PAR. 4. Section 31.3401(a)(12)-1 is amended by revising paragraph (a) thereof to read as follows:

**§ 31.3401(a)(12)-1 Payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.**

(a) *Payments from or to certain tax-exempt trusts.* The term "wages" does not include any payment made—

(1) By an employer, on behalf of an employee or his beneficiary, into a trust, or

(2) To, or on behalf of, an employee or his beneficiary from a trust,

if at the time of such payment the trust is exempt from tax under section 501(a) as an organization described in section 401(a). A payment made to an employee of such a trust for services rendered as an employee of the trust and not as a beneficiary thereof is not within this exclusion from wages. Also, since supplemental unemployment compensation benefits are treated under paragraph (b)(14) of § 31.3401(a)-1 as if they were wages for purposes of this chapter, this section does not apply to such benefits.

PAR. 5. Section 31.3401(b)-1 is amended by redesignating paragraph (c) thereof as paragraph (d) and inserting a new paragraph (c). These redesignated and inserted provisions read as follows:

**§ 31.3401(b)-1 Payroll period.**

* * * * *

(c) The term "payroll period" also means the period of accrual of supplemental unemployment compensation benefits for which a payment of such benefits is ordinarily made. Thus if benefits are ordinarily accrued and paid on a monthly basis, the payroll period is deemed to be monthly.

(d) The term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

PAR. 6. Section 31.3401(c)-1 is amended by redesignating paragraph (g) thereof as paragraph (h) and inserting a new paragraph (g). These redesignated and inserted provisions read as follows:

**§ 31.3401(c)-1 Employee.**

* * * * *

(g) The term "employee" includes every individual who receives a supplemental unemployment compensation benefit which is treated under paragraph (b)(14) of § 31.3401(a)-1 as if it were wages.

(h) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 3401(a).

PAR. 7. Section 31.3401(d)-1 is amended by revising paragraph (g) thereof and redesignating it as paragraph (h), and by inserting a new paragraph (g). These revised, redesignated, and inserted provisions read as follows:

**§ 31.3401(d)-1 Employer.**

* * * * *

(g) The term "employer" also means a person making a payment of a supplemental unemployment compensation benefit which is treated under paragraph (b)(14) of § 31.3401(a)-1 as if it were wages. For example, if supplemental unemployment compensation benefits are paid from a trust which was created under the terms of a collective bargaining agreement, the trust shall generally be deemed to be the employer. However, if the person making such payment is acting solely as an agent for another person, the term "employer" shall mean such other person and not the person actually making the payment.

(h) It is a basic purpose to centralize in the employer the responsibility for withholding, returning, and paying the tax, and for furnishing the statements required under section 6051 and § 31.6051-1. The special definitions of the term "employer" in paragraphs (e), (f), and (g) of this section are designed solely to meet special or unusual situations. They are not intended as a departure from the basic purpose.

PAR. 8. The following new sections are added immediately after § 31.3402(n)-1.

**§ 31.3402(o) Statutory provisions; income tax collected at source; extension of withholding to certain payments other than wages.**

SEC. 3402. *Income tax collected at source.* * * *

(o) *Extension of withholding to certain payments other than wages*—(1) *General rule.* For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(A) Any supplemental unemployment compensation benefit paid to an individual, and

(B) Any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subjected to withholding under this chapter is in effect,

shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(2) *Definitions*—(A) *Supplemental unemployment compensation benefits.* For purposes of paragraph (1), the term "supplemental unemployment compensation benefits" means amounts which are paid to an employee, pursuant to a plan to which the employer is a party, because of an employee's involuntary separation from employment (whether or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includible in the employee's gross income.

(B) *Annuity.* For purposes of this subsection, the term "annuity" means any amount paid to an individual as a pension or annuity, but only to the extent that the amount is includible in the gross income of such individual.

(3) *Request for withholding.* A request that an annuity be subject to withholding under this chapter shall be made by the payee in writing to the person making the annuity payments, shall be accompanied by a withholding exemption certificate, executed in accordance with the provisions of subsection (f)(2), and shall take effect as provided in subsection (f)(3). Such a request may, notwithstanding the provisions of subsection (f)(4), be terminated by furnishing to the person making the payments a written statement of termination which shall be treated as a withholding exemption certificate for purposes of subsection (f)(3)(B).

[Sec. 3402(o) as added by sec. 805(g), Tax Reform Act 1969 (83 Stat. 708)]

**§ 31.3402(o)-1 Extension of withholding to certain payments other than wages.**

(a) *Supplemental unemployment compensation benefits.* Withholding of income tax is required under section 3402(o) with respect to payments of supplemental unemployment compensation benefits made after December 31, 1970, which are treated under paragraph (b)(14) of § 31.3401(a)-1 as if they were wages.

