(f) and all other sources of Authority revenue as well as any loans proposed to be obtained by the Authority.

(3) *Expenditure information.* The proposed budget must identify expenditures separately for:

(i) The racetrack safety program;

(ii) The anti-doping and medication control program;

(iii) All other programmatic expenditures other than for racetrack safety and anti-doping and medication control, such as the administration of the Authority or its technological needs;

(iv) Repayment of any loans; and

(v) Any funding shortfall incurred.

(4) *Line items.* For both revenue and expenditure information, the Authority's proposed budget must provide sufficient information, by line item, as would be required for members of the Authority's Board of Directors to exercise their fiduciary duty of care. For example, the proposed budget's expenditure information for anti-doping and medication control might include separate line items for in-house salaries, the costs of testing of laboratory samples, the costs of arbitrators, and all the costs associated with contracting with an anti-doping and medication control enforcement agency. The proposed budget must include a narrative component that provides a brief explanation of each line item's utility in carrying out the purposes of the Horseracing Integrity and Safety Act.

(5) *Comparison of approved budget to actual revenues and expenditures.* For each approved line item, the proposed budget must provide a comparison showing the actual revenues and expenditures for the current year along with a narrative component explaining why any line item is anticipated to deviate by 10 percent or more during the current year.

(6) *Public comments received and the Authority's response.* The Authority must include with its submission all of the public comments that it received after posting the proposed budget on its website. The Authority must also provide an assessment of public comments relevant to the Commission's evaluation of the proposed budget. The Authority must also identify any changes made to the proposed budget in response to the comments received.

(d) *Publication of the proposed budget in the* FEDERAL REGISTER. If the Secretary concludes that the Authority's submission complies with §1.150(c), then the Secretary will publish the Authority's proposed budget in the FEDERAL REGISTER with supporting materials available on *regulations.gov*. Members of the public will have 14 days after the date of publication in which to file comments on the proposed budget. Public comments should provide commenters' views as to the decisional criteria set forth in §1.151(c) and whether any line items should be modified.

§ 1.151 Commission decision on the Authority's proposed budget.

(a) *Commission approval required.* The Authority's proposed budget takes effect only if approved by the Commission. The Commission will approve or disapprove the proposed budget after considering the public comments filed and the Commission's internal review of the Authority's submissions pursuant to §1.150. The Commission may, in its discretion, require the Authority to submit additional information to the Commission before the Commission approves or disapproves the proposed budget. The Commission will vote on the Authority's proposed budget no later than November 1, or as soon thereafter as practicable.

(b) *Conditional collection of fees allowed.* The notice required to be sent to State racing commissions estimating the amount required from each State for the subsequent year must state that the amount required is based on the proposed annual budget, as approved by the Board of Directors, which takes effect only if approved by the Commission. State racing commissions (or covered persons in States that

do not elect to remit fees) may nevertheless elect to remit fees, and the Authority may conditionally collect them, even before the Commission approves the proposed budget. If the Commission makes any modifications to line items under paragraph (d) of this section that have the net effect of reducing the budget, the Authority must, within 30 days, refund the proportionate amount owed to any State racing commission or covered person that has conditionally paid. If the Commission makes any modifications to line items under paragraph (d) of this section that have the net effect of increasing the budget, the Authority may obtain loans to make up the difference or may account for the difference as a funding shortfall incurred in the subsequent year's proposed budget.

(c) *Decisional criteria.* The Commission will approve the proposed budget if the Commission determines that, on balance, the proposed budget is consistent with and serves the goals of the Horseracing Integrity and Safety Act in a prudent and cost-effective manner and that its anticipated revenues are sufficient to meet its anticipated expenditures.

(d) *Modification of line items.* In its decision on the proposed budget, the Commission may modify the amount of any line item.

§ 1.152 Deviation from approved budget.

(a) *When notice to the Commission is required.* As to any line item, the Authority may deviate from the approved budget's expenditure information in a year by up to 10 percent in a year without providing prior notification to the Commission. If the Authority determines that it is likely to expend more than the approved expenditure for any line item by 10 percent or more, or if it will exceed its approved total expenditure by any amount, it must notify the Commission immediately upon such a determination.

