Walter S. Luffsey, Associate Administrator for Aviation Standards
Homer C. McClure, Director, Western-Pacific Region
Clarence R. Melugin, Jr., Director, Southwest Region
John E. Murdock, III, Chief Counsel
Donald R. Segner, Associate Administrator for Policy and International Aviation
William F. Shea, Associate Administrator for Airports
Murray E. Smith, Director, Central Region
Leon C. Watkins, Director, Office of Civil Rights
Charles E. Weithoner, Associate Administrator for Administration
Robert E. Whittington, Director, New England Region
Raymond J. VanVuren, Director, Air Traffic Service
Franklin K. Willis, Deputy Assistant Secretary for Planning and Policy Analysis, Office of the Secretary
Linda J. Gosden, Director, Office of Public Affairs, Office of the Secretary

Federal Highway Administration

Daniel Markoff, Associate Administrator for Adminstration
Marshall Jacks, Jr., Associate Administrator for Safety
Edwin M. Wood, Associate Administrator for Research, Development and Technology
M. Eldon Green, Regional Federal Highway Administrator, Region 10
Richard B. Robertson, Associate Administrator for Planning and Policy Development
Donald L. Ivers, Chief Counsel
Wesley S. Mendenhall, Jr., Regional Federal Highway Administrator, Region 6
Katherine M. Anderson, Director, Executive Secretariat, Office of the Secretary

Federal Railroad Administration

Thomas A. Till, Deputy Administrator
Charles Swinburn, Deputy Assistant Secretary for Planning and Policy Development, Office of the Secretary
Gail T. Young, Director, Office of Financial Management, Office of the Secretary
Harold B. Williams, Deputy Associate Administrator for Management and Demonstrations, Urban Mass Transportation Administration
John H. Broadley, General Counsel, Interstate Commerce Commission

National Highway Traffic Safety Administration

Diane K. Steed, Deputy Administrator
Courtney M. Price, Associate Administrator for Rulemaking
Michael M. Finkelstein, Associate Administrator for Research and Development
Barry I. Felrice, Associate Administrator for Plans and Programs
J. Kenneth Klinge, Special Assistant to the Secretary, Office of the Secretary

Urban Mass Transportation Administration

Thomas R. Hunt, Associate Administrator for Administration
Robert H. McManus, Associate Administrator for Grants Management
Harold B. Williams, Deputy Associate Administrator for Management and Demonstrations
Raymond J. Sander, Executive Director
Lawrence L. Schulman, Deputy Associate Administrator for Budget and Policy
Richard E. Bowman, Chief, Transportation Operations Division, Office of the Secretary
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Katherine M. Anderson, Director, Executive Secretariat, Office of the Secretary
Charles F. Bingman, Special Assistant to the Deputy Secretary, Office of the Secretary
Kevin E. Heanue, Director, Office of Highway Planning, Federal Highway Administration

Research and Special Programs Administration

Leon D. Santman, Director, Materials Transportation Bureau
James Costantino, Director, Transportation Systems Center
William J. Driscoll, Chief Counsel
Lloyd J. Money, Director, Office of University Research
Charles F. Bingman, Special Assistant to the Deputy Secretary, Office of the Secretary
Carolina L. Mederos, Director, Office of Programs and Evaluation, Office of the Secretary

Maritime Administration

Howard A. Watters, Deputy Administrator (Inland Waterways and Great Lakes)
Stuart R. Breidbart, Chief Counsel
Russell F. Stryker, Jr., Associate Administrator for Policy and Administration
Gerard E. Neumann, Associate Administrator for Maritime Aids
Thomas W. Pross, Director, Office of Shipbuilding Costs
James G. Gross, Deputy Associate Administrator for Research and Development
Franklin K. Willis, Deputy Assistant Secretary for Planning and Policy analysis, Office of the Secretary
Charles Swinburn, Deputy Assistant Secretary for Policy and Program Development, Office of the Secretary
B. Kelley Andrews, Director, Office of Intergovernmental Affairs, Office of the Secretary
William T. Hudson, Director, Office of Civil Rights, United States Coast Guard

[FR Doc. 82-29845 Filed 10-29-82; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF TREASURY

Public Information Collection Requirements Submitted to OMB for Review

During the period October 15 through October 21, 1982 the Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. NW., Washington, D.C. 20220; *and* to the OMB reviewer listed at the end of entry.

Date Submitted: October 19, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0644.

Form Number: 6781.

Type of Submission: Revision.

Title: Gains and Losses from Commodity Futures Contracts and Straddle Positions.

Purpose: Form 6781 is used by taxpayers in computing their gains and losses from regulating futures contracts and straddle positions and its special tax treatment. The data is used to verify that the tax reported accurately reflects any such gains or losses.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 19, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: N/A (new submission).

Form Number: 8013.

Type of Submission: New.

Title: Radio Informercials Bounce Back Card.

Purpose: Informercials are public announcements of approximately 2-4 minutes in length, providing taxpayers with tax information and assistance. The bounce back card will provide feedback enabling us to target our future informercials to meet the needs of affected audiences.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 19, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: N/A (new submission).

Form Number: 8012.

Type of Submission: New.

Title: Television Informercials Bounce Back Card.

Purpose: Informercials are public announcements of approximately 2-4 minutes in length, providing taxpayers with tax information and assistance. The bounce back card will provide feedback enabling us to target our future informercials to meet the needs of affected audiences.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: October 19, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0086.

Form Number: 1040C.

Type of Submission: Revision.

Title: U.S. Departing Alien Income Tax Return.

Purpose: Form 1040C is used by aliens departing the U.S. to report income received or expected to be received for the entire taxable year determined as nearly as possible the date of intended departure. The data collected is used to insure that the departing alien has no outstanding U.S. tax liability.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 15, 1982.

Submitting Bureau: Alcohol, Tobacco and Firearms.

OMB Number: 1545-0160.

Form Number: ATF F 3020(5130.20).

Type of Submission: Extension.

Title: Transfer of Concentrate Produced from Beer.

Purpose: Form is necessary to document a shipment on beer concentrate in bond between brewers. Describes the shipping and receiving brewers, amount of beer concentrate involved and shipping containers sent and received and certification by the brewers of the shipment. Form is used to account for beer concentrate in bond by both the brewers and ATF.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 18, 1982.

Submitting Bureau: Alcohol, Tobacco and Firearms.

OMB Number: 1512-0135.

Form Number: ATF F 5110.37.

Type of Submission: Extension.

Title: Storages Summary Account.

Purpose: Form is necessary to determine the movement of spirits into and out of storage account of a distilled spirits plant. Describes by class and type of spirits in the container sizes, the amount of proof gallons, the related transaction forms showing entry and removals and at certain times a balancing for the on-hand amount of the spirit.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 19, 1982.

Submitting Bureau: U.S. Customs Service.

OMB Number: 1515-0065.

Form Number: CF 7501, 7501-A, 7501-B and 7501-C.

Type of Submission: Revision.

Title: Entry Summary; Entry Summary-Permit; Entry Summary Continuation Sheet; Entry Summary Permit Continuation Sheet.

Purpose: A document which specifically describes and identifies imported merchandise entered into the commerce of the U.S. shows the amount of duties/taxes paid, provides statistical data for Census, and becomes a permanent record to which other pertinent documents may be attached for Customs/broker/importer/other agency use. It is a recordkeeping requirement pursuant to 19 CFR 162.1c with a retention period of 8 years from date of entry of merchandise.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 19, 1982.

Submitting Bureau: Comptroller of the Currency.

OMB Number: 1557-0081.

Form Number: FFIEC 010, 011, 011J, 012, 013, 014, 015, 0135; FDIC 8040/52, 8040/58.

Type of Submission: Revision.

Title: Interagency Call Report.

Purpose: To collect additional data from all national banks bearing directly on assessing their safety and soundness.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 20, 1982.

Submitting Bureau: Alcohol, Tobacco and Firearms.

OMB Number: 1512-0390.

Form Number: ATF F 5020.29.

Type of Submission: Extension.

Title: Request for Disposition of Offense.

Purpose: When an applicant applies for a license or permit and the applicant has an arrest record (charged with a violation of Federal or State law) there is no record present of the disposition indicating the arrest record. This form is sent to the custodian of records to ascertain the disposition of the case records. The information is needed to determine if the applicant is eligible to receive the license or permit.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 20, 1982.

Submitting Bureau: Alcohol, Tobacco and Firearms.

OMB Number: 1512-0128.

Form Number: ATF F 3066 (5210.10).

Type of Submission: Extension.

Title: Record of Small and Large Cigars and Cigarettes.

Purpose: Form is necessary for tobacco products manufacturers whose commercial records are inadequate to protect the revenue on taxable products. On a daily basis this form describes the receipt, manufacture, and disposition of cigarettes and small and large cigars by a tobacco products manufacturer. Serves as a basis for accounting by ATF and manufacturer.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 20, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: N/A (New submission).

Form Number: None.

Type of Submission: New.

Title: Questionnaire for Computer Prepares.

Purpose: The Service is currently studying the use of optical character recognition and magnetic tape as substitute methods for entering tax return data into IRS computers. The Government could save significant resources if our present data entry operation could be enhanced by more direct entry. The results of the questionnaire will help IRS better understand the technology used by return preparers and its application to IRS processing.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 20, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0047.

Form Number: 990 and Schedule A.

Type of Submission: Revision.

Title: (1) Return of Organization Exempt from Income Tax; (2) Organization Exempt Under 501(c)(3).

Purpose: Form 990 is needed to determine that IRC section 501(a) exempt organizations fulfill the operating conditions of their tax exemption. Sch. A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 20, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0130.

Form Number: 1120S, Schedules D and K-1.

Type of Submission: Revision.

Title: U.S. Small Business Corporation Income Tax Return, Capital Gains and Losses.

Purpose: Form 1120S, Schedule D (Form 1120S), and Schedule K-1 (Form 1120S) are used by a Subchapter S corporation to figure its taxable income, undistributed taxable income, and other tax-related information. Copy B of Schedule K-1 (Form 1120S) is given to shareholders of the corporation to assist them in preparing their separate income tax returns. IRS uses the information to determine the correct tax.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

* * * * *

Date Submitted: October 21, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1510-0187.

Form Number: 4835.

Type of Submission: Revision.

Title: Farm Rental Income and Expenses and Summary of Gross Income from Farming and Fishing.

Purpose: Form 4835 is attached to Form, 1040 for use by landowners (or sub-lessors) to report farm, rental income based on crops or livestock produced by the tenant where the landowners (or sub-lessors) do not materially participate in the operation or management of the farm. The data is used to determine whether the proper amount of rental income has been reported.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joy Tucker,

Departmental Reports Management Officer.

October 26, 1982.

[FR Doc. 82-30004 Filed 10-27-82; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF THE TREASURY

National Productivity Advisory Committee; Meeting

October 19, 1982.

The Subcommittee on the Role of Government in the Economy of the National Productivity Advisory Committee will hold a meeting on November 3, 1982 from 2:00 p.m. until 4:00 p.m. at the Continental Illinois Center (Third Floor), 520 Madison Avenue, New York, New York.

The purpose of the meeting will be to discuss ways in which changes in government policy can improve national productivity.

Roger B. Porter,

Executive Secretary, National Productivity Advisory Committee.

[FR Doc. 82-30000 Filed 10-29-82; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 211
Monday, November 1, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Federal Communications Commission	2
Federal Election Commission	3
Federal Home Loan Bank Board	4
Federal Mine Safety and Health Review Commission	5, 6
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Nuclear Regulatory Commission	8
Securities and Exchange Commission	9

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., November 9, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Final rules on options on physicals.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1571-82 Filed 10-28-82; 11:35 am]

BILLING CODE 6351-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From October 28th Open Meeting

The following item has been deleted at the request of the Office of Commissioner Rivera from the list of agenda items scheduled for consideration at the October 28, 1982 Open Meeting and previously listed in the Commission's Notice of October 21, 1982.

Agenda, Item Number, and Subject

General—1—Title: Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979. Summary: The FCC will consider amendment of Part 2 of its Rules to implement domestically the radio frequency spectrum allocations adopted by the 1979 World Administrative Radio Conference.

Issued: October 27, 1982.

William K. Tricarico,
Secretary, Federal Communications Commission.

[S-1569-82 Filed 10-28-82; 10:02 am]

BILLING CODE 6712-01-M

3

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO. 1554.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 4, 1982, at 10:00 a.m.

CHANGE IN MEETING: The following matter has been deleted for the meeting of this date:

Draft advance notice of proposed rulemaking—Party Committee expenditure limitations (11 C.F.R. 110.7).

The following matter has been added for the meeting of this date:

Proposed revisions to the Presidential Primary Matching Fund Regulations and related sections.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer, Telephone: 202-523-4065.