(b) *Withholding exemption certificates.* For purposes of section 3402(f)(2) and (3) and the regulations thereunder (relating to withholding exemption certificates), in the case of supplemental unemployment compensation benefits an employment relationship shall be considered to commence with either the date on which such benefits begin to accrue or January 1, 1971, whichever is later, and the withholding exemption certificate furnished the employer with respect to such commencement of employment shall be considered the first certificate furnished the employer. The withholding exemption certificate furnished by the employee to his former employer (with whom his employment has been involuntarily terminated, within the meaning of paragraph (b)(14)(ii) of § 31.3401(a)-1) shall be treated as meeting the requirements of section 3402(f)(2)(A) and the regulations thereunder if such former employer furnishes such certificate to the employee's current employer, as defined in paragraph (g) of § 31.3401(d)-1, or if such former employer is the agent of such current employer with respect to the employee's withholding exemption certificate. However, the preceding sentence shall not be applicable if such employee furnishes a new withholding exemption certificate to such current employer (or his agent), provided that such withholding exemption certificate meets the requirements of section 3402(f)(2)(A) and the regulations thereunder. See the definitions of payroll period in paragraph (c) of § 31.3401(b)-1 and of employee in paragraph (g) of § 31.3401(c)-1.

[FR. Doc. 70-15211; Filed, Nov. 10, 1970; 8:48 a.m.]

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[T.D. 7069]

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

## PART 301—PROCEDURE AND ADMINISTRATION

### Filing Requirements for Individuals

On August 1, 1970, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26

CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) under section 6012 of the Internal Revenue Code of 1954 to reflect the changes made by section 941 of the Tax Reform Act of 1969 (83 Stat. 726) was published in the FEDERAL REGISTER (35 F.R. 12343). No objection to the rules proposed having been received from the public during the 30-day period presented in the notice, the regulations as proposed are hereby adopted.

(Sec. 7805, Internal Revenue Code of 1954, (68A Stat. 917; 26 U.S.C. 7805)

[SEAL] RANDOLPH W. THROWER,
*Commissioner of Internal Revenue.*

Approved: October 28, 1970.

JOHN S. NOLAN,
*Acting Assistant Secretary of the Treasury.*

In order to conform the Income Tax Regulations (26 CFR Part 1) and the regulations on Procedure and Administration (26 CFR Part 301) under section 6012(a)(1) of the Internal Revenue Code of 1954 to section 941 of the Tax Reform Act of 1969 (83 Stat. 726), such regulations are amended as follows:

PARAGRAPH 1. Section 1.6012 is amended by revising paragraph (1) of section 6012 (a) and the historical note to read as follows:

**§ 1.6012 Statutory provisions; persons required to make returns of income.**

SEC. 6012. *Persons required to make returns of income*—(a) *General rule.* Returns with respect to income taxes under subtitle A shall be made by the following:

[Applicable to taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1973]

(1) (A) Every individual having for the taxable year a gross income of $600 or more, except that a return shall not be required of an individual (other than an individual referred to in section 142(b))—

(i) Who is not married (determined by applying section 143(a)) and for the taxable year has a gross income of less than $1,700, or

(ii) Who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than $2,300 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (ii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

(B) The $1,700 amount specified in subparagraph (A)(i) shall be increased to $2,300 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the $2,300 amount specified in subparagraph (A)(ii) shall be increased by $600 for each additional personal exemption to which the individual or his spouse is entitled under section 151(c);

[Applicable to taxable years beginning after Dec. 31, 1972]

(1) (A) Every individual having for the taxable year a gross income of $750 or more, except that a return shall not be required of an individual (other than an individual referred to in section 142(b))—

(i) Who is not married (determined by applying section 143(a)) and for the taxable year has a gross income of less than $1,750, or

(ii) Who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than $2,500 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (ii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

(B) The $1,750 amount specified in subparagraph (A)(i) shall be increased to $2,500 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the $2,500 amount specified in subparagraph (A)(ii) shall be increased by $750 for each additional personal exemption to which the individual or his spouse is entitled under section 151(c).

* * * * *

[Sec. 6012 as amended by sec. 72(a), Technical Amendments Act 1958 (72 Stat. 1660); sec. 206(b)(1), Rev. Act 1964 (78 Stat. 40); sec. 941, Tax Reform Act 1969 (83 Stat. 726)]

PAR. 2. Paragraph (a) of § 1.6012-1 is amended by revising subparagraphs (1), (2), and (4) thereof to read as follows:

**§ 1.6012-1 Individuals required to make returns of income.**

(a) *Individual citizen or resident*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, an income tax return must be filed by every individual for each taxable year beginning before January 1, 1973, during which he receives $600 or more of gross income, and for each taxable year beginning after December 31, 1972, during which he receives $750 or more of gross income, if such individual is—

(i) A citizen of the United States, whether residing at home or abroad,

(ii) A resident of the United States even though not a citizen thereof, or

(iii) An alien bona fide resident of Puerto Rico during the entire taxable year.