(b) *Line-item deviations of more than 10 percent.* If the Authority determines that it is likely to expend more than the approved expenditure for any line item by 10 percent or more, its notice to the Commission must indicate whether it intends to repurpose funds from one or more different line items to cover the increased expenditure. The Commission retains the discretion to disapprove such a proposed repurposing. The Commission must issue any decision to disapprove a proposed repurposing within 14 business days of receiving notice of the Authority's proposal to repurpose funds from another line item. If the Commission takes no action, the Authority's proposal takes effect as an amendment to its approved budget.

(c) *Total expenditure deviation.* If the Authority determines that it is likely to expend more than the total approved expenditure, its notice to the Commission must indicate by what means it proposes to cover the difference. The Commission retains the discretion to disapprove the proposed means of covering the difference. The Commission must issue any decision to disapprove a proposed means of covering the difference within 14 business days of receiving notice of the Authority's proposal to cover the difference. If the Commission takes no action, the Authority's proposal takes effect as an amendment to its approved budget.

§ 1.153 Submission of the Authority's annual reports, midyear reports, and strategic plans.

(a) *Annual financial report.* Every year, by May 15, the Authority must follow the procedures in §1.143 to submit an annual financial report to the Commission, detailing the items listed in paragraphs (a)(1) through (9) of this section for the previous calendar year. The Authority must also publish this report on its website. The report must contain:

(1) A complete accounting of the Authority's budget, as audited by a qualified, independent, registered public accounting firm and in accordance with Generally Accepted Accounting Principles (including a statement from the auditor attesting to the auditor's independence and its opinion regarding the financial statements presented in the annual financial report);

(2) Line-item comparisons between the approved budget's revenues and expenditures for the previous year and the actual revenues and expenditures for the previous year;

(3) An explanation of how the Authority has considered the relative costs and benefits in formulating the programs, projects, and activities described in the budget;

(4) A description and accounting of the Authority's insurance coverage;

(5) A description and accounting of any budgetary reserves;

(6) Summaries of contracts or other liabilities that the Authority has entered into or may potentially incur;

(7) A summary of travel expenses, including an itemized list of any first-class travel (defined as the highest and most expensive class of service);

(8) Any new or continuing material or significant risks or issues raised by the audit, internal quality or control reviews, other inspections or peer reviews of the Authority, or any inquiry or investigation by governmental or professional authorities, along with any steps taken (*e.g.*, corrective actions) to deal with any such issues, consistent with §1.154; and

(9) Any other information requested by Commission staff.

(b) *Annual performance report.* Every year, by March 31, the Authority must follow the procedures in §1.143 to submit an annual performance report to the Commission, detailing the items listed in paragraphs (b)(1) through (11) of this section for the previous calendar year. The Authority must also publish this report on its website. The report must contain:

(1) Narrative summaries of all the major efforts by the Authority to carry out the requirements of the Act, including the status or results of any publicly announced investigations conducted by the Authority;

(2) Information about the Authority's cooperation with the States as set forth in 15 U.S.C. 3060(b), including whether each State has covered horseraces, elects to remit fees, or has entered into an agreement under 15 U.S.C. 3060(a)(1) to implement a component of the programs on racetrack safety or anti-doping and medication control;

(3) A summary of all final civil sanctions imposed by the Authority in the previous year, in a tabular format. At a minimum, the summary should be broken down by violation category (*e.g.*, racetrack safety program, anti-doping and controlled medication protocol rules, etc.) and should include the total number of alleged violations by category, the number of times the violations were admitted and resolved without adjudication, the number of times any violations were contested and adjudicated, the number of times any sanctions were imposed, the number of times that no sanctions were imposed, the number of civil sanction notices that needed to be reissued or corrected, the total fines imposed, the total amount of purses forfeited, and the number of times the sanctions were appealed to the Commission's Administrative Law Judge;

(4) An assessment of the Authority's progress in meeting or not meeting its performance measures contained in its strategic plan per paragraph (d) of this section;

(5) A statement from each Board of Directors committee summarizing its work in the previous year and all recommendations each such committee has made to the Board;

(6) Information about any changes in the composition of the Authority's Board of Directors or standing committees;