[S-1576-82 Filed 10-28-82; 3:45 pm]

BILLING CODE 6715-01-M

4

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Thursday, November 4, 1982.

PLACE: Board Room, 6th Floor, 1700 G St, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

MATTERS TO BE CONSIDERED:

Request for Approval of Additional Suretyship Authority—First Federal Savings and Loan Association, Warner Robins, Georgia.

Request for Extension of Time To Open a Branch Office—Fulton Federal Savings and Loan Association, Atlanta, Georgia.

Request for Modification of Insurance Condition—Sentry Savings and Loan Association, Stamford, Connecticut.

Application for Bank Membership—Dollar Savings and Loan Association of New York, Bronx, New York.

No. 74, October 28, 1982.

[S-1570-82 Filed 10-28-82; 11:35 am]

BILLING CODE 6720-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 28, 1982.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Florence Mining Company, Docket No. PITT 75-15, etc., (IBMA 77-32); Motion for reconsideration. (Issues include whether the Commission should reconsider its decision in this case issued August 31, 1982).

It was determined by a unanimous vote of Commissioners that Commission business required that a meeting be held on this item and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

[S-1574-82 Filed 10-28-82; 3:45 pm]

BILLING CODE 6735-01-M

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, November 3, 1982.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Joseph W. Herman v. Imco Services, Docket No. WEST 81-109-DM. (Issues include whether judge properly dismissed the discrimination complaint.)

2. Thompson Brothers Coal Company, Docket No. PENN 81-171; Petition for Discretionary Review. (Issues include whether the judge properly found a violation of 30 CFR 77.400(a).)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

[S-1575-82 Filed 10-28-82; 3:45 pm]

BILLING CODE 6735-01-M

7

[USITC SE-82-47]

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, November 10, 1982.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary: a. Certain vertical milling machines (Docket No. 885).
5. Investigations 731–TA–113/114 [Preliminary] (Carbon Steel Wire Rod from Brazil and Trinidad and Tobago)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S-1573-82 Filed 10-28-82; 3:26 pm]

BILLING CODE 7020-02-M

8

NUCLEAR REGULATORY COMMISSION.

DATE: Week of November 1, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Tuesday, November 2

2:00 p.m.—Options Regarding High Level Waste Rule—Technical Criteria (Part 60) (Public Meeting).

Wednesday, November 3

10:00 a.m.—Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 and 6).

2:00 p.m.—Discussion of Order in Waste Confidence Proceeding (Closed—Exemption 10).

Thursday, November 4

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting): a. NRDC and Sierra Club "Petition to the Commissioners to Exercise Their Inherent Supervisory Authority to Delineate the Scope of the LWA Proceeding for the Clinch River Breeder Reactor."

ADDITIONAL INFORMATION: On October 21 the Commission voted 5–0 to hold Discussion of Management-Organization and Internal Personnel Matters, held that day.

On October 21 the Commission voted 5–0 to hold Discussion of Pending Adjudicatory Matters in Diablo Canyon Proceeding (Closed—Exemption 10), scheduled to be held on October 29.

On September 23 the Commission voted 4–0 (Commissioner Roberts not present) to hold Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 & 6), scheduled to be held on October 29.

Automatic telephone answering service for schedule update: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,
Office of the Secretary.
October 26, 1982.

[S-1577-82 Filed 10-28-82; 3:47 pm]

BILLING CODE 7590-01-M

9

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).

STATUS: Closed meeting.

PLACE: Room 6059, 450 5th Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, October 19, 1982.

CHANGES IN THE MEETING: Additional item.

The following additional item will be considered at a closed meeting scheduled for Wednesday, October 27, 1982, at 10:00 a.m.

Freedom of Information Act appeal.

Chairman Shad and Commissioners Evans, Longstreth and Treadway determined by vote that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Catherine McGuire at (202) 272–3085.

October 27, 1982.

[S-1572-82 Filed 10-28-82; 11:35 am]

BILLING CODE 8010-0-M

federal register

Monday
November 1, 1982

Part II

Interstate Commerce Commission

Revision and Redesignation of the Rules of Practice

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 55 (Sub-55)]

Revision and Redesignation of the Rules of Practice

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Interstate Commerce Commission adopts its proposed revision and redesignation of all its procedural regulations governing the conduct of formal and informal cases which come before it for decision. (The prior notice of proposed rulemaking appeared at 47 FR 28115, June 29, 1982.) The purpose of this revision and redesignation is to bring the arrangement of the procedural regulations into conformity with the recodified Interstate Commerce Act (49 U.S.C. 10101 et seq.); to simplify our regulations, and to make the regulations easier to locate and to be used by persons practicing before the Commission.

EFFECTIVE DATE: November 1, 1982.

ADDRESSES: To purchase a copy of this decision contact: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT:

James H. Bayne, 202-275-7429
or
Kathleen M. King, 202-275-0956

SUPPLEMENTARY INFORMATION: On June 29, 1982, the Commission instituted this proceeding by issuing a notice of proposed rulemaking [47 FR 28115] to revise and redesignate the Commission's Rules of Practice.

Comments on our proposal were submitted by American Trucking Associations, Inc., (ATA); Arsham & Keenan (Arsham); Association of American Railroads (AAR); Association of Interstate Commerce Practitioners (Practitioners); Consolidated Rail Corporation (Conrail); Department of the Army; Grain Processing Corporation; Greyhound Lines, Inc.; McCarthy, Sweeney & Harkaway, PC (McCarthy); Slover and Loftus (Slover); Motor Carrier Lawyers Association (MCLA); Regular Common Carrier Conference of the American Trucking Associations, Inc. (RCCC); jointly South Carolina Public Service Authority, Systems Fuels, Inc., Arkansas Power & Light Company and Public Service Company of Indiana, Inc. (South Carolina); Verner, Liipfert, Bernhard and McPherson, Chartered (Verner); Joseloff, Joseloff & Cramer (Joseloff). Three individuals, Herbert Dubin, Esquire, Arthur L. Moon; and George H. Morin, Registered Practitioner, separately submitted comments on their own behalf.

All the commentors generally approve of our proposed revisions and redesignation of the Rules of Practice. The AAR stated that "[our proposal] * * * represents a significant effort by the Commission to facilitate the use of the rules." One individual, Arthur L. Moon, commented that "Revision and redesignation of the rules of practice is particularly appropriate at this time." The commentors offered may suggestions and recommendations which will improve our Rules of Practice. We are adopting many of those suggestions. However, several issues which were raised by commentors go beyond the scope of this rulemaking. For example, the MCLA has requested that the Commission modify its rules in present 49 CFR 1100.11 relating to disciplinary proceedings. We believe that such a proposal is beyond the scope of this proceeding. That recommendation, along with several other matters outside the present scope will shortly be considered for future action.

Finally, we recognize that the new numbering system, as well as the content of many rules, do not integrate a number of pending matters. We will make all necessary adjustments in the individual cases. Postponement here, pending those final actions, is not warranted. To do so would prevent this overall reorganization from being codified this year.

Proposed Redesignation

All commentors approve of our general plan to redesignate Chapter X of Title 49 of the Code of Federal Regulations. Some commentors suggested moving various parts of Subchapter A, to Subchapter B, such as Part 1002 *Fees*, and Part 1003 *List of Forms*. However, others thought that there was no need to move those parts. We believe that Parts 1002 and 1003 should remain in Subchapter A because they are general provisions. At this time the only part we will move to Subchapter B is Part 1031A.

Part 1106 *Implementation of Energy Policy and Conservation Act of 1975* and Part 1108 *Guidelines for Implementation of the National Environmental Policy Act of 1969* will remain in Subchapter B, rather than moving to Subchapter A as we initially proposed. Those two parts will be assigned appropriate part numbers in Subchapter B.

We have made a few adjustments in the numbering plan originally proposed in order to provide more reserved parts in the Licensing Procedure categories. Accordingly, we will adopt the redesignation of Subchapter B of Title 49 of the Code of Federal Regulations as set forth in this document.

Revisions to the Rules of Practice

This document contains the text of those revisions that we will be adopting. It should be noted that in those instances in which we are updating statutory references or making editorial changes, we will be using only piecemeal amendments. However, when a substantial number of revisions have been made the full text will appear.

To aid the user we have included Redesignation, Derivation, and Removal Tables in this notice. We also are including a table of contents which lists all part and section titles in redesignated Subchapter B. This should aid users during the period of time before the 1982 volume of Title 49 CFR Part 1000–1199 is available to the public through the Superintendent of Documents.

All comments have been thoroughly considered. In the following sections, we will review the comments which warrant specific discussion and explain all changes that we will make in our original proposed text.

We will refer to our proposed rules by the newly redesignated section. If reference is made to existing rules, the prior section number will be used.

Part 1101.—Definitions and Construction

The AAR suggests that we amend § 1101.2(b) by adding a cross reference to 49 CFR Part 1011 *Commission Organization; Delegations of Authority*, because such an addition would refer the reader to provisions explaining the assignments of jurisdiction and responsibility within the Commission. We agree and we will make that addition.

Another of AAR's suggestions is that we add an additional category, petition for exemption, to the definition of proceeding in § 1101.2(e). Such an addition would be helpful and it will be included in our final rules as follows:

(5) A petition for exemption filed under 49 U.S.C. § 10505 or requesting the Commission to exempt from all or part of the application of Subtitle IV of Title 49 of the United States Code any person, class of persons, transaction or service related to a rail carrier.

Part 1102.—Communications

One commentor suggests that in § 1102.2 *Ex Parte Communications prohibited; penalties provided* paragraphs (a) and (b) could be read as prohibiting any communications whether or not addressed to the merits of a proceeding. They suggest that a specific provision authorizing the making of communications not related to the merits be added. Rather than add an additional provision we believe it is more appropriate to revise § 1102.2 so that the words defined in § 1102.2(a), "*ex parte* communications concerning the merits", are used instead of "*ex parte* communication".

The AAR would assign to the Commission, instead of the Chairman, the authority to deal with *ex parte* communications. This would be a substantive change from the present rule (49 CFR 1100, App. C, Par. 4). No change is warranted since this falls logically under the Chairman's executive and administrative duties as described in 49 U.S.C. 10301(f).

Part 1103.—Practitioners

We received many comments on our proposed revisions of the Canons of Ethics. The ATA and the RCCC are concerned about § 1103.13 *Attempts to exert political or personal influence on the Commission are prohibited.* Both commentors are concerned about the proscription against "enlisting the influence or intercession of members of the Congress or other public officers." While we note that such language is taken from Old Canon 4, we will delete that phrase so there is no conflict between our canons, on the one hand, and, on the other, the right of individuals to petition their government and the right of free speech. The RCCC is also concerned about the use of the term propaganda. We recognize its concerns and will delete that term also. The revised § 1103.13(a) will read:

It is unethical for a practitioner to attempt to influence the judgment of the Commission by threats of political or personal reprisal.

Commentors McCarthy and Verner point out that our proposed revision of § 1103.16(c) would unreasonably limit the ability of practitioners to practice before the Commission. This problem will be resolved by adding the phrase "with respect to which confidence has been reposed" which appears in original Canon 9.

Section 1103.17 deals with joint association of practitioners and conflicts of opinions. The AAR questions our proposed revision in § 1103.17(c) because it does not believe that a practitioner should be required to notify another practitioner when the first practitioner has been retained or consulted regarding a complaint against the other practitioner. The prior Canon 10 contained the same requirement. We believe that our proposed revision should be adopted because it provides an avenue for informal resolution of problems before the Commission gets involved in the dispute. Accordingly we will not revise § 1103.17(c) any further.

Our proposed addition to § 1103.21 of the sentence "Most particularly, a practitioner shall refrain from filing documents in cases before the Commission containing material misstatements, false representation of fact and unauthorized affidavit of support.", generated significant comment. It was not our intention to impose any liability on a practitioner who unknowingly submits false or unauthorized statements or other evidence. The purpose of the addition was to make it clear that a practitioner cannot be forced by a client to submit false or unauthorized statements or other evidence. However, we will delete that additional language to avoid any problems of interpretation.

In their comments the Practitioners have requested that we include the phrase "professional corporation" in § 1103.35. We have adopted this proposal since it reflects the fact that law firms as well as other associations of practitioners are now choosing the corporate organizational form, so that the term "partnership" alone is no longer sufficient.

The MCLA has requested that we reinstate old Canon 40 *Prior Government Service.* However, we hold to the view that this matter is covered by Federal law, 18 U.S.C. § 207 and by other Commission regulation. Therefore, old Canon 40 will be deleted.

Part 1104.—Pleadings; Generally

The AAR requests that § 1104.2 *Typographical specifications generally* be amended to permit pleadings with text on both sides of the paper because such a provision will allow savings on postage and duplication costs. We will adopt that suggestion and add the following sentence to § 1104.2(a): "Printing may appear on both sides of a page."