(2) *Special rules.* (i) For taxable years beginning before January 1, 1970, an individual who is described in subparagraph (1) of this paragraph and who has attained the age of 65 before the close of his taxable year must file an income tax return only if he receives $1,200 or more of gross income during his taxable year.

(ii) For taxable years beginning after December 31, 1969, and before January 1, 1973, an individual described in subparagraph (1) of this paragraph (other than an individual referred to in section 142(b))—

(*a*) Who is not married (as determined by applying section 143(a) and the regulations thereunder) must file an income tax return only if he receives $1,700 or more of gross income during his taxable year, except that if such an individual has attained the age of 65 before the close of his taxable year an income tax return must be filed by such individual only if he receives $2,300 or more of gross income during his taxable year.

(*b*) Who is entitled to make a joint return under section 6013 and the regulations thereunder must file an income tax return only if his gross income received during his taxable year, when combined with the gross income of his spouse received during his taxable year, is $2,300 or more. However, if such individual or his spouse has attained the age of 65 before the close of the taxable year an income tax return must be filed by such individual only if their combined gross income is $2,900 or more. If both the individual and his spouse have attained the age of 65 before the close of the taxable year such return must be filed only if their combined gross income is $3,500 or more. However, this subdivision (ii)(*b*) shall not apply if the individual and his spouse did not have the same household as their home at the close of their taxable year, if such spouse files a separate return for a taxable year which includes any part of such individual's taxable year, or if any other taxpayer is entitled to an exemption for such individual or his spouse under section 151(e) for such other taxpayer's taxable year beginning in the calendar year in which such individual's taxable year begins. For example, a married student more than half of whose support is furnished by his father must file an income tax return if he receives $600 or more of gross income during his taxable year.

(iii) For taxable years beginning after December 31, 1972, an individual described in subparagraph (1) of this paragraph (other than an individual referred to in section 142(b))—

(*a*) Who is not married (as determined by applying section 143(a) and the regulations thereunder) must file an income tax return only if he receives $1,750 or more of gross income during his taxable year, except that if such an individual has attained the age of 65 before the close of his taxable year an income tax return must be filed by such individual only if he receives $2,500 or more of gross income during his taxable year.

(*b*) Who is entitled to make a joint return under section 6013 and the regulations thereunder must file an income tax return only if his gross income received during his taxable year, when combined with the gross income of his spouse received during his taxable year, is $2,500 or more. However, if such individual or his spouse has attained the age of 65 before the close of the taxable year an income tax return must be filed by such individual only if their combined gross income is $3,250 or more. If both the individual and his spouse attain the age of 65 before the close of the taxable year such return must be filed only if their combined gross income is $4,000 or more. However, this subdivision (iii)(*b*) shall not apply if the individual and his spouse did not have the same household as their home at the close of their taxable year, if such spouse files a separate return for a taxable year which includes any part of such individual's taxable year, or if any other taxpayer is entitled to an exemption for the taxpayer or his spouse under section 151(e) for such other taxpayer's taxable year

beginning in the calendar year in which such individual's taxable year begins. For example, a married student more than half of whose support is furnished by his father must file an income tax return if he receives $750 or more of gross income during the taxable year.

(iv) For purposes of section 6012(a)(1)(A)(ii) and subdivisions (ii)(b) and (iii)(b) of this subparagraph, an individual and his spouse are considered to have the same household as their home at the close of a taxable year if the same household constituted the principal place of abode of both the individual and his spouse at the close of such taxable year (or on the date of death, if the individual or his spouse died within the taxable year). The individual and his spouse will be considered to have the same household as their home at the close of the taxable year notwithstanding a temporary absence from the household due to special circumstances, as, for example, in the case of a nonpermanent failure on the part of the individual and his spouse to have a common abode by reason of illness, education, business, vacation, or military service. For example, A, a calendar-year individual under 65 years of age, is married to B, also under 65 years of age, and is a member of the Armed Forces of the United States. During 1970 A is transferred to an overseas base. A and B give up their home, which they had jointly occupied until that time; B moves to the home of her parents for the duration of A's absence. They fully intend to set up a new joint household upon A's return. Neither A nor B must file a return for 1970 if their combined gross income for the year is less than $2,300 and if no other taxpayer is entitled to a dependency exemption for A or B under section 151(e).

(v) In the case of a short taxable year referred to in section 443(a)(1), an individual described in subparagraph (1) of this paragraph shall file an income tax return if his gross income received during such short taxable year equals or exceeds his own personal exemption allowed by section 151(b) (prorated as provided in section 443(c)) and, when applicable, his additional exemption for age 65 or more allowed by section 151(c)(1) (prorated as provided in section 443(c)).