(7) Information about the relationship between the Authority and the anti-doping and medication control enforcement agency, including how the enforcement agency is performing under its contract with the Authority and how many years remain under the contract;

(8) A summary of all litigation to which the Authority is a party, including actions commenced by the Authority under 15 U.S.C. 3054(j);

(9) A summary of all subpoenas issued by the Authority under 15 U.S.C. 3054(c);

(10) Descriptions of any areas in which the Authority believes that improvements to its operations are warranted, together with the Authority's plans to achieve those improvements. Forward-looking information should reflect known and anticipated risks,

uncertainties, future events or conditions, and trends that could significantly affect the Authority's future financial position, condition, or operating performance, as well as Authority actions that have been planned or taken to address those challenges; and

(11) Any other information requested by Commission staff.

(c) *Midyear reporting.* Every year, by August 15, the Authority must follow the procedures in §1.143 to furnish to the Commission a same-year midyear report covering January through June, to include:

(1) Spending and staffing levels for the quarter ending June 30, compared to the levels in the Commission-approved budget;

(2) A summary of travel expenses, including an itemized list of any first-class travel (defined as the highest and most expensive class of service);

(3) The status of outstanding and completed corrective actions; and

(4) Any other information requested by Commission staff.

(d) *Strategic plan.* The Authority must develop and maintain a multiyear strategic plan. The Authority must follow the procedures in §1.143 to submit its first strategic plan to the Commission on or before October 15, 2024. The Authority must reevaluate the strategic plan no less frequently than every five years. The Authority's annual budget must align with, and link spending to, the strategic goals. The strategic plan must include items such as a description of its State-by-State relationships and a discussion of planned rulemaking activities. The Authority must:

(1) Post its draft strategic plan on its website for a public comment period of at least 14 days;

(2) Present its final strategic plan to the Commission, along with a summary of its responses to public comments; and

(3) Publish its final strategic plan on its website.

(e) *Further guidance on strategic plan.* The Authority's strategic plan should include forecasts of the Authority's industry environment and its priority initiatives for the current and subsequent years. The strategic plan should also consider the impact that program levels and changes in methods of program delivery, including advances in technology, could have on program operations and administration. The strategic plan should identify several strategic goals aligned with the Authority's mission statement. Each strategic goal should have accompanying objectives, strategies, and performance measures. As guiding principles, performance measures should:

(1) Be limited to the vital few and demonstrate results;

(2) Cover multiple priorities;

(3) Provide useful information for decision-making;

(4) Be clear, measurable, objective, and reliable; and

(5) Focus on core program activities and priorities.

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§ 1.154 Enterprise risk management.

(a) *Guiding principles.* The Authority must effectively manage risk to prevent conflicts of interest, waste, fraud, embezzlement, and abuse. To manage risk, the Authority must align the enterprise risk-management process to the goals and objectives noted in the Authority's strategic plan. The Authority must assess risks, select risk responses, monitor whether responses are successful, and communicate and report on risks, consistent with §1.153. The Authority must ensure that all internal controls have appropriate separation of duties (*e.g.*, requester, approver, recorder). In addition, the Authority must develop corrective action plans no later than 90 days after receiving a notice of finding from its auditors or other internal assessments. The Board of Directors (or one of the Authority's standing committees) must review and evaluate identified risks and proposed corrective action plans. The Authority must review regularly its corrective actions identified from all audits and internal assessments and should develop criteria by which to prioritize its response activities. The Authority must ensure that its risk management activities encompass:

(1) Compliance with applicable laws, rules, and regulations;

(2) The avoidance of conflicts of interest, or the appearance thereof, in all

aspects of the Authority's operations, including investigation and enforcement, vendor selection, personnel assignments and responsibilities, and actions by the Board of Directors or management; and

(3) Handling funds received and expended by the Authority, including revenue/expense policies, fundraising practices, contracting policies, travel policies, and real and personal property agreements and expenses.