Another of AAR's suggestions is to clarify § 1104.4 *Attestation and verification* by specifying that a person not an attorney or practitioner is required to sign only the original document. We will make that change by revising § 1104.4(b) to read in part: "The original of each document not signed by a practitioner or attorney must be . . . .".

The Practitioners suggest that proposed § 1104.5, *Affirmation in lieu of oath,* be revised to permit declaration under penalty of perjury in accordance with 28 U.S.C. § 1746 in lieu of an oath wherever an oath is required by the provisions of the Rules of Practice. Declarations under penalty of perjury are already accepted in motor carrier operating rights applications as the Commission stated in Ex Parte No. 55 (Sub-No. 43) *Rules Governing Applications for Operating Authority,* [45 FR 86771, 86782, (December 31, 1980)]:

Use of declarations in lieu of formal oaths will not diminish the legal sanctions available to the Commission. Sanctions are found in two types of statutes in the United States Code, involving prosecution for fraud and perjury. See 18 U.S.C. 1001 and 18 U.S.C. 1621.

Accordingly, there appear to be valid reasons to permit the use of such declarations under other circumstances where oaths or verifications are normally required. Such revision will also relieve small businesses that do not otherwise have direct or immediate access to a notary public from notarization requirements.

We will include additional language which will advise those who practice before the Commission of the penalties that can be imposed for knowing and willful misstatements or omission of material facts. It should be noted that the form of the declaration must follow the form set forth in our regulations. The following language will be adopted in § 1104.5 (b) and (c).

(b) Whenever any rule of this Commission requires or permits matter to be supported, evidenced, established, or proved by sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, oath of office, or an oath required to be taken before a special official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proven by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury and dated, in the following form:

I declare (certify, verify, or state) under penalty of perjury (under the laws of the United States, if executed outside of the United States) that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this (specify type of document). Executed on (date).

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signature

(c) Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621 which provides for fines up to $3,000 or imprisonment up to 5 years for each offense.

Our revision of § 1104.6—*Timely filing required* generated significant comments from the AAR, the Practitioners and Greyhound. These three commentors have requested that we modify the rule further so that documents sent by United States express mail postmarked one day prior to the due date and documents received by private express mail carriers one day prior to the due date, will be accepted as timely filed. They argue that U.S. express mail or private express mail service has improved significantly since 1977, when the Commission considered a similar suggestion and that today it is extremely rare for such services not to satisfy the next-day delivery standard. The Practitioners state that such ". . . revisions would accomplish the Commission's major goal of receiving pleadings on their due date at the same time provide more equitable treatment for non-Washington DC practitioners". We believe that this modification should be adopted at this time because U.S. express mail and private express mail are reliable. This revision will be adopted. However, we reserve the right to modify this rule, if we find that this modification causes time delays and interferes with statutory deadlines. A new sentence will be added to § 1104.6 and the last two sentences of that section will be modified as follows:

However, if a document is mailed by United States express mail, postmarked at least one day prior to the due date, it will be accepted as timely. Other express mail, received by the express carrier at least one day prior to the due date, also will be accepted as timely filed. The term express mail means that the carrier or delivery service guarantees next day delivery to Washington, DC.

The AAR has requested that we modify § 1104.7 *Computation and extension of time* so that if requests for extension are served personally on the Commission, service on the parties by first class or express mail is permissible. We will make that modification since the same exception applies to service of all other pleadings in § 1104.12.

It also asks that "must" be changed to "should," with regard to meeting the 10-day rule for seeking extensions. Section 1101.3 provides adequate leeway to accommodate unusual situations. We do not believe the 10-day rule has posed a problem in the past. As appropriate, exceptions are allowed.

The Practitioners also recommend that proposed § 1104.7 *Computation and extension of time*, be revised to permit the parties to a proceeding to stipulate to a one-time only 3-day extension of a due date for any pleading to be filed with the Commission, without a need for formal Commission approval, provided such extension does not interfere with a statutorily imposed evidentiary deadline.

At the present time, requests for a short time extension to which all parties consent are routinely granted by the Commission, as long as the extension would not otherwise affect the procedural posture of the case. The benefit to the public, Congress and the Commission of having the Commission control the timing of all proceedings far outweighs the cost of administering requests for extensions. Accuracy and certainty about deadlines are crucial to smooth administration of the Commission. We may not delegate responsibility for meeting them to others. We will not adopt the suggestion.

One commentor, Joseloff, has requested that we modify § 1104.12 *Service of pleading and papers*. He is concerned that practitioners should not have to use air express to serve parties, when service is made to the Commission by that method because of the cost of air express. In view of short response time, it is often necessary for opposing parties to review pleadings and other documents as quickly as possible. However, in cases in which there are numerous parties, it may be a heavy burden on a party to bear the cost of air express service to all parties. Accordingly, we will provide the following exception to § 1104.12. "If service is made to the Commission by air express and air express service on the other parties is not feasible, service should be made by first-class or express mail."

Part 1110.—Procedures Governing Informal Rulemaking Proceedings

One commentor questions our use of the term "informal" in the title of this section because there are no rules governing "formal" rulemaking proceedings. It suggests that the word informal should be stricken from the title of this part. The proposed rules, which follow the present ones, use the generally accepted terminology. See, *Attorney General's Manual on the Administrative Procedure Act*, Department of Justice, 1947, pages 31–33. "Informal rulemaking" must follow procedures established by section 553 of the Administrative Procedure Act, but it does not involve an "on the record" proceeding. "Formal rulemaking" is a different procedure used when there is a statutory requirement that rules be made on the record only after the opportunity for an agency hearing. See 5 U.S.C. 553(c). For the most part, our rulemakings are of the informal type. Accordingly, we will make no change in the title.

Part 1111.—Complaint and Investigation Procedures

The AAR suggests that the full text of old § 1100.31 be retained and that filing dates be stated for amended and supplemental complaints. We accept this proposal, and will replace § 1111.2 *Amended and supplemental complaints* with the text proposed by the AAR, as follows:

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have occurred within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to sections 1111.4 and 1111.5 as if the amended or supplemental complaint was an original complaint.

Slover contends that the proposed § 1111.4 *Answers and cross complaints* is confusing and that answers should be required to every complaint. The AAR suggests that the language of old § 1100.33(d) which provides that the "issues are joined" if no answer is filed, be retained. It further argues that the proposed rule would have the effect of instituting a default procedure, which, it maintains, would be inappropriate for an administrative agency which is required by law to determine the pertinent facts and to make specific factual findings. The proposed rule was an attempt to resolve what appears to be an ambiguity rising when § 1100.33(a) is read in conjunction with old § 1100.44(a). Section 1100.33(a) states that an answer *may* be filed; rule § 1100.44(a) states that if a complaint is set for modified procedure, the defendant is relieved of the *obligation* to answer. Any rule which we would adopt must define the nature of the "obligation" to answer and, since the actual filing of an answer cannot be compelled, must state the consequences of not answering. Under present § 1100.33(d), if no answer is filed, the "issues are joined" as to the defendant failing to answer. This means that the Commission may proceed to a decision based on the material contained in the complaint. This may seem like a default procedure, but it has the obvious advantage of prompt resolution of a controversy when further evidence is not required at the lowest possible cost to the Commission and the parties.

We agree that the language of the proposed rule is still not sufficiently clear, and we are inclined to agree with AAR that familiar terminology should be retained. Proposed § 1111.4 will be revised as follows:

§ 1111.4 Answers and cross complaints

(a) *Generally*. An answer may be filed within the time provided in paragraph (b) of this section. Whether or not an answer is filed and served, issue is joined at the conclusion of the time for filing answers, and the Commission may then proceed to a decision. In the alternative, the Commission may provide for the taking of evidence under the modified or oral hearing procedures, and in such a case the failure to answer a complaint will not bar a party from further participating in a proceeding or from the presentation of its evidence. An answer should be responsive to the complaint and should fully advise the Commission and the parties of the nature of the defense.

(b) *Time for filing; copies; service*. An answer must be filed within 20 days after the service of the complaint or within such additional time as the Commission may provide. The original and six copies of an answer must be filed with the Commission. The defendant must serve copies of the answer upon the complainant and any other defendants.

(c) *Cross complaints*. A cross complaint alleging violations by other parties to the proceeding or seeking relief against them may be filed with the answer. An answer to a cross complaint may be filed within 20 days after the service date of the cross complaint. The party shall serve copies of an answer to a cross complaint upon the other parties.

The AAR proposes a revision of the first sentence of § 1111.5 *Motions to dismiss or to make more definite* to make it clear that motions to dismiss may be filed at any time during the pendency of a complaint proceeding. We will adopt this suggestion and substitute the following for the first sentence of proposed § 1111.5:

An answer to a complaint or cross-complaint may be accompanied by a motion to dismiss the complaint or cross-complaint or a motion to make the complaint or cross-complaint more definite. A motion to dismiss can be filed at any time during a proceeding.

The AAR suggests that, if a complaint is satisfied, it is necessary to obtain a statement to that effect from the complainant only, and not from all the parties. We agree, and we will amend proposed § 1111.6 *Satisfaction of complaint* to read as follows:

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant must be filed (original only need be filed), setting forth when and how the complaint has been satisfied.

Part 1112.—Modified Procedure

The AAR points out that old § 1100.43 provides for the use of modified procedure when all "material" issues of fact can be resolved on the written record. The proposed rule in § 1112.1 *When modified procedure is used* changes "material" to "relevant". We agree with the AAR that the present terminology is preferable, and the change which it suggests will be made.

The AAR would have us add to § 1112.1 and numerous other sections a reference to the procedures for handling appeals from individual employee decisions in procedural matters. These procedures are now found in § 1011.7. We will not incorporate that reference, but we will include in part 1115 governing appelate procedures a new paragraph restating the procedures governing appeals from individual employee decisions.

The AAR objects to the use of the terms "reply" and "rebuttal" to describe, respectively, the opponent's initial pleading and the proponent's response in the normal modified procedure case in § 1112.2 *Decisions directing modified procedure*. Technically, the AAR is correct since the opponent's initial submission includes its case in chief and is not limited to material responsive to the proponent's presentation, whereas a "reply is normally thought of as a purely responsive pleading. Nevertheless, these terms are in common use, and they provide the most convenient means of designating these several submissions. No other party has suggested that their use is likely to cause confusion, and no change in the proposed rule is warranted.

In its comments on § 1112.4 *Petitions to intervene* the ATA seeks reassurance that a trade association such as itself may request leave to intervene at any stage of a proceeding. Neither the present nor the proposed rule set any limit as to the point in a proceeding under modified procedure at which any party may seek leave to intervene. There seems to be no reason for changing the proposed rule.

The AAR believes paragraph (c) of this rule is contradictory. We have revised the language to make clear that, in those limited cases where petitions are not required, intervenors must still comply with certain substantive (as opposed to procedural) requirements. This follows old § 1100.71.

In their comments on proposed § 1112.4, the Practitioners ask us to retain the present provisions under which intervention is permitted without petition in investigation and rate cases under both the modified and oral hearing procedures. We do not believe that it is an undue burden to require a party to submit a brief petition explaining its reasons for wanting to intervene in a proceeding. It provides the Commission with greater control over the proceeding, and enables it to screen out potential parties that have no real interest. Where time is really of the essence, in investigation proceedings involving rate-related matters handled under the modified procedure, the proposed rule allows intervention without petition. Given the extreme rarity of orally-heard rate investigations, and the benefits gained in control by the presiding judge, no further exceptions to the rule appear necessary. We have, however, modified the language to reflect the old rule by referring to rate-related rather than only reasonableness cases.

The Practitioners also ask that in those cases involving the reasonableness of rates, persons intending to intervene be required to give 15 days' notice of that intention. The Practitioners seem to think that this additional time is necessary to permit the other parties to prepare their respective cases, but they offer no convincing arguments as to why this should be the case. Accordingly we will not adopt that suggestion.

In § 1112.6 *Verified statements; contents*, we will accept the essence of the AAR's suggested editorial revisions. However, we will not use the exact wording of the proposal.

The AAR suggests that the provisions dealing with authority of officers found in § 1113.3 of the oral hearing rules be included also in the modified procedure rules. This appears to be a valid suggestion, and the following new section will be added at the end of this part:

§ 1112.11 Authority of officers

Except to the extent that they apply only to the conduct of a public hearing, the officer assigned to handle a proceeding under the modified procedure shall have the same authority as officers assigned to conduct oral hearings as described in 49 CFR § 1113.3(a) and (b).

Part 1113.—Oral Hearings

The AAR points to an ambiguity in proposed § 1113.12(a). This is caused by the erroneous inclusion of the last sentence in that paragraph. That sentence will be stricken.

