



OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA  
 FEDERAL TRADE COMMISSION  
 WASHINGTON, D.C. 20580

NOTICE OF FEDERAL TRADE COMMISSION APPROVAL  
OF PROCEDURES TO GOVERN THE PREPARATION OF  
FINAL ORDERS AND OPINIONS  
IN ADJUDICATIVE PROCEEDINGS

On April 7, 1994, the Federal Trade Commission -- by a vote of 5-0 -- approved the following procedures to govern the preparation of Final Orders and Opinions in adjudicative proceedings,<sup>1</sup> and determined to place these procedures on the public record:

1. Commissioners should endeavor to express their conclusions on liability at the post oral argument executive session. If no majority forms at the executive session, the commissioners will agree on a date approximately 14 days later on which to reconvene the executive session for further deliberation. If no decision is reached, the commissioners will continue to set the matter for executive session every two weeks until a majority forms.
2. A draft final order and opinion should be prepared within four months after formation of a majority and circulated for comment to the other commissioners and to the general counsel on an "adjudicative for information pending motion" basis. In cases for which the assigned commissioner believes additional time will be needed to complete the draft, he or she -- at the executive session following the oral argument -- may move to revise the schedule created pursuant to paragraph 6 below. If the Commission approves that motion, the schedule will be so revised.
3. The other commissioners should submit comments on the draft final order and opinion to the assigned commissioner within one month after the circulation of the draft. If any commissioner believes that further discussion is warranted, any commissioner

---

<sup>1</sup> The Commission Rules of Practice provide that

[a]djudicative proceedings are those formal proceedings conducted under one or more of the statutes administered by the Commission which are required by statute to be determined on the record after opportunity for an agency hearing.

16 C.F.R. § 3.2 (1994). When the Commission reviews an initial decision issued by an Administrative Law Judge in such a proceeding, an oral argument is held before the Commission (unless the Commission otherwise orders). *Id.* § 3.52(i). Immediately following the oral argument, the Commission meets in closed executive session to discuss the proceeding. Thereafter, the Commission issues a final order and opinion.

may schedule an executive session to consider any remaining issues.

4. The assigned commissioner should move that the Commission approve a final order and opinion -- and in addition move that the Commission issue any notice that may be required to notify appropriate persons of the impending disclosure of any information submitted for the record and ruled *in camera* pursuant to Section 3.45 of the Rules of Practice, 16 C.F.R. § 3.45 (1994) -- within 45 days after receiving comments from the other commissioners.

5. If one or more commissioners note on the voting sheet that they will have separate statements, the statements shall be circulated within twenty-one calendar days following the date the vote closes. The final order and opinion shall be issued no later than 5:00 p.m. on the thirtieth calendar day following the date the vote closes, or as soon thereafter as practicable.

6. One week prior to each oral argument, the secretary shall prepare and forward to the Commission a schedule for completing a final order and opinion in the matter at issue, based on the foregoing principles. The secretary shall in addition attach a copy of the schedule -- as modified, if at all, at the executive session -- to the computer reports forwarded to each commissioner each week.

7. Whenever the Chairman moves that a discussion of the budget be scheduled for a closed meeting of the Commission, the secretary shall move that each pending adjudicative proceeding be scheduled for an executive session -- to follow the same closed meeting -- provided that the general counsel certifies that the matter may properly be closed to the public under 5 U.S.C. § 552b(c). A "pending adjudicative proceeding" is any adjudicative proceeding -- as defined in section 3.2 of the Commission Rules of Practice, 16 C.F.R. § 3.2 (1994) -- for which (1) an oral argument has been held, but (2) a final order and opinion, or a final order, has not been issued.

8. One year after these procedures are approved, a Commission meeting will be scheduled by the Chairman to consider how they have worked in practice.

By direction of the Commission.

  
Donald S. Clark-  
Secretary

ISSUED: April 7, 1994