

Federal Trade Commission

§ 2.51

(e) The Commission may at any time reconsider any advice given under this section and, where the public interest requires, rescind or revoke its prior advice. In such event the respondent will be given notice of the Commission's intent to revoke or rescind and will be given an opportunity to submit its views to the Commission. The Commission will not proceed against a respondent for violation of an order with respect to any action which was taken in good faith reliance upon the Commission's advice under this section, where all 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 advice.

(f)(1) All applications for approval of proposed divestitures, acquisitions, or similar transactions subject to Commission review under outstanding orders shall fully describe the terms of the transaction and shall set forth why the transaction merits Commission approval. Such applications will be placed on the public record, together with any additional applicant submissions that the Commission directs be placed on the public record. The Director of the Bureau of Competition is delegated the authority to direct such placement.

(2) The Commission will receive public comment on a prior approval application for 30 days. During the comment period, any person may file formal written objections or comments with the Secretary of the Commission, and such objections or comments shall be placed on the public record. In appropriate cases, the Commission may shorten, eliminate, extend, or reopen a comment period.

(3) Responses to applications under this section, together with a statement of supporting reasons, will be published when made, together with responses to any public comments filed under this section.

(4) Persons submitting information that is subject to public record disclosure under this section may request confidential treatment for that information or portions thereof in accordance with § 4.9(c) and the General Counsel or the General Counsel's designee

will dispose of such requests in accordance with that section. Nothing in this section requires that confidentiality requests be resolved prior to, or contemporaneously with, the disposition of the application.

[32 FR 8449, June 13, 1967]

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

Subpart E—Requests to Reopen

§ 2.51 Requests to reopen.

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

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

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

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

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

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

(c) *Opportunity for public comment.* A request under this section shall be placed on the public record except for material exempt from public disclosure

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

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

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

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

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