The AAR's proposed editorial changes in proposed § 1113.17(a) and § 1113.13 will be accepted.

The AAR says that the filing of reply briefs is a normal Commission practice, and that the statement to the contrary in § 1113.18(a) is incorrect and should be stricken. We disagree. While reply briefs are allowed in certain instances, the usual practice is to provide for the filing of only one round of briefs simultaneously by all parties, and time limits usually preclude the acceptance of reply briefs. The rule as drafted states the normal practice and leaves ample discretion for the hearing officer to allow reply briefs if time permits and the issue requires them.

Part 1114.—Subpart B—Discovery

One commentor asks that the discovery rules be thoroughly revised and rewritten. While we agree that a reexamination of these provisions could be profitable, their substantive revision is beyond the scope of this proceeding. This comment will be taken under advisement for possible consideration at a future date.

The AAR believes that the present exclusion of modified procedure application proceedings from the discovery rules has been eliminated in the revision of § 1114.21. This is not correct. First, these proceedings were never completely excluded from the operation of the discovery procedures. Instead, under old § 1100.55(a) discovery could be had in such proceedings, but only if the Commission acted favorably on a petition seeking such relief. Second, this provision is, in fact, retained in § 1114.21(b)(1) of the proposed rules.

The AAR suggests a modification in the protective conditions in paragraph (c)(8) which would add "competitively sensitive" information to the list of privileged material. We cannot see that the language the AAR proposes would add any necessary degree of protection to the rule as it reads at present, and as proposed, and in which "confidential commercial information" is protected from disclosure.

The AAR suggests an addition to paragraph § 1114.26(b) to provide extended protection from disclosure in cases where the information in the possession of the party upon which the interrogatory has been served is extracted not by that person but by an independent professional organization employed and paid by the party seeking the information. We cannot agree that this additional protection is necessary. The information extracted would, by definition, be discoverable, and there is no reason to protect it from disclosure. To the extent that it is not discoverable, it remains the property of the owner of the material from which it was extracted, and could be disclosed by another party or that party's agent only at its peril. In connection with § 1114.26(c), the Practitioners suggest an overall review of use of the terms "should" and "shall". While we agree in theory, and will consider this further, certain rules do not easily lend themselves to such a choice. For example, it may not be appropriate, in a rule describing the kinds of relevant evidence in a particular case, to *require* certain information. Our change to § 1114.26(c) was proposed to eliminate the problem caused when discovery is sought in a complaint case handled under the modified procedure. Typically, there is not sufficient time to serve interrogatories within 20 days of the opening statement due date. This has caused many parties a great deal of concern and confusion. We have changed "should" back to "shall". The language "unless under special circumstances and for good cause" should be broad enough to cover the situation described above.

In comments on § 1114.31 *Failure to respond to discovery*, McCarthy asks that the time within which a request for an order compelling an answer must be filed be extended from 10 to 20 days. Given the statutory deadlines under which we must operate, we cannot agree that 10 days is an unreasonably short time for filing such a request. In exceptional circumstances, the time can be extended upon request.

Part 1115.—Appellate Procedures

The AAR and Verner ask that the appeal procedures governing such procedural matters as the assignment of cases for hearing be included in § 1115.1 *Scope of rule*. These procedures are now found in 49 CFR 1011.7, which is the portion of the Commission's regulations providing for the apportioning of jurisdiction among the Commission, divisions, of the Commission, individual Commissioners, employee boards, and individual employees. Procedural decisions are in large part made by individual employees, under authority delegated to them by the Chairman of the Commission, and we think that the provision for appealing their decisions should remain where it is, since that provision constitutes the assignment to the Chairman of authority to act on the appeals. However, we agree that it would be helpful to have the procedures governing these appeals readily available as a part of the procedural regulations generally, and we will add a new paragraph (c) to § 1115.1 which simply restates the procedures outlined at § 1011.7. This addition necessitates a minor change in the text of paragraph 1115.1(a) as well.

Arsham suggests a revision of § 1115.2(d) to make it clear that the 30-page limit on the length of appeals and replies does not include a table of cases and authorities, and to change that provision so that the page limit does not include a subject matter index. Such a change would bring our regulations into closer conformity with the Federal Rules of Appellate Procedures and will be adopted. Paragraph 1115.2(d) will be modified to read:

(d) Appeals and replies shall not exceed 30 pages in length, including argument, appendices, and other attachments, but excluding a table of cases and authorities and an index of subject matter.

The AAR would have us alter § 1115.2(e) to state that a division, as well as the Commission, may grant extensions of time. This change is not necessary since the term "Commission" is defined in § 1101.2(b) to include any decisionmaking body within the Commission, including a division, which is empowered to act in a given situtation. We will adopt AAR's proposed word change in § 1115.2(f).

Slover suggests that § 1115.3(f)(3) should be deleted, as (f)(1) is adequate. However, subparagraph (f)(3) is a catch-all provision designed to cover all situations except where some specific provision of the rules is applicable. Paragraph (f)(1) is one such specific provision dealing only with procedures in rail cases, and does, as Slover points out, control in those cases. The provisions proposed are the same as those currently in effect, and we are not convinced a change is needed.

Part 1116.—Oral Argument Before the Commission

The AAR asks that the time limit for filing requests for oral argument, set at 20 days in proposed § 1116.1(c), be fixed at 30 days, as is now the case. The change was proposed both because of the statutory time limits now applying to virtually all Commission proceedings and also to attain greater uniformity in filing deadlines generally. Twenty days seems ample time to prepare a request for oral argument.

Part 1117.—Petitions (for Relief) Not Otherwise Covered

We will not adopt AAR's proposal to refer again to § 1011.7. See discussion, *infra*.

Part 1118.—Procedures in Informal Proceedings Before Certain Employee Boards

We believe that it is necessary to modify the proposed appellate procedures in § 1118.4 insofar as they relate to motor carrier temporary authority proceedings. Revision is necessary because it is unreasonable to require a protestant to an emergency temporary authority application to file an appeal within any fixed time because no public notice of these grants of authority is given and a potentially interested party cannot be expected to learn of a grant of emergency temporary authority until the recipient of the authority actually starts to operate. We also have decided that the question of the administrative finality of appellate decisions in temporary authority proceedings should not be resolved on the limited record available in this proceeding; but, instead be reserved for decision, pending in Ex Parte No. 67 (Sub-No. 8), *Rules Governing Temporary Authority and Emergency Temporary Authority*.

§ 1118.4(c) will be revised to read as follows:

(c) *Time for filing.* Except as provided in paragraph (e) of this section with respect to matters involving emergency temporary authority, appeals in proceedings governed by this part must be filed within 20 days after the date of service of the decision.

The following new paragraph (e) will be included:

(e) *Appeals in emergency temporary authority proceedings.*

An applicant seeking reconsideration of a decision concerning emergency temporary authority must file a petition within 20 days after it is notified of the decision on the application. Any other interested person seeking reconsideration of a decision granting emergency temporary authority may file a petition at any time during the life of the authority. Replies may be filed within 15 days after the filing of the petition. Pleadings must be served on all parties of record.

Present paragraphs (e) and (f) will be redesignated as paragraphs (f) and (g).

The last sentence of redesignated paragraph (g) will be revised to read:

A decision on appeal by an appellate body is administratively final, except for decisions of review boards in temporary authority and emergency temporary authority proceedings under 49 U.S.C. 10928.

Part 1130.—Informal Complaints

Verner suggests that 49 CFR Parts 1005 and 1008, governing loss and damage claims and overcharge claims, respectively, either be cross referenced or incorporated into Part 1130. We do not believe that this change would add to the clarification of Part 1130. The jurisdiction of the Commission to resolve overcharge claims is limited to the rail area. The Commission has no jurisdiction to award monetary relief in motor overcharge disputes. Nor does it possess jurisdiction to resolve either rail or motor loss and damage claims. Therefore, the inclusion of a cross reference to Parts 1005 and 1008 would merely confuse rather than clarify Part 1130.

The AAR and Practitioners indicate in their comments that the United States Court of Appeals for the Eleventh Circuit recently held in *Southern Motor Carrier Rate Conference v. United States*, 667 F.2d 971, *amended opinion*, 676 F.2d 1374 (1982) that 49 U.S.C. 10762(e) does not authorize the Commission to reject or strike an effective tariff using Tariff Integrity Board procedures. Therefore, they propose the elimination of § 1130.2 in its entirety. However, the more recent decision of the United States Court of Appeals for the Fifth Circuit in *Aberdeen & Rockfish Railroad Company v. United States*, 682 F.2d 1092 (1982) held that § 10762(e) permits the rejection of tariffs under certain circumstances. We recognize that some changes are necessary but, as we did not propose them here and the issue is both complex and controversial, we will address this separately at a future date. No harm can result, as the Board is not now acting.

However, one change with respect to § 1130.2 will be made. Section 1130.2(b)(6) will be revised to limit the definition of an unlawfully established tariff to one which purports to change *non-rail carrier* schedules in effect for less than 30 days. This change is made necessary by the Commission decision in No. 37517, *Reduction of the Notice Period for Filing Railroad Tariffs* (not printed), decided December 19, 1980, which revoked the requirement that rail rates remain in effect for a minimum of 30 days.

The order of § 1130.2 and § 1130.3 should be reversed. It would be more logical for the section on informal complaints when damages are sought to follow the section on informal complaints when no damages are sought. Under the current proposal, the section on Tariff Integrity Board procedures separates these sections. Since this change would clarify the rules it will be made.

Other changes will be made to update the Special Docket rules contained in proposed § 1130.3(e) and the six-month rule contained in proposed § 1130.3(f) to comply with No. 37130 (Sub-No. 1), *Special Docket Proceedings—Simplification of Proc.*, 365 I.C.C. 544 (1982).

Part 1131.—Formal Complaints, Rail Intrastate Petitions and Investigations

The AAR suggests that the title of Part 1131 be revised to read "Formal Rate Complaints, Rail Intrastate Petitions and Investigations" in order to distinguish Part 1131, which applies to formal complaint proceedings involving rate matters from Part 1111, which contains general provisions applicable to all other formal complaint proceedings. This change will clarify the rules and will be made.

With respect to § 1131.1(a), South Carolina submits that the proposed language that a formal rate complaint should include a specific reference to the pertinent statutory provisions or Commission regulations which "have been violated" should be changed to "have been or are violated or will be violated." This is the language used prior to this revision. The Commission is empowered to and has in the past ruled on complaints filed in anticipation of the beginning of a movement. Accordingly, the earlier language will be restored.

South Carolina also proposes to revise § 1131.4. It believes that this section should provide for service of the petition not only upon the State authority but also upon the parties to the State proceeding. It notes that this is particularly important in light of the short reply period and the short period within which the Commission must render a decision. Slover concurs and, in addition, suggests that replies be required to be filed within 10 days after receipt of a carrier petition. We agree with the proposed changes regarding service, but will require replies to be filed 10 days after a petition is filed.

The Department of the Army recommends that the first sentence of § 1131.6(c) be revised to reflect decisions in No. 38436S, *Ford Motor Co. v. Union Pac. R. Co.*, 365 I.C.C. 630 (1982) and No. 37925S, *Department of Defense v. Seaboard Coast Line Railroad Company* (not printed), served May 10, 1981. In those decisions the Commission found that all persons participating in through transportation by continuous carriage had to be made defendants even though no order had been sought against all such persons. Conrail also urges that all participants be made defendants in the proceeding. We appreciate these parties' concerns. However, we will make no rule change at this time because the Commission has been unable to reach an agreement on the substance of this issue. See *Department of Defense, supra*, decision served October 12, 1982. Thus, due to the uncertain state of the law, we caution parties to recognize the risks involved if a complainant fails to name as defendants all carriers participating in the challenged transportation movement.

The AAR urges revision of the second sentence of this section to provide that a complainant challenging a classification must serve notice of the complaint upon the tariff agent for the subscribers to the tariff containing the challenged classification. Since the requirement would not impose a significant burden on complainant and because it would benefit subscribers to the tariff, we will adopt AAR's suggestion. We will not now adopt Conrail's suggestion that all participants in the classification be made defendants. Service upon the agent offers constructive notice to all defendants. We will, however, study this matter further.

Section 1131.7—See 1111.2
Section 1131.9—See 1111.4
Section 1131.10—See 1111.5

Part 1132.—Protests Against Tariffs; Procedures in Certain Suspension and Long and Short Haul Restriction Matters

We have found that it is necessary to eliminate in § 1132.1(a) the requirement that a protest against a tariff state what protestant offers by way of substitution. This requirement is generally ignored and although a protest will occasionally request suspension without prejudice to refiling a lesser increase, protestant would probably do so without the requirement.