* * * * *

(4) *Return of income of minor.* A minor is subject to the same requirements and elections for making returns of income as are other individuals. Thus, for example, for a taxable year beginning after December 31, 1972, a return must be made by or for a minor who has an aggregate of $1,750 of gross income from funds held in trust for him and from his personal services, regardless of the amount of his taxable income. The return of a minor must be made by the minor himself or must be made for him by his guardian or other person charged with the care of the minor's person or property. See paragraph (b)(3) of § 1.6012-3. See § 1.73-1 for inclusion in the minor's gross income of amounts received for his personal services. For the amount of tax which is considered to have been properly assessed against the parent, if not paid by the child, see section 6201(c) and paragraph (c) of § 301.6201-1 of this chapter (Regulations on Procedure and Administration).

* * * * *

PAR. 3. Section 301.6012 is amended by revising paragraph (1) of section 6012(a) and the historical note to read as follows:

**§ 301.6012 Statutory provisions; persons required to make returns of income.**

SEC. 6012. *Persons required to make returns of income*—(a) *General rule.* Returns with respect to income taxes under subtitle A shall be made by the following:

[Applicable to taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1973]

(1) (A) Every individual having for the taxable year a gross income of $600 or more, except that a return shall not be required of an individual (other than an individual referred to in section 142(b))—

(i) Who is not married (determined by applying section 143(a)) and for the taxable year has a gross income of less than $1,700, or

(ii) Who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than $2,300 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (ii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

(B) The $1,700 amount specified in subparagraph (A)(i) shall be increased to $2,300 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the $2,300 amount specified in subparagraph (A)(ii) shall be increased by $600 for each additional personal exemption to which the individual or his spouse is entitled under section 151(c);

[Applicable to taxable years beginning after Dec. 31, 1972]

(1) (A) Every individual having for the taxable year a gross income of $750 or more, except that a return shall not be required of an individual (other than an individual referred to in section 142(b))—

(i) Who is not married (determined by applying section 143(a)) and for the taxable year has a gross income of less than $1,750, or

(ii) Who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than $2,500 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (ii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

(B) The $1,750 amount specified in subparagraph (A)(i) shall be increased to $2,500 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the $2,500 amount specified in subparagraph (A)(ii) shall be increased by $750 for each additional personal exemption to which the individual or his spouse is entitled under section 151(c);

* * * * *

(Sec. 6012 as amended by sec. 72(a), Technical Amendments Act 1958 (72 Stat. 1660); sec. 206(b)(1), Rev. Act 1964 (78 Stat. 40); sec. 941, Tax Reform Act 1969 (83 Stat. 726))

[F.R. Doc. 70-15212; Filed, Nov. 10, 1970; 8:48 a.m.]

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[T.D. 7067]

## PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

### Special Rule for Withholding Agents of Foreign Tax-Exempt Organizations for Calendar Year 1970

The following regulations relate to the application for calendar year 1970 of section 1443(b) of the Internal Revenue Code of 1954, as added by section 101(j) of the Tax Reform Act of 1969 (83 Stat. 528) to any person required to deduct and withhold any tax imposed on a foreign private foundation by section 4948(a).

The regulations set forth herein are temporary and are designed to provide rules whereby any person within the United States who makes payment of any item of gross investment income, as defined in section 4940(c)(2), to any foreign organization may rely on the certified statement of such organization that it is not a private foundation and thereby be relieved of the liability for withholding any tax imposed under section 4948(a). The procedure for certification by the foreign organization is also set forth. The regulations are effective until the issuance of final regulations to be prescribed by the Commissioner and approved by the Secretary or his delegate.

In order to provide such temporary regulations under section 1443(b) of the Internal Revenue Code of 1954, the following regulations are adopted:

**§ 13.14 Special rule for withholding agents of foreign tax-exempt organizations for calendar year 1970.**

(a) Any person required under section 1443(b) to deduct and withhold any tax imposed by section 4948(a) on any foreign organization for any period after December 31, 1969, and before January 1, 1971, shall not be liable for such tax if such person receives a certified statement from the foreign organization prior to December 1, 1970, stating that either—

(1) Such foreign organization has properly filed the notice described in section 508(b) and the regulations thereunder and has not been notified by the Commissioner or his delegate by the 30th day after the day on which the notice is filed that such notice has failed to establish that such foreign organization is not a private foundation, or

(2) The presumption contained in section 508(b) does not apply to such foreign organization by reason of section 508(c) and the regulations thereunder.