(b) *Data security and privacy*. The Authority must ensure the privacy and security of data, including all reasonable measures to protect the confidentiality of any sensitive health information (SHI), personally identifiable Information (PII), and sensitive PII (SPII) stored in its systems, including those operated by the anti-doping and medication control program, the Horseracing Integrity and Welfare Unit, and the Authority's third-party contractors. The Authority must ensure a complete annual evaluation of the status of its overall information technology security program and practices, as audited by a qualified, independent, third-party auditor. The Authority must also ensure that it has policies, programs, and practices in place to protect SHI, PII, and SPII. The Authority must send a copy of the annual evaluation to Commission staff.

(c) *Vendor selection*. Procurement actions estimated at over $10,000 must be accompanied by documented market research (*e.g.*, comparing the prices and other terms offered by the selected vendor against the prices and other terms offered by at least two other vendors) to ensure lowest cost or best value for goods or services to be provided. The Authority should also develop policies and procedures covering procurement activities.

(d) *Notice*. The Authority must provide advance notice to Commission staff of all significant Authority-planned events (*e.g.*, press conferences, media events, summits, etc.) via a calendar, a list, email, or some other reasonable means. The Authority must also summarize key aspects of all such events on its website within a reasonable timeframe. The Authority must also give Commission staff prompt notice after it has been alerted to significant, adverse events in the horseracing industry (*e.g.*, adverse safety or medical events that might reasonably lead to sanctions, track closures, etc.).

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§ 1.155 Other best practices.

(a) *Regular monitoring meetings*. The Commission recommends that the Authority hold regular meetings with Commission staff to discuss upcoming or potential risks, challenges, and opportunities for improvement.

(b) *Records and information management*. The Commission recommends that the Authority maintain records and information in sufficient detail to support the Authority's programs and operations, as well as any records relating to its information management policies or procedures. The Commission expects that the Authority will make any of these records available to Commission staff upon request, to allow the Commission to carry out its statutorily mandated oversight.

(c) *Treatment of confidential information*. The Commission recommends that the Authority's submissions to the Commission not include any SHI, PII, or SPII, such as a Social Security number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. If the Authority submits documents to the Commission containing confidential commercial or financial information, it should so designate that material and request confidential treatment pursuant to §4.10(g) of this chapter.

(d) *Standing data requests*. The Commission recommends that the Authority submit Board of Directors minutes to the Commission's Office of the Secretary within 30 days following each Board meeting.

(e) *Personnel and compensation*. The Commission recommends that the Authority develop compensation policies and practices with the primary objective of attracting, developing, and retaining high-performing individuals capable of achieving the Authority's mission. The Authority should strive to recruit a diverse team of industry leaders whose unique backgrounds, education,

cultures, and perspectives help position the Authority as an effective and innovative self-regulatory organization. The Commission also recommends that the Authority conduct periodic salary benchmarks to ensure that employee compensation is in line with other like organizations.

(f) *Customer service.* The Commission recommends that the Authority maintain publicly accessible points of contact (*e.g.,* email addresses, phone numbers) and monitor the timeliness with which it responds to inquiries. In this regard, the Commission urges the Authority to develop a policy and associated metrics covering its customer service activities, to be incorporated into its strategic plan and its regular reporting to the Commission.

(g) *Travel.* The Commission recommends that the Authority use standard, General Services Administration (GSA)-established, published per diem rates when determining how much a person may spend on lodging, meals, and incidental expenses. Nevertheless, actual subsistence expenses may be authorized under unusual circumstances with justification and prior approval from the appropriate approving official. The Commission urges the Authority to prohibit the use of first-class travel (defined as the highest and most expensive class of service) by employees, except when no other option is available or when a disability or exceptional security conditions require it. The Commission also recommends that the Authority not reimburse its contractors for first-class travel unless exceptional circumstances warrant.

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§ 1.156 Severability.

The provisions of this subpart are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

[89 FR 66550, Aug. 16, 2024]

PART 2—NONADJUDICATIVE PROCEDURES

Subpart A—Inquiries; Investigations; Compulsory Processes

Sec.

Subpart B—Petitions Filed Under Section 7A of the Clayton Act, as Amended, for Review of Requests for Additional Information or Documentary Material

Subpart C—Consent Order Procedure

Subpart D—Reports of Compliance

Subpart E—Requests To Reopen

AUTHORITY: 15 U.S.C. 46.