Another change which we believe is necessary is the addition in § 1132.1(b) of language providing that protests to tariffs filed on less than 10 days' notice will be acted on only if received not later than the last workday before the effective date for the tariff and that appeals to those protests will be considered only if the protest reaches the Suspension Board not later than the second workday before the effective date. The reason this change is needed is that in the case of tariffs filed on less than 10 days' notice the current 5-day requirement for filing a protest is simply not met. Since the Suspension Board is able to act within shorter time frames than those provided in the proposed rule, the rule will be revised to reflect that capability.

For purposes of clarity, the language pertaining to replies to protests contained in proposed § 1132.1(c) will be moved to § 1132.1(f). This would further the purpose of consolidating the requirements for replies to protests in one place in the rules.

McCarthy objects to the increased filing requirement for protestants in Ex Parte No. MC-82 proceedings contained in proposed § 1132.1(d). Currently an original plus 11 copies of protests are required. The proposed language increases the requirement to an original plus 15 copies. We proposed the change to accomplish greater uniformity in the rules. However, we agree that a more important goal is minimizing the amount of paper filed. Eleven copies is adequate here and we will amend the final rule accordingly.

Conrail points out that, because of the tight deadlines for filing protests against tariffs and replies, time is of the essence. However, proposed § 1132.1(d) requires service of a copy of the protest upon the publishing carrier, freight forwarder *or* agent. Because service on the agent results in loss of time to the respondent for review of and reply to the protest, Conrail proposes language to remedy this situation. Its proposal is to require service directly on a carrier if that carrier elects to list itself on the cover page of the tariff. This proposal entails little inconvenience to protestant, while affording respondent carrier essential time to frame a reply. Therefore, the proposal will be adopted.

We believe that the reference in § 1132.1(g) to protest against and requests for suspension of, tariffs or schedules containing proposed rates, classifications, rules, or practices filed by rail carriers, or their publishing agents "that result in revisions of rates or charges" should be deleted because of its susceptibility to misinterpretation. The word "rate" has a much broader application than generally understood. In order to eliminate this confusion, the subject language will be deleted.

Slover suggests the removal from § 1132.1(g)(3) of the reference to Ex Parte No. 320 (Sub-No. 2) since that decision is on appeal in court. We will retain the reference as proposed. The rules promulgated in that proceeding are final, have not been stayed and, if changed by the courts, will be changed in the same proceeding.

We believe that additional language is necessary for proposed § 1132.1(h) to deal with the continuing problem of the lack of specific notice as to the procedures when the Commission acts initially on protested household goods rate increase proposals.

There appears to be widespread confusion on the part of attorneys regarding § 1132.2(b), which deals with petitions for reconsideration in suspension matters. We will revise that section to spell out more clearly when such petitions may be filed.

The rejection by the Secretary of a late-filed petition for suspension needs to be made permissive rather than mandatory to take into account possible problems with the mails, but more importantly, to permit the use of discretion by the Commission. The rationale is that if the matter is to be resolved against appellant it is better to do so on the merits, whereas, if the matter is to be resolved against the proponent, then the Commission should not lose the opportunity to act. Therefore, the language will be made permissive.

Part 1163.—Temporary Operating Authorities and Approvals

No change was proposed in this part, except that it be renumbered part 1163 instead of part 1101. However, there appears to be considerable confusion in applying the present rule. In adopting the present rule in 1976, a provision for the automatic extension of temporary authorities upon the filing of a corresponding permanent authority application was adopted. Prior to that time, extensions were acted upon individually at the carriers's request. In adopting the automatic extension provision, procedures for obtaining TA extensions by petition were eliminated. There are situations in which the automatic provisions do not, for some reason, apply, but in which extension is nonetheless warranted. We will add a new provision to deal with this problem. That new provision, § 1163.1(c), will read as follows:

(c) When an applicant has not made a timely and sufficient application for a renewal, or new, authority or approval in accordance with applicable Commission rules, the Commission will determine upon written request of any interested party, or upon its own initiative, whether any temporary authority granted under 49 U.S.C. 10928 may be continued in force beyond the expiration date of such temporary authority for an extended term as defined in paragraph (a) above. A written request for such a determination must be filed with the Regional Motor Carrier Board with which the temporary authority application was filed not later than 30 days prior to expiration of the temporary authority.

Additional Comments

The Practitioners request that present § 1100.78 be retained. As we stated in the notice of proposed rulemaking, that rule is redundant and the presiding officers have ample power to deal with documents containing a high proportion of irrelevant matter. Therefore, that rule should be left out.

Commentor McCarthy requests that we include our revised procedure to calculate interest rates set forth in *Notice of Revised Procedure to Calculate Interest,* (not printed), decided April 14, 1977. We agree that the matter of computation of interest rates is of sufficient significance to be included with our Rules of Practice. Therefore, we will add a new Part 1141 *Procedures to Calculate Interest Rates.* The language of that part will be as follows:

§ 1141.1 Procedures to calculate interest rates.

Interest rates to be computed following the Commission decision shall be the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days.

Effective Date of These Rules

There is good cause under 5 U.S.C. 553(d)(3) for making these revisions to the Commission's Rules of Practice effective on less than 30 days' notice. The revisions that we are adopting here primarily classify existing rules of procedure and practice. They impose no new burdens on those who practice before the Commission. The few substantive changes that we have made, such as revision of the 3-day mail rule and the notorization rules, relieve persons of procedural burdens. Accordingly, the public will benefit from having these rules made effective as soon as possible.

Also, these Revised Rules of Practice need to be effective on November 1, 1982 so that they will be included in the 1982 edition of the Code of Federal Regulations. The CFR volumes are updated and published annually by the Office of the Federal Register. Normally, the Commission's volumes of the CFR close on October 1, 1982. Since it would have been inconvenient for those who practice before the Commission to work without the full text for more than one year, the Commission obtained a one month extension of the closing date for the volume 49 CFR Parts 1000 to 1199 so that the redesignated and revised Rules of Practice would appear in the 1982 edition of the CFR. Therefore, these redesignated and revised Rules of Practice will be made effective on November 1, 1982 to meet this publication schedule.

Regulatory Flexibility Act Statement

In this proceeding we adopt our proposal to reorganize and simplify our Rules of Practice. The language of some of the rules is modified to make our rules easier to read and understand. However, no substantial changes have been made. Therefore, it is certified that this rule has no significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This action will not significantly affect the quality of the human environment and conservation of energy.

We adopt the revisions to 49 CFR Chapter X, Subpart B set forth in the Final Rules section of this notice.

List of some of the subjects in 49 CFR Part 1031A and 49 CFR Chapter X, Subchapter B:

Administrative Practice and Procedure, Motor Carriers, Railroads, Maritime Carriers, Freight Forwarders, Buses, Freight, Securities.

Authority 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: October 13, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,
Secretary.

REDESIGNATION TABLE

Old section	New section
Part 1031a	Part 1138.
1045.11	1181.32.
Part 1100:	
1100.1	1100.1, 1100.2.
1100.2	1100.3.
1100.3	1100.4.
1100.4	1102.1, 1100.2, 1104.6, 1100.8, & 1100.10.
1100.5	Part 1101.
1100.6	
1100.7	1103.1.
1100.8	1103.2.
1100.9	1103.3.
1100.10	1103.4.
1100.11	1103.5.
1100.12	1113.31.
1100.13	1104.2.
1100.14	1104.3.
1100.15	1104.4.
1100.16	1104.5.
1100.17	1104.9.
1100.18	1104.11.
1100.19	1104.7.
1100.20	1104.12.
1100.21	1104.13.
1100.22	1130.1.
1100.22a	1130.3.
1100.23	1130.2.
1100.24	Removed.
1100.25	1131.6 & 1111.1.
1100.26	1131.1 & 1111.1.
1100.27	1131.2.
1100.28	Removed.
1100.29	1131.2, 1131.5 & 1111.1.
1100.30	1131.1.
1100.31	1131.7.
1100.32	1111.2.
1100.33	1131.9 & 1111.4.
1100.34	1131.10 & 1111.5.
1100.35	1131.11 & 1111.6.
1100.36	Removed.
1100.37	Removed.
1100.38	Removed.
1100.39	1118.4(e).
1100.40	1132.1.
1100.41	1111.7.
1100.43	1112.1 & 1112.2.
1100.44	1131.9(d), 1111.4, & 1112.3.
1100.45	Removed.
1100.46	1112.5.
1100.47	1112.6, 1112.7, & 1133.1.
1100.48	1112.8 & 1112.9.
1100.49	Removed.
1100.50	Removed.
1100.51	1112.10.
1100.52	Removed.
1100.53	1113.1.
1100.54	1113.2.
1100.55	1114.21.
1100.56	1114.22.
1100.57	1114.23.
1100.58	1114.24.
1100.59	1114.25.
1100.60	1114.26.
1100.61	1114.27.
1100.62	1114.28.
1100.63	1114.29.
1100.64	1114.30.
1100.65	1114.31.
1100.66	1113.3.
1100.67	1113.4.
1100.68	1113.5.
1100.69	1113.3 & 1113.6.
1100.70	1113.7.
1100.71	1113.7.
1100.72	1113.8.
1100.73	1114.1.
1100.74	1113.3.
1100.75	1113.9.
1100.76	1114.2.
1100.77	1114.3.
1100.78	Removed.
1100.79	1114.4.
1100.80	1113.10 & 1114.5.
1100.81	1113.11.
1100.82	1114.7 & 1113.12.
1100.83	Removed.
1100.84	1113.13.
1100.85	1113.14 & 1113.15.
1100.86	1113.16.
1100.87	1113.1.
1100.88	1113.17.
1100.89	1113.18.
1100.90	1113.18.
1100.91	Removed.
1100.92	Removed.
1100.93	Part 1116.
1100.94	1119.1.
1100.95	1133.2.
1100.96	Removed.
1100.98	Part 1115.
1100.99	1117.1.
1100.100	Removed.
1100.101	Removed.
1100.102	Removed.
1100.200	1132.2.
1100.225	Part 1118.
1100.240	1182.1.
1100.241	1182.2.
1100.242	1182.3.
1100.243	1182.4.
1100.244	1182.5.
1100.245	Part 1161.
1100.246	1153.9.
1100.248	Removed.
1100.249	Removed.
1100.250	Part 1134.
1100.251	1160.1–1160.23.
1100.252	1160.40–1160.49.
1100.253	1160.66–1160.68.
Appendix A	1103.11–1103.35.
Appendix B:	
Form 1	Removed.
Form 2	Removed.
Form 3	1104.12.
Form 4	Removed.
Form 5	1133.2.
Form 6	1112.9.
Form 7	1161.5 Appendix.
Appendix C	1102.2.
Appendix D	Removed.
Appendix E	Removed.
Appendix F	Removed.
Appendix G	Removed.
Part 1101	Part 1163.
Part 1102	Part 1135.
Part 1103	Part 1110.
Part 1104	Part 1139.
Part 1104A	Part 1120.
Part 1105	Part 1136.
Part 1106	Part 1106.
Part 1107	Removed.
Part 1108	Part 1105.
Part 1109:	
1109.5	11371.1.
1109.15	11371.2.
Part 1110	Removed.
Part 1111	Part 1180.
Part 1112	Part 1185.
Part 1113	Removed.
Part 1114	Part 1176.
Part 1115	Part 1175.
Part 1116	Part 1177.
Part 1117:	Part 1190.
1117.1–1117.12	1190.1–1190.12.
1117.51–1117.55	1190.20–1190.24.
Part 1118	Part 1191.
Part 1120	Part 1150.

Redesignation Table—Continued

Old section	New section
Part 1120A	Removed.
Part 1121:	Part 1152.
1121.10	1152.1.
1121.11	1152.2.
1121.20-.25	1152.10-1152.15.
1121.30-.34	1152.20-1152.24.
1121.36	1152.25.
1121.37	1152.26.
1121.38	1152.27.
1121.39	1152.28.
1121.40-.47	1152.30-1152.37.
1121.60-.63	1152.40-1152-.43.
Appendix I	Appendix A.
Appendix II	Appendix B.
Part 1122	Part 1153.
Part 1123	Part 1154.
Part 1125	Part 1155.
Part 1126	Part 1156.
Part 1127	Part 1157.
Part 1128	Part 1151.
Part 1129	Part 1140.
Part 1131	Part 1162 Subpart A.
Part 1131A	Part 1162 Subpart B.
Part 1132	Part 1181 Subpart A.
Part 1133	Part 1181 Subpart D.
Part 1134:	Part 1183.
1134.1	1183.1.
1134.3	1183.2.
1134.4	1183.3.
1134.6	1183.4.
1134.50	1183.5.
1134.51	1183.6.
Part 1135	Part 1192.
Part 1136	Part 1167.
Part 1137	Part 1165.
Part 1138	Part 1164.
Part 1139	Part 1184.
Part 1140	Part 1166.
Part 1141	Part 1181 Subpart B.
Part 1151	Part 1181 Subpart C.