If a certified statement is not received prior to December 1, 1970, by any person required to deduct and withhold any tax imposed by section 4948(a) with respect to any foreign organization, then such person shall be liable for all such

tax imposed for any period after December 31, 1969 (excluding interest and penalties on such tax), to the extent that such person incurs liability to the foreign organization after November 30, 1970, for gross investment income, as defined in section 4940(c)(2). Nothing in this paragraph, however, relieves any foreign private foundation of the liability for the tax (including interest and penalties) imposed by section 4948(a).

(b) Certain foreign organizations to which section 508 does not apply: Any foreign organization to which section 508 does not apply because such organization has received substantially all of its support (other than gross investment income, as defined in section 4940(c)(2)) from sources outside the United States may nevertheless receive the benefits of paragraph (a) of this section by following the procedure set forth in such paragraph. See section 4948(b).

(c) Effect of notice by Internal Revenue Service concerning organization's certified statement: Paragraph (a) of this section shall have no effect with respect to a withholding agent as to a particular foreign organization on or after the earlier of (1) the date on which such agent acquired knowledge that the Internal Revenue Service has given notice to such foreign organization that its notice or statement has failed to establish that it is not a private foundation, or (2) the date on which the Internal Revenue Service publishes notice that such foreign organization has failed to establish that it is not a private foundation.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] RANDOLPH W. THROWER,
*Commissioner of Internal Revenue.*

Approved: November 6, 1970.

EDWIN S. COHEN,
*Assistant Secretary of the Treasury.*

[F.R. Doc. 70-15197; Filed, Nov. 10, 1970; 8:47 a.m.]

# Title 28—JUDICIAL ADMINISTRATION

## Chapter I—Department of Justice

[Order 442-70]

## PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

### Subpart R—Bureau of Narcotics and Dangerous Drugs

DELEGATING FUNCTIONS UNDER COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

By virtue of the authority vested in me by section 501 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513) and 28 U.S.C. 509, 510, and 5 U.S.C. 301, Subpart R of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.100 is amended by deleting "sections 1 and 2 of Reorganization Plan No. 1 of 1968" and substituting "the Comprehensive Drug Abuse Prevention and Control Act of 1970."

2. Section 0.102 is deleted.

Dated: November 4, 1970.

JOHN N. MITCHELL,
*Attorney General.*

[F.R. Doc. 70-15198; Filed, Nov. 10, 1970; 8:47 a.m.]

# Title 47—TELECOMMUNICATION

## Chapter I—Federal Communications Commission

[FCC 70-1193]

## PART 0—COMMISSION ORGANIZATION

## PART 1—PRACTICE AND PROCEDURE

### Conduct of Hearing Proceedings

*Report and order.* 1. The Commission, through its Procedure Review Committee, has been inquiring into measures which can be taken to expedite the conduct of hearing proceedings, and has decided to adopt two specific measures which it believes will contribute to this purpose. First, the presiding officer in a hearing proceeding is being authorized to act on joint requests for approval of agreements between broadcast applicants to procure the removal of a conflict between their applications. Such requests have heretofore been acted on by the Review Board. Secondly, we are revising procedures governings appeals from rulings of the presiding officer. Under the new procedures, most interlocutory rulings may be appealed only with the consent of the presiding officer. Heretofore, all such rulings have been appealable as a matter of right. In addition, procedures are being adopted which deal specifically with rulings of the presiding officer which terminate a hearing proceeding. These measures are discussed in paragraphs 3-8 below; the changes in the rules required to effectuate them are set forth below.

2. Before submitting its recommendations to the Commission, the Procedure Review Committee prepared specific rule changes and sent copies for comment to those individuals and groups who have expressed interest in the work of the Committee. Comment on the proposal was received from Earle K. Moore, counsel for the Office of Communications of the United Church of Christ; from Michael H. Bader, Esq., on his own behalf; and from the Federal Communications Bar Association Committee designated to work on the review of procedures. The Church of Christ took no position on the proposals. Mr. Bader supported them and suggested that the presiding officer also be authorized to act on agreements for dismissal of applications in the Domestic Public Land Mobile Radio Services. Because work is proceeding separately on this proposal, outside of the Committee, the Committee has not considered its merits. The FCBA Committee generally approved the proposals but recommended modification of provisions (set out as § 1.301(b)) governing the appeal of most interlocutory rulings.[1] Its comments are discussed in paragraph 7 below with the general discussion of that provision.

3. *Requests for approval of agreements between applicants.* When agreements between broadcast applicants to procure the removal of a conflict between their applications are entered into, requests for approval are required by § 1.525 of the rules. Since the Commission first required the submission of such requests, they have been acted on by a single authority, to develop a body of consistent precedent, and since 1962, they have been acted on by the Review Board. Hearing proceedings can be expedited by authorizing the presiding officer to act on such requests, since he will begin their consideration with a knowledge of the case developed in the proceeding to that point; and the Board's rulings since 1962 should afford the guidance to the corps of examiners needed to provide for the continuing consistency of rulings in this area. This change involves the deletion of a delegation to the Review Board set out in § 0.365(b)(2) of the rules, and of § 1.605(b)(2), concerning the effective date and review of Review Board action on such requests, and the amendment of § 1.525(d)(2).

4. *Appeals.* The new procedures governing appeals from rulings of the presiding officer deal separately with appeals from interlocutory rulings and rulings which terminate a hearing proceeding (i.e., noninterlocutory rulings). The rules at present discourage appeals from interlocutory rulings; that is, they ask that parties defer objections to rulings made by the presiding officer during the hearing and raise them when (and if) they file exceptions to his initial decision. This voluntary approach has been only partially effective. The rules do not now deal specifically with rulings of the presiding officer which terminate a hearing proceeding.

5. Section 1.301 deals with interlocutory rulings made by the presiding officer in a hearing proceeding. Section 1.301(a) provides for appeal, as a matter of right, from a ruling which denies or terminates the right of any person to participate as a party to the proceeding (e.g., an order dismissing an application or denying a petition to intervene) or which grants a request for inspection of documents not routinely available for public inspection. In addition, if a ruling requires testimony or the production of documents, over objection based on a claim of privilege, the ruling on the claim of privilege is appealable as a matter of right. A ruling granting a joint request

[1] The views of the Bar Committee are its own and are not necessarily those of the Bar Association or of its Executive Committee.

(see paragraph 3, supra) without terminating the proceeding, finally, is appealable by any party as a matter of right. Section 1.301(a) also requires that objection to such rulings be raised as an appeal rather than later, on exception to the initial decision.

6. Section 1.301(b) provides principally that no other interlocutory ruling may be appealed without the consent of the presiding officer and that the appeal, if allowed, may be dismissed by the Review Board or the Commission. Under this provision, the presiding officer would allow an appeal if (and only if) "the appeal presents an important question of law or policy as to which there is substantial ground for difference of opinion and * * * the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception." Because provision is made for modification of the ruling, we are deleting § 1.303, which now provides for reconsideration of a ruling with the presiding officer's consent. We are amending § 1.246(d) by deleting a provision dealing with orders overruling written objections to a request for the admission of facts or the genuineness of documents. We are also amending § 1.323(e) by deleting a provision dealing with orders invoking adverse procedural consequences following a failure to answer interrogatories. Section 1.301 will govern the appeal of such orders. Section 1.301(c) details procedures relating to appeals from interlocutory rulings. The new procedures relating to interlocutory appeals are similar to those followed in the Federal district courts and in some other agencies. We believe that they will expedite the conduct of hearing proceedings, by strengthening the position of the presiding officer, by cutting down on hearing delays occasioned by consideration of appeals which should be deferred pending action on the merits, and by freeing the Review Board to spend its resources on the other matters coming before it.

7. The primary concern of the FCBA Committee was that the presiding officer, under § 1.301(b), would be authorized to disallow an appeal from his own ruling, that his order disallowing an appeal would be final, and that the consequences of an erroneous ruling could have serious adverse effect on the parties. It recommended that an appeal be allowed from the presiding officer's ruling disallowing an appeal. Upon further consideration, however, the FCBA Committee and the Procedure Review Committee were able to reach a consensus position (in which we concur): First, the benefits of the proposal would be lost by provision for appeal of a ruling disallowing an appeal. Secondly, the corps of examiners could be relied upon to allow appeals when the showing required by the rule was made. Third, the standard itself was acceptable if properly applied. Fourth, a provision allowing appeal from orders overruling an objection based on a claim of privilege (§ 1.301(a)(2)), not a part of the original proposal, should be added. And, finally, on this basis, the new procedures are worthy of trial.

8. Section 1.302 details new procedures to deal with rulings of the presiding officer which terminate a hearing proceeding. There are a number of circumstances in which the presiding officer's ruling on a motion will leave nothing further to decide. Examples include favorable action on a joint request to terminate the hearing proceeding (see paragraph 3, above) or an order dismissing one of two applications, assuming in both instances that no additional issues remain to be heard. Section 1.302 allows 30 days for an appeal from such a ruling, and 20 additional days for review by the Commission or the Review Board on its own motion if the ruling is not appealed. The provision for notice of appeal is for the purpose of avoiding unnecessary delay when no party wishes to appeal the ruling.

9. Authority for the amendments set forth below is contained in sections 4(i), 5(d), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(d), and 303(r). Because the amendments relate to internal organization and procedure, the procedural and effective date provisions of 5 U.S.C. 553 do not apply. The amendments shall apply to joint requests (see paragraph 3, supra) and appeals filed on or after November 13, 1970.