Derivation Table

New designation	Old designation
Part 1100:	
1100.1	1100.1(a) & 1100.1(c).
1100.2	1100.1(b).
1100.3	1100.2.
1100.4	1100.3.
Part 1101:	
1101.1	New.
1101.2	1100.5.
1101.3	1100.6.
Part 1102:	
1102.1	1100.4(a) in part.
1102.2	1100.4(e) & Appendix C.
Part 1103:	
1103.1	1100.7.
1103.2	1100.8.
1103.3	1100.9.
1103.4	1100.10.
1103.5	1100.11.
Subpart B—Canon of Ethics.	Old Appendix A to Part 1100.
1103.10	New.
1103.11	Old Canon 1.
1103.12	Old Canons 2, 3.
1103.13	Old Canons 4, 5.
1103.14	Old Canon 8.
1103.15	Old Canon 7.
1103.16	Old Canon 9.
1103.17	Old Canon 10.
1103.18	Old Canon 11.
1103.19	Old Canon 12.
1103.20	Old Canons 14, 15, 16, 17, 18, 19, 20, 21, 22.
1103.21	Old Canon 23.
1103.22	Old Canon 24.
1103.23	Old Canon 41.
1103.24	Old Canon 21.
1103.25	Old Canons 25, 26.
1103.26	Old Canon 28.
1103.27	Old Canons 29, 30, 31.
1103.28	Old Canon 13.
1103.29	Old Canon 32.
1103.30	Old Canon 36.
1103.31	Old Canon 35.
1103.32	Old Canons 37, 38.
1103.33	Old Canon 38.
1103.34	Old Canon 39.
1103.35	Old Canons 42, 43.
Canons 6, and 40—Removed.	
Part 1104:	
1104.1	1100.4(a) (in part).
1104.2	1100.13.
1104.3	1100.14.
1104.4	1100.15.
1104.5	1100.16.
1104.6	1100.4(b).
1104.7	1100.19.
1104.8	1100.4(d).
1104.9	1100.17.
1104.10	1100.4(c).
1104.11	1100.18.
1104.12	1100.20.
1104.13	1100.21.
Part 1105	Part 1108.
Part 1106	Part 1106.
Part 1107-1109 [Reserved].	
Part 1110	Part 1103.
Part 1111:	
1111.1(a)	1100.25(d) & 1100.26.
(b)	1100.29(c).
(c)	1100.25(a).
(d)	1100.25(b).
1111.2	1100.31 (in part).
1111.3	1100.24(a) & 1100.32.
1111.4	1100.33 & 1100.44(a).
1111.5	1100.34.
1111.6	1100.35.
1111.7	1100.41.
Part 1112:	
1112.1	1100.43 intro text & (a).
1112.2	1100.43(b).
1112.3	1100.44(b).
1112.4	New.
1112.5	1100.46.
1112.6	1100.47 part of (a).
1112.7	1100.47 part of (a).
1112.8	1100.48 (in part).
1112.9	1100.48 in part, Form 6 of Appendix B to Part 1100, & new material.
1112.10	1100.51.
Part 1113:	
1113.1	1100.53(a) & part of (b) 1100.87.
1113.2	1100.54.
1113.3	1100.66, 1100.69, 1100.74.
1113.4	1100.67.
1113.5	1100.68.
1113.6	1100.69.
1113.7	1100.70 & 1100.71.
1113.8	1100.72.
1113.9	1100.75.
1113.10	1100.80.
1113.11	1100.81.
1113.12	1100.82 (c), (d), (e).
1113.13	1100.84.
1113.14	1100.85 (in part).
1113.15	1100.85 (in part).
1113.16	1100.86.
1113.17	1100.88.
1113.18	1100.89, 1100.90.
1113.19-1113.30 [Reserved].	
1113.31	1100.12.
Part 1114:	
1114.1	1100.73.
1114.2	1100.76.
1114.3	1100.77.
1114.4	1100.79.
1114.5	1100.80.
1114.6	New.
1114.7	1100.82 (a) & (b).
1114.21	1100.55.
1114.22	1100.56.
1114.23	1100.57.
1114.24	1100.58.
1114.25	1100.59.
1114.26	1100.60.
1114.27	1100.61.
1114.28	1100.62.
1114.29	1100.63.
1114.30	1100.64.
1114.31	1100.65.
Part 1115:	
1115.1	1100.98(a).
1115.2	1100.98(b).
1115.3	1100.98(c).
1115.4	1100.98(d).
1115.5	1100.98(e).
1115.6	1100.98(f).
Part 1116:	
1116.1	1100.93 (a), (b), (c).
1116.2	1100.93(d).
Part 1117:	
1117.1	1100.99.
Part 1118:	
1118.1	1100.225 heading.
1118.2	1100.225(a).
1118.3	1100.225(h).
1118.4(a)	1100.225 (b) & (c).
(b)	1100.225(e).
(c)	1100.225(f).
(d)	New.
(e)	1100.39.
Part 1119:	
1119.1	1100.94.
Part 1120	Part 1104A.
Parts 1120-1129 [Reserved].	
Part 1130:	
1130.1	1100.22.
1130.2	1100.23.
1130.3	1100.22a.
Part 1131:	
1131.1(a)	1100.25(d), 1100.26, 1100.30(a).
(b)	1100.29(c).
1131.2(a)	1100.27.
(b)	1100.29(c).
1131.3	Reserved.
1131.4	New.
1131.5	1100.29 (a) & (b).
1131.6	1100.25 (a), (b), (c).
1131.7	1100.31.
1131.8(a)	1100.24(a), 1100.32.
(b)	1100.24(b).
1131.9	1100.33 & 1100.44(a).
1131.10	1100.34.
1131.11	1100.35.
Part 1132:	
1132.1	1100.40.
1132.2	1100.200.
Part 1133:	
1133.1	1100.47(c).
1133.2	1100.95 and Form 5 of Appendix B to Part 1100.
Part 1134	1100.250.
1134.1	1100.250(a).
1134.2	1100.250(b).
1134.3	1100.250(c).
1134.4	1100.250(d).
1134.5	1100.250(e).
1134.6	1100.250(f).
1134.7	1100.250(g).
Part 1135	Part 1102.
Part 1136	Part 1105.
Part 1137	Part 1109.
1137.1	1109.5.
1137.2	1109.15.
Part 1138	Part 1031A.
Part 1139	Part 1104.
Part 1140	Part 1129.
Part 1141	New.
Parts 1142-1149 [Reserved].	
Part 1150	Part 1120.
Part 1151	Part 1128.
Part 1152	Part 1121.
1152.1-1152.12	1121.10-1121.11.
1152.10-1152.15	1121.20-1121.25.
1152.20-1152.24	1121.30-1121.34.
1152.25-1152.28	1121.36-1121.39.
1152.30-1152.37	1121.40-1121.47.
1152.40-1152.43	1121.60-1121.63.
Appendices I & II	Appendices A & B.
Part 1153	Part 1122.
1153.9	1100.246.
Part 1154	Part 1123.
Part 1155	Part 1125.
Part 1156	Part 1126.
Part 1157	Part 1127.
Parts 1158-1159 [Reserved].	
Part 1160:	
1160.1	1100.251(a).
1160.2	1100.251(b).
1160.3	1100.251(c).
1160.4	1100.251(d).
1160.5	1100.251(e).
1160.6	1100.251(f).

DERIVATION TABLE—Continued

New designation	Old designation
1160.7	1100.251(g).
1160.8	1100.251(h).
1160.9	1100.251(i).
1160.10	1100.251(j).
1160.11	1100.251(k).
1160.12	1100.251(l).
1160.13	1100.251(m).
1160.14	1100.251(n).
1160.15	1100.251(o).
1160.16	1100.251(p).
1160.17	1100.251(q).
1160.18	1100.251(r).
1160.19	1100.251(s).
1160.20	1100.251(t).
1160.21	1100.251(u).
1160.22	1100.251(v).
1160.23	1100.251(w).
1160.40	1100.252(a).
1160.41	1100.252(b).
1160.42	1100.252(c).
1160.43	1100.252(d).
1160.44	1100.252(e).
1160.45	1100.252(f).
1160.46	1100.252(g).
1160.47	1100.252(h).
1160.48	1100.252(i).
1160.49	1100.252(j).
1160.60	1100.253(a).
1160.61	1100.253(b).
1160.62	1100.253(c).
1160.63	1100.253(d).
1160.64	1100.253(e).
1160.65	1100.253(f).
1160.66	1100.253(g).
1160.67	1100.253(h).
1160.68	1100.253(i).
Part 1161:	
1161.1	1100.245(a).
1161.2	1100.245(b).
1161.3	1100.245(c).
1161.4	1100.245(d).
1161.5	Part 1100 Appendix B Form 7.
1161.6	1100.245(e).
Part 1162:	
1162.1-1162.7	Parts 1131, 1131.1-1131.7.
1162.10-1162.14	Parts 1131a.1-1131a.5.
Part 1163	Part 1101.
Part 1164	Part 1138.
Part 1165	Part 1137.
Part 1166	Part 1140.
Part 1167	Part 1136.
Parts 1168-1174 [Reserved].	
Part 1175	Part 1115.
1175.1	New.
1175.2-1175.7	1115.1-1115.6.
1175.10	1115.25.
Appendix	Appendix.
Part 1176	Part 1114.
Part 1177	Part 1116.
Parts 1178-1179 [Reserved].	
Part 1180	Part 1111.
Part 1181:	
1181.1-1181.4	1132.1-1132.4.
1181.10-1181.19	1141.1-1141.10.
1181.20-1181.26	1151.1-1151.7.
1181.30-1181.31	1133.1-1133.2.
1181.32	1045.11.
Parts 1181.41-1181.42	New.
Part 1182:	
1182.1	1100.240.
1182.2	1100.241.
1182.3	1100.242.
1182.4	1100.243.
1182.5	1100.244.
Part 1183	Part 1134.
1183.2	1134.3.
1183.3	1134.4.
1183.4	1134.6.
1183.5	1134.50.
1183.6	1134.51.
Part 1184	Part 1139.
Part 1185	Part 1122.
Parts 1186-1189 [Reserved].	
Part 1190	Part 1117.
1190.1-1190.12	1117.1-1117.12.
1190.20-1190.24	1117.51-1117.55.
Part 1191	Part 1118.
Part 1192	Part 1135.
Parts 1193-1199 [Reserved].	

REMOVAL TABLE

Existing sections to be removed	Existing parts to be removed
1100.24, 1100.28, 1100.36, 1100.37, 1100.38, 1100.45, 1100.49, 1100.50, 1100.52, 1100.78, 1100.83, 1100.91, 1100.92, 1100.96, 1100.100, 1100.101, 1100.102, 1100.248, 1100.249.	Part 1107, Part 1110 [1], Part 1113, Part 1120A.
Part 1100—Appendix B, Forms 1, 2, & 4.	Existing Paragraphs To Be Removed
Part 1100—Appendices D-G	1100.225(g) and (d).
1122.9	

[1] Removed by Ex Parte No. 433, *Deletion of General Requirements* (49 CFR 1110), served June 4, 1982 [47 FR 24594, June 7, 1982].

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1190.7 Granting of order of authorization.
1190.8 Applicant desiring to act for more than one issue of securities.
1190.9 Contents of application.
1190.10 Application by other than an individual.
1190.11 Filing of exhibits.
1190.12 Procedure governing application.

Subpart B—Ratification of Appointment as Trustee

1190.20 Filing of petition.
1190.21 Petition under oath.
1190.22 Number of copies.
1190.23 Form, notice accompanying petition.
1190.24 Consideration of petition.

PART 1191—CORPORATE REORGANIZATION OF CARRIERS AND CORPORATIONS

1191.1 Submission of copies of reorganization plan.
1191.2 Statements and information to be submitted with reorganization plan.
1191.3 Hearing in court; filing of notice with Commission.

PART 1192—CORPORATE REORGANIZATION OF MOTOR CARRIERS

1192.1 Information required to be filed with the Secretary of Commission.

PARTS 1193-1199—[RESERVED]

Final Rules

Subchapter B of Title 49, Chapter X of the *Code of Federal Regulations* is amended as follows:

PART 1100—[AMENDED]

(1) Part 1100 is amended by removing the following sections, paragraphs and appendices: §§ 1100.24, 1100.28, 1100.36, 1100.37, 1100.38, 1100.45, 1100.49, 1100.50, 1100.52, 1100.78, 1100.83, 1100.91, 1100.92, 1100.96, 1100.100, 1100.101, 1100.102, 1100.225, (d) and (g), 1100.248, 1100.249, Forms 1, 2, and 4 of Appendix B, and Appendices D and G.