10. In view of the foregoing: *It is ordered*, Effective November 13, 1970, That Parts 0 and 1 of the rules and regulations are amended as set forth below.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

Adopted: November 4, 1970.

Released: November 6, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[2]

[SEAL] BEN F. WAPLE, *Secretary.*

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In paragraph (b) of § 0.365, subparagraph (2) is revoked, and the numerical designation is reserved, to read as follows:

**§ 0.365 Authority delegated to the Review Board on a regular basis.**

* * * * *

(b) *Original action on interlocutory matters.* * * *

(2) [Reserved]

* * * * *

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 1.246(d) is revised to read as follows:

**§ 1.246 Admission of facts and genuineness of documents.**

* * * * *

(d) Written objections to the requested admissions may be ruled upon by the presiding officer without additional pleadings.

[2] Commissioner Bartley absent; Commissioner Johnson concurring in the result.

2. Section 1.301, and the headnote thereto, are revised to read as follows:

**§ 1.301 Appeal from presiding officer's interlocutory ruling; effective date of ruling.**

(a) *Interlocutory rulings which are appealable as a matter of right.* Rulings listed in this paragraph are appealable as a matter of right. An appeal from such a ruling may not be deferred and raised as an exception to the initial decision.

(1) If the presiding officer's ruling denies or terminates the right of any person to participate as a party to a hearing proceeding, such person, as a matter of right, may file an appeal from that ruling.

(2) If the presiding officer's ruling requires testimony or the production of documents, over objection based on a claim of privilege, the ruling on the claim of privilege is appealable as a matter of right.

(3) Rulings granting a request for inspection of documents not routinely available for public inspection are appealable as a matter of right. See § 0.461 (e) of this chapter.

**(4)** Rulings granting a joint request filed under § 1.525 without terminating the proceeding are appealable by any party as a matter of right.

(b) *Other interlocutory rulings.* Except as provided in paragraph (a) of this section, appeals from interlocutory rulings of the presiding officer shall be filed only if allowed by the presiding officer. Any party desiring to file an appeal shall first file a request for permission to file appeal. The request shall be filed within 5 days after the order is released or (if no written order) after the ruling is made. Pleadings responsive to the request shall be filed only if they are requested by the presiding officer. The request shall contain a showing that the appeal presents an important question of law or policy as to which there is substantial ground for difference of opinion and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception. The presiding officer shall determine whether the showing is such as to justify an interlocutory appeal and, in accordance with his determination, will either allow or disallow the appeal or modify the ruling. If the presiding officer allows or disallows the appeal, his ruling is final: *Provided, however,* That the Review Board or the Commission may, on its own motion, dismiss an appeal allowed by the presiding officer on the ground that objection to the ruling should be deferred and raised as an exception. In the discretion of the presiding officer, the request for permission to file appeal may be made orally, on the record of the proceeding, and if made orally, may be disposed of orally.

(1) If an appeal is not allowed, or is dismissed by the Review Board or the Commission, or if permission to file appeal is not requested, objection to the ruling may be raised on review of the initial decision.

(2) If an appeal is allowed and is considered on its merits, the disposition on

appeal is final. Objection to the ruling or to the action on appeal may not be raised on review of the initial decision.

(3) If the presiding officer modifies the ruling, any party adversely affected by the modified ruling may file a request for permission to file appeal, pursuant to the provisions of this paragraph.

(c) *Procedures; effective date.* (1) Unless the presiding officer orders otherwise, rulings made by him shall be effective when the order is released or (if no written order) when the ruling is made. The Review Board or the Commission may stay the effect of any ruling which comes before it for consideration on appeal.

(2) Appeals filed under paragraph (a) of this section shall be filed within 5 days after the order is released or (if no written order) after the ruling is made. Appeals filed under paragraph (b) of this section shall be filed within 5 days after the appeal is allowed.

(3) The appeal shall conform with the specifications set out in § 1.49 and shall be subscribed and verified as provided in § 1.52.

(4) The appeal shall be served on parties to the proceeding (see §§ 1.47 and 1.211), and shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

(5) The appeal shall not exceed 15 double-spaced typewritten pages.

(6) If a commissioner or panel of commissioners is presiding at the hearing, the appeal will be acted on by the Commission. The Commission also acts on appeals from the rulings of a hearing examiner in proceedings which involve rule making matters exclusively. In all other proceedings in which a hearing examiner is presiding, appeals from his ruling will be acted on by the Review Board. The caption of the appeal shall specify whether the appeal is to be acted on by the Commission or the Review Board. If the appeal is to be acted on by the Commission, an original and 19 copies shall be filed. If the appeal is to be acted on by the Review Board, an original and 14 copies shall be filed.