PART 1107—[REMOVED]

(2) Part 1107 is removed.

PART 1113—[REMOVED]

(3) Part 1113 is removed.

PART 1120A—[REMOVED]

(4) Part 1120A is removed.

PART 1122—[AMENDED]

(5) Part 1122 is amended by removing § 1122.9.

The heading of Subchapter B is revised to read as follows:

SUBCHAPTER B—RULES OF PRACTICE

Parts 1100–1129—Rules of General Applicability

(6) Former §§ 1100.1–1100.3 are redesignated as Part 1100 and a center heading is added to precede the newly redesignated Part 1100 to read as set forth above.

(7) The newly redesignated Part 1100 is revised to read as follows:

PART 1100—GENERAL PROVISIONS

Sec.
1100.1 Scope of rules.
1100.2 Applicability.
1100.3 Liberal construction.
1100.4 Information and inquiries.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1100.1 Scope of rules.

These rules govern practice and procedure before the Interstate Commerce Commission under Title 49, subtitle IV of the United States Code (49 U.S.C. 10101 *et seq.*). This subchapter will be referred to as the "Rules of Practice".

§ 1100.2 Applicability.

The rules in Parts 1100–1119, Rules of General Applicability, establish general rules applicable to all types of proceedings. Other rules in this subchapter establish special rules applicable to particular types of proceedings. When there is a conflict or inconsistency between a rule of general applicability and a special rule, the special rule will govern.

§ 1100.3 Liberal construction.

The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.

§ 1100.4 Information and inquiries.

Persons with questions concerning these rules should either send a written inquiry addressed to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, or should telephone the Secretary's Office, (202) 275–7428.

(8) Former §§ 1100.5 and 1100.6 are redesignated as Part 1101, and the newly redesignated Part 1101 is revised to read as follows:

PART 1101—DEFINITIONS AND CONSTRUCTION

Sec.
1101.1 Statutory definitions.
1101.2 Definitions applicable to this subchapter.
1101.3 Construction.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1101.1 Statutory definitions.

The definitions contained in section 10102 of the Act (49 U.S.C. 10102) apply in this chapter.

§ 1101.2 Definitions applicable to this subchapter.

(a) "Act" or "Interstate Commerce Act" means subtitle IV of Title 49 of the United States Code (49 U.S.C. 10101 et seq.).

(b) "Commission" means (1) the Interstate Commerce Commission and (2) any body or individual to which or to whom decision making authority is assigned by the Commission or the Chairman of the Commission, including a division of the Commission, the Chairman, another Commissioner, employee board, an individual employee, an administrative law judge, a joint board, or other hearing officer entitled to act in a particular proceeding. See 49 CFR Part 1101, Commission Organization and Delegation of Authority.

(c) "Decision" means any formal, published action of the Commission, including orders and notices.

(d) "Party" means a complainant, defendant, applicant, respondent, protestant, intervener, or petitioner in any proceeding, or other persons permitted or directed by the Commission to participate in a proceeding. It will not include persons merely signing certificates of support or witnesses at oral hearing or in modified procedure proceedings, unless they are otherwise a party to the proceeding. Persons on the docket service list merely for the purpose of receiving copies of Commission releases are not considered parties to the proceeding.

(e) "Proceeding" includes: (1) An "informal complaint" filed under 49 C.F.R. 1130.1, or 1130.3 or a "formal complaint" alleging violation of any provision of the Act or of any regulation or requirement made pursuant to a power granted by such Act, including petitions on special dockets;

(2) An "application" for (i) the granting of any right, privilege, authority, or relief under or from any provision of the Act or of any regulation or requirement made pursuant to a power granted by such Act, or (ii) the consideration of any submission required by law to be made to the Commission;

(3) An "investigation" instituted by the Commission;

(4) A "rulemaking" proposal instituted by the Commission; or

(5) A petition for exemption filed under 49 U.S.C. 10505 requesting the Commission to exempt from application all or part of subtitle IV of Title 49 of the United States Code any person, class of persons, transaction, or service related to a rail carrier.

§ 1101.3 Construction.

The rules of construction contained in chapter 1 of Title 1 of the United States Code (1 U.S.C. 1 et seq.) apply in this chapter. Among other things, they provide that the singular includes the plural, and vice versa; that the masculine includes the feminine; that the word "person" includes corporations, associations, and the like; that "county" includes parish and similar subdivisions; and that "company" includes successors and assigns.

(9) Former paragraphs § 1100.4 (a) and (e) and Appendix C to Part 1100 are redesignated as Part 1102, and the newly redesignated Part 1102 is revised to read as follows:

PART 1102—COMMUNICATIONS

Sec.
1102.1 How addressed.
1102.2 Ex parte communications prohibited; penalties provided.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1102.1 How addressed.

All communications should be addressed to the Secretary of the Commission, Interstate Commerce Commission, Washington, DC 20423 unless otherwise specifically directed by another Commission regulation. All communications should designate the docket number and title, if any. The person communicating shall state his address, and the party he represents.

§ 1102.2 Ex parte communications prohibited; penalties provided.

(a) *Definitions.* (1) "On-the-record proceeding" means any matter described in Sections 556–557 of the Administrative Procedure Act (5 U.S.C. 556–557) or any matter required by the Constitution, statute, Commission rule, or by decision in the particular case, that is decided solely on the record made in a Commission proceeding.

(2) "Person who intercedes in any proceeding" means any person, partnership, corporation, or association, private or public, outside of the Commission which is neither a party nor party's agent, that volunteers a communication that it has reason to know may advance or adversely affect the interest of a party or party's agent in any proceeding before the Commission.

(3) "*Ex Parte* communication concerning the merits" means an oral or written communication by or on the behalf of a party which is made without

the knowledge or consent of any other party that could or is intended to influence anyone who participates or could reasonably be expected to participate in the decision.

(b) *Communications that are not prohibited.* (1) Any communication to which all the parties to the proceeding agree, or on which the Commission formally rules, may be made on an *ex parte* basis;

(2) Any communication of facts or contention which has general significance for a regulated industry if the communicator cannot reasonably be expected to have known that the facts or contentions are material to a substantive issue in a pending on-the-record proceeding in which it is interested;

(3) Any communication by means of the news media that in the ordinary course of business of the publisher is intended to inform the general public, members of the organization involved, or subscribers to such publication with respect to pending on-the-record proceedings.

(c) *Prohibitions.* (1) No party, counsel, agent of a party, or person who intercedes in any on-the-record proceeding shall engage in any *ex parte* communication concerning the merits of the proceeding with any Commissioner, hearing officer, joint board member, employee board member or employee of the Commission who participates, or who may reasonably be expected to participate, in the decision in the proceeding.

(2) No Commissioner, hearing officer, joint board member, employee board member or employee of the Commission who participates, or is reasonably expected to participate, in the decision in an on-the-record proceeding shall invite or knowingly entertain any *ex parte* communication concerning the merits of a proceeding or engage in any such communication to any party, counsel, agent of a party, or person reasonably expected to transmit the communication to a party or party's agent.

(d) *When prohibitions take effect.* The prohibitions against *ex parte* communications concerning the merits of a proceeding apply from the date on which a proceeding is noticed for oral hearing or for the taking of evidence by modified procedure, or when the person responsible for the communication has knowledge that the proceeding will be so noticed, or at any time the Commission, by rule or decision, specifies.

(e) *Procedure required of Commission members and employees upon receipt of ex parte communications concerning the merits of a proceeding.* Any person who receives an *ex parte* communication concerning the merits of a proceeding must promptly transmit either the written communication, or a written summary of the oral communication with an outline of the surrounding circumstances to the Secretary of the Commission. The Secretary shall place all of the material in the correspondence section of the public docket of the proceeding. A recipient of such *ex parte* communication, who has doubt as to the nature of the communication, may request a ruling on the question from the Commission's General Counsel. The General Counsel shall promptly reply to such requests. The Secretary shall promptly notify the Chairman of the Commission of such *ex parte* communications sent to the Secretary. The General Counsel shall promptly notify the Chairman of all requests for rulings sent to the General Counsel. The Chairman may require that any communication be placed in the correspondence section of the docket when fairness requires that it be made public, even if it is not a prohibited communication. The Chairman may direct the taking of such other action as may be appropriate under the circumstances.

(f) *Sanctions.* (1) The Commission may censure, suspend, or revoke the privilege of practicing before the agency of any person who knowingly and willfully engages in or solicits prohibited *ex parte* communication concerning the merits of a proceeding.

(2) The relief or benefit sought by a party to a proceeding may be denied if the party, or his agent knowingly and willfully violates the foregoing rules.

(3) The Commission may censure, suspend, dismiss, or institute proceedings to suspend or dismiss any Commission employee who knowingly and willfully violates the foregoing rules.

(10) Former §§ 1100.7–1100.11 (which fell under the center heading "PRACTITIONERS") and former Appendix A to Part 1100 are redesignated as Part 1103, and the newly redesignated Part 1103 is revised to read as follows:

PART 1103—PRACTITIONERS

Subpart A—General Information

Sec.
1103.1 Register of practitioners.
1103.2 Attorneys-at-law—qualifications and requirements to practice before the Commission.
1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Commission.
1103.4 Initial appearances.
1103.5 Discipline.

Subpart B—Canons of Ethics

Sec.
1103.10 Introduction.

The Practitioner's Duties and Responsibilities Toward the Commission

Sec.
1103.11 Standards of ethical conduct in courts of the United States to be observed.
1103.12 The practitioner's duty to and attitude toward the Commission.
1103.13 Attempts to exert political or personal influence on the Commission are prohibited.
1103.14 Private communications with the Commission are prohibited.

The Practitioner's Duties and Responsibilities Toward a Client

1103.15 The practitioner's duty to clients, generally.
1103.16 Adverse influence and conflicting interests.
1103.17 Joint association of practitioners and conflicts of opinion.
1103.18 Withdrawal from employment.
1103.19 Advising upon the merits of a client's cause.
1103.20 Practitioner's fees and related practices.
1103.21 How far a practitioner may go in supporting a client's cause.
1103.22 Restraining clients from improprieties.
1103.23 Confidences of a client.

The Practitioner's Duties and Responsibilities Regarding Witnesses, Other Litigants and the Public

1103.24 Use of adverse witnesses.
1103.25 Treatment of witnesses, litigants and other counsel.
1103.26 Discussion of pending litigation in the public press.
1103.27 Candor and fairness in dealing with other litigants.
1103.28 Negotiations with opposing party.
1103.29 Public communication and solicitation.
1103.30 Acceptance of employment.
1103.31 Responsibility for litigation.
1103.32 Discovery of imposition and deception and duty to report corrupt or dishonest conduct.
1103.33 Responsibility when proposing a person for admission to practice before the Commission.
1103.34 Intermediaries.
1103.35 Partnership or professional corporation names and titles.

Authority: 49 U.S.C. 10308 and 10321; 5 U.S.C. 559.

Subpart A—General Information

§ 1103.1 Register of practitioners.

The Commission maintains a register containing the names of all non-attorneys entitled to practice before it. The register is maintained according to the individual non-attorney practitioner's name and not by corporate or firm name. Corporations and firms are not admitted or recognized as practitioners before the Commission.

§ 1103.2 Attorneys-at-law—qualifications and requirements to practice before the Commission.

Any person who is a member in good standing of the bar of the highest court of any State, Commonwealth, possession, territory, or the District of Columbia may represent persons before the Commission.

§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Commission.

(a) *In general.* Any citizen or resident of the United States, not an attorney-at-law, who files an application for admission to practice, accompanied by the payment of the fee prescribed by rule or order of the Commission, and who successfully completes the practitioners' examination, and shows that applicant possesses the necessary legal and technical qualifications to enable applicant to render valuable service before the Commission and that applicant is competent to advise and assist in the presentation of matters before the Commission, may be permitted to practice before the Commission.

(b) *Qualifications standards.* A non-attorney applicant for admission to practice must meet one of the following requirements:

(1) An applicant must have completed 2 years (60 semester hours or 90 quarter hours) of post secondary education and must possess technical knowledge, training or experience in the field of transportation which is regarded by the Commission as the equivalent of 2 additional years of college education;

(2) An applicant must have worked in the field of transportation for at least 10 years;

(3) An applicant must have received a bachelor's degree with at least 12 semester hours or 18 quarter hours in transportation or business; or

(4) An applicant must have received a bachelor's degree and worked in the field of transportation for at least one year. An applicant's statement of college education must be supported by a transcript of records attached to the original application. Transcripts from any college accredited by the United States Department of Education will be accepted without question. With all other institutions, the burden of proof is on the applicant to establish that the formal education satisfies the standards set forth above. The qualifications standards are intended as general guidelines. Individual situations that vary from the standards will continue to be evaluated on their own merits.