(7) Oppositions and replies shall be served and filed in the same manner as appeals and shall be served on appellant if he is not a party to the proceeding. Oppositions shall be filed within 5 days after the appeal is filed. Replies to oppositions shall be filed within 5 days after the opposition is filed and shall be limited to matters raised in the opposition. Oppositions shall not exceed 15 double-spaced type-written pages. Replies shall not exceed 10 double-spaced type-written pages.

3. Section 1.302 is added, to read as follows:

**§ 1.302 Appeal from presiding officer's final ruling; effective date of ruling.**

(a) If the presiding officer's ruling terminates a hearing proceeding, any party to the proceeding, as a matter of right, may file an appeal from that ruling within 30 days after the ruling is released.

(b) Any party who desires to preserve the right to appeal shall file a notice of appeal within 10 days after the ruling is released. If a notice of appeal is not filed within 10 days, the ruling shall be effective 30 days after the ruling is released and within this period, may be reviewed by the Commission or the Review Board on its own motion. If an appeal is not filed following notice of appeal, the ruling shall be effective 50 days after the day of its release and, within this period, may be reviewed by the Commission or the Review Board on its own motion. If an appeal is filed, or if the Commission or the Review Board reviews the ruling on its own motion, the effect of the ruling is further stayed pending the completion of proceedings on appeal or review.

(c) The appeal shall conform with the specifications set out in § 1.49 and shall be subscribed and verified as provided in § 1.52.

(d) The appeal shall be served on parties to the proceeding (see §§ 1.47 and 1.211), and shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

(e) The appeal shall not exceed 25 double-spaced typewritten pages.

(f) If the Commission would have reviewed an initial decision in the proceeding (see § 0.365(a) of this chapter), the Commission will act on the appeal. In all other cases, the appeal will be acted on by the Review Board. The caption of the appeal shall specify whether the appeal is to be acted on by the Commission or the Review Board. If the appeal is to be acted on by the Commission, an original and 19 copies shall be filed. If the appeal is to be acted on by the Review Board, an original and 14 copies shall be filed.

(g) Oppositions and replies shall be filed and served in the same manner as the appeal. Oppositions to an appeal shall be filed within 15 days after the appeal is filed. Replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited to matters raised in the oppositions. Oppositions shall not exceed 25 double-spaced typewritten pages. Replies shall not exceed 10 double-spaced typewritten pages.

**§ 1.303 [Revoked]**

4. Section 1.303 is revoked.

5. Section 1.323(e) is revised to read as follows:

**§ 1.323 Interrogatories to parties.**

* * * * *

(e) *Appeal.* As order to compel an answer is not subject to appeal.

6. Section 1.525(d)(2) is revised to read as follows:

**§ 1.525 Agreements between parties for amendment or dismissal of, or failure to prosecute broadcast applications.**

* * * * *

(d) * * *

(2) Requests and affidavits which relate to an application which has not been designated for hearing shall bear the file number of such application. If the affiant is also an applicant, the affidavit shall also bear the file number of affiant's pending application(s). Requests and affidavits which relate to an application which is designated for hearing shall bear the file number of that application and the hearing docket number and will be acted on by the presiding officer.

* * * * *

7. Section 1.605(b)(2) is revoked, and the numerical designation is reserved, to read as follows:

**§ 1.605 Retention of applications in hearing status after designation for hearing.**

* * * * *

(b) * * *

(2) [Reserved]

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[F.R. Doc. 70-15202; Filed, Nov. 10, 1970; 8:47 a.m.]

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[Docket No. 18010; FCC 70-1181]

## PART 87—AVIATION SERVICES

### Use of Private Aircraft Frequencies

*Report and order.* In the matter of amendment of Part 87 of the rules to permit air carrier aircraft weighing 12,500 pounds or less to use private aircraft frequencies.

1. The Commission, on July 10, 1970, released a notice of proposed rule making in the above entitled matter (FCC 70-728) which made provision for filing comments. The notice was published in the FEDERAL REGISTER on July 16, 1970 (35 F.R. 11409). The time for filing comments and reply comments has passed and none were filed.

2. The notice proposed rule changes, requested by the Federal Aviation Administration, so that aircraft weighing up to 12,500 pounds, rather than 10,000 pounds, would be permitted to use the private aircraft frequencies. We believe, for reasons set forth in the notice, that the requested changes are reasonable and necessary.

3. Accordingly, in view of the foregoing, and the fact that no comments in opposition to this proposed change were filed, the Commission's rules, pursuant to section 4(i) and 303(r) of the Communications Act of 1934, as amended, are amended, effective December 16, 1970, as set forth below.

4. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Adopted: November 4, 1970.

Released: November 6, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

Part 87 of the rules is amended as shown below:

1. In § 87.5 the definitions of an "air carrier aircraft station" and a "private aircraft station" are amended to read as follows:

**§ 87.5 Definition of terms.**

* * * * *

[1] Commissioner Bartley absent.