(c) *Application for admission.* An application filed pursuant to this rule under oath for admission to practice must be completed in full on the form provided by the Commission, and must be addressed to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, to the attention of the room number indicated on the form.

(d) *Application fee.* Each application filed pursuant to this rule must be accompanied by a non-refundable fee of $50.00. Payment must be made either by check or money order payable to the Interstate Commerce Commission. Cash payment will not be accepted.

(e) *Additional certification.* (1) When an application meets the required standards, a copy will be referred to the Association of Interstate Commerce Commission Practitioners for a report to the Commission as to the reputation and character of the applicant. Inquiry also will be made by the Commission of the sponsors as to their knowledge of the applicant's legal and technical qualifications as contemplated by the Commission's Rules of Practice. If the Commission is satisfied as to the applicant's qualifications, reputation and character, then applicant will be considered eligible to take the examination.

(2) The Commission may require an applicant's sponsors to provide a detailed statement of the nature and extent of their knowledge of applicant's qualifications. Upon consideration of this material, if the Commission is not satisfied as to the adequacy of applicant's qualifications, the applicant will be notified by registered mail. Applicant may then request a hearing to prove his qualifications. If applicant makes such a request, the Commission will allow a hearing. In the absence of a request for a hearing within 20 days after receipt of the notice, the application will be considered withdrawn.

(f) *Scope of examination.* If applicant meets the educational and experience standards, and is found to be of good character, the applicant will be permitted to take the examination. The examination tests the applicant's experience and knowledge of the principal regulations, laws, and economic principles in the field of transportation as well as knowledge of the Commission's Rules of Practice and Canons of Ethics.

(g) *Time and Place of Examination.* Examinations are conducted twice a year on the first Tuesday in June and December of each year. Applications may be filed at any time. Those filed from October 1 to March 31, both inclusive, will be considered for the June examination. Applications filed from April 1 to September 30, both inclusive, will be considered for the December examination. Notice of time and place to appear for examination will be mailed to qualifying applicants approximately 30 days prior to the date of the examination.

(h) *Location of Examination.* Examinations will ordinarily be conducted in selected cities where Commission offices are located. A listing of the available sites will be attached to the application form. Applicants may select their preferred examination site. If a group of prospective applicants (three applicants or more) wishes to take the examination at a location not listed, a letter stating the preferred test site should be included with the application. The Commission will make every effort to administer the test at the requested location.

(i) *Examination Results.* Results will be released within 90 days after the examination. Individual results will be forwarded to the applicants at least 1 week before being publicly released. To protect the privacy of those taking the examination, individual grades will not be released over the telephone to anyone. Requests for grades may, however, be submitted in writing to the Office of the Secretary to the attention of the address stated in the application form.

(j) *Failure to appear for examination.* Applicants who have failed to appear for, or postponed taking an examination, a total of three times without showing good cause will have any subsequently filed application returned.

(k) *Failing or postponing the examination.* Applicants who failed the examination may reapply by submitting a request in writing with an additional $50 fee. Applicants who have postponed taking the examination three times without showing good cause will have their applications returned.

(l) The $50 filing fee is not refundable.

(m) Any application resubmitted to the Commission after being returned must be accompanied by a $50 filing fee.

(n) *Content and grading of examination.* The Employee Board on Education and Practice is responsible, under the general supervision of the Vice-Chairman, for the examination of non-attorney applicants, for the preparation of examination questions, and for grading examinations. The Board consists of two attorneys and one non-attorney appointed by the Chairman with the approval of the

Commission. Under the supervision of this Board, a seven-member Committee of Examiners will grade the examination questions. The members of this Committee must have at least 2 years experience with the Commission and are appointed for a 2 year term by the Chairman, with the approval of the Commission. Members may be reappointed and, to the extent possible, no more than three members of the Committee will be replaced at one time.

(o) *Applicant's oath.* No applicant shall be admitted to practice before the Commission until applicant shall subscribe to an oath or affirmation that applicant will conduct practice uprightly and according to the law, as a practitioner before the Commission, and that applicant will support the Constitution of the United States and laws of the United States and will conform to the rules and regulations of the Commission.

§ 1103.4 Initial appearances.

Practitioners shall file a declaration that they are authorized to represent the particular party on whose behalf they appear at the time of making an initial appearance, in all proceedings. This requirement can be met by:

(a) Entering the practitioner's name as the representative of an applicant in the appropriate space on an application form;

(b) Signing any complaint, petition, protest, reply or other pleading with a designation following the practitioner's signature that he is the representative of a party;

(c) Entering an appearance at any hearing on the form provided; or

(d) Filing a letter with the Secretary of the Commission stating that practitioner is authorized to represent a party. The party represented, their address, and the docket number of the proceeding must also be identified at the time of the initial appearance.

§ 1103.5 Discipline.

(a) A member of the Commission's bar may be subject to suspension, disbarment, or other disciplinary action if it is shown that the practitoner:

(1) Has been suspended or disbarred from practice in any court of record;

(2) Violated any of the Commission's rules including the Canons of Ethics set out in §§ 1103.10–1103.35; or

(3) Engaged in conduct unbecoming a member of the bar of the Commission.

(b) The practitioner will be afforded an opportunity to show why he should not be suspended, disbarred, or otherwise disciplined. Upon the practitioner's timely response to the show cause order after any requested hearing, or upon failure to make a timely response to the show cause order, the Commission shall issue an appropriate decision.

Subpart B—Canons of Ethics

§ 1103.10 Introduction.

The following canons of ethics are adopted as a general guide for those admitted to practice before the Interstate Commerce Commission. The practitioners before the Commission include (a) lawyers, who have been regularly admitted to practice law and (b) others who have fulfilled the requirements set forth in § 1103.3. The former are bound by a broad code of ethics and unwritten rules of professional conduct which apply to every activity of a lawyer. The canons do not release the lawyer from any of the duties or principles of professional conduct by which lawyers are bound. They apply similarly to all practitioners before the Commission, but do not negate the applicability of other ethical codes. The canons are organized under three headings, The Practitioner's Duties and Responsibilities to the Commission, The Practitoner's Duties and Responsibilities to the Client, The Practitioner's Duties and Responsibilities to Other Litigants, Witnesses and the Public.

The Practitioner's Duties and Responsibilities Toward the Commission

§ 1103.11 Standards of ethical conduct in courts of the United States to be observed.

These canons further the purpose of the Commission's Rules of Practice which direct all persons appearing in proceedings before it to conform, as nearly as possible, to the standards of ethical conduct required of practice before the courts of the United States. Such standards are taken as the basis for these specifications and are modified as the nature of the practice before the Commission requires.

§ 1103.12 The practitioner's duty to and attitude toward the Commission.

(a) It is the duty of the practitioner to maintain a respectful attitude toward the Commission and for the importance of the functions it administers. In many respects the Commission functions as a Court, and practitioners should regard themselves as officers of that Court and uphold its honor and dignity.

(b) It is the right and duty of the practitioner to submit grievances about a member or employee of the Commission to the proper authorities when proper grounds for complaint exists. In such cases, charges should be encouraged and the person making them should be protected.

(c) It is the duty of the practitioner to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

§ 1103.13 Attempts to exert political or personal influence on the Commission are prohibited.

(a) It is unethical for a practitioner to attempt to influence the judgment of the Commission by threats of political or personal reprisal.

(b) Marked attention and unusual hospitality on the part of a practitioner to a Commissioner, administrative law judge, or other representative of the Commission, which is unwarranted by the personal relationship of the parties, is subject to misconstruction of motive and should be avoided.

§ 1103.14 Private communications with the Commission are prohibited.

To the extent that the Commission acts in a quasi-judicial capacity, it is improper for litigants, directly or through any counsel or representative, to communicate privately with a Commissioner, administrative law judge, or other representative of the Commission about a pending case, or to argue privately the merits thereof in the absence of the adversaries or without notice to them. Practitioners at all times shall scrupulously refrain from going beyond *ex parte* representations which are clearly proper in view of the administrative work of the Commission in their communication with the Commission and its staff.

The Practitioner's Duties and Responsibilities Toward a Client

§ 1103.15 The practitioner's duty to clients, generally.

The practitioner shall be respectful of the law and its official ministers, and shall not be involved in corruption of public officials or deception of the public. In giving improper service or advice, the practitioner invites and deserves stern condemnation. The practitioner shall observe and advise all clients to observe the statutory law to the best of his knowledge or as interpreted by competent adjudication. The practitioner owes a general duty to practice candor toward his client with respect to all aspects to his service to the client.

§ 1103.16 Adverse influences and conflicting interests.

(a) At the time of the retainer, the practitioner shall disclose to the client all circumstances of his relations to the parties, and any interest in or connection with the case.

(b) It is unethical for a practitioner to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this section, a practitioner represents conflicting interest, when on behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

(c) The obligation to represent the client with undivided fidelity and not to divulge secrets or confidence forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

§ 1103.17 Joint association of practitioners and conflicts of opinion.

(a) A client's offer of the assistance of an additional practitioner should not be regarded as evidence of lack of confidence, but the matter should be left to the determination of the client. A practitioner shall decline association as colleague if it is objectionable to the practitioner first retained, but if the client should relieve the practitioner first retained, another may come into the case.

(b) When practitioners jointly associated in a case cannot agree as to any matter vital to the interest of the client the conflict of opinion should be frankly stated to the client for final determination. The client's decision should be accepted by them unless the nature of the difference makes it impracticable for the practitioner whose judgment has been overruled to cooperate effectively. In that event, it is the practitioner's duty to ask the client to relieve him of his obligation.

(c) It is the right of any practitioner to give proper advice to those seeking relief against an unfaithful or neglectful practitioner. The practitioner against whom the complaint is made should be notified of such action.

§ 1103.18 Withdrawal from employment.

The right of a practitioner to withdraw from employment, once begun, arises only from good cause. The desire or consent of the client is not always sufficient cause for withdrawal. The practitioner shall not abandon the unfinished task to the detriment of the client except for reasons of honor, or the client's persistence over the practitioner's remonstrance in presenting frivolous defenses, or the client's deliberate disregard of an obligation as to fees or expenses. In these cases, the practitioner may be warranted in withdrawing after due notice to the client with time allowed for the employment of another practitioner. Other reasons for withdrawal might include instances in which a practitioner discovers that his client has no cause and the client is determined to continue the cause, or the practitioner's own inability to conduct a case effectively. Upon withdrawing from a case, the practitioner shall refund any part of a retainer which clearly has not been earned.

§ 1103.19 Advising upon the merits of a client's cause.

A practitioner shall try to obtain full knowledge of his client's cause before advising thereon. The practitioner shall give a candid opinion of the merits and probable result of bringing the case or of any related pending or contemplated litigation. The practitioner shall beware of bold and confident assurances to clients, especially where employment may depend upon such assurances. Whenever a fair settlement can be reached, the client shall be advised to avoid or to end litigation.

§ 1103.20 Practitioner's fees and related practices.

(a) *Establishing fees.* In establishing fees, a practitioner shall avoid charges which overestimate the value of his advice and services. A client's ability to pay cannot justify a charge in excess of the value of the service although a client's poverty may require a lesser charge or even no charge at all. Publicly quoted fees should be adhered to when actual charges are made. Practitioners are bound to charge no more than the quoted rates for 30 days following the date of their quotations unless a different period of time for the effectiveness of such rates is clearly specified when quoted, or unless permission to charge a higher rate is obtained from the Vice Chairman of the Commission.

(b) *Compensation, commissions and rebates.* A practitioner shall accept no compensation, commissions, rebates or other advantages from the parties in a proceeding other than his client without the knowledge and consent of his client after full disclosure.

(c) *Contigent fees.* Contigent fees should be only those sanctioned by law. In no case, except a charity case, should fees be entirely contingent upon success.

(d) *Division of fees.* Fees for services should be divided only with another member of the bar of practitioners and should be based upon a division of service or responsibility. It is unethical for a practitioner to retain laymen to solicit his employment in pending or prospective cases, and to reward them by a share of the fees. Such a practice cannot be too severely condemned.

(e) *Suing clients for fees.* Controversies with clients concerning compensation are to be entered into only insofar as they are compatible with self-respect and with the right to receive reasonable compensation for services. Lawsuits against clients should be resorted to only to prevent injustice, imposition or fraud.

(f) *Acquiring interest in litigation.* The practitioner shall not purchase or otherwise acquire any pecuniary interest in the subject matter of litigation which the practitioner is conducting.

(g) *Expenses.* A practitioner may not properly agree with a client that the practitioner shall pay or bear the expenses of litigation. He may in good faith advance expenses as a matter of convenience but must do so subject to reimbursement by the client. A practitioner shall bill and collect from a client, and thereafter retain only such payments and reimbursements for expenses as have actually been incurred in behalf of the client.

(h) *Witnesses' compensation.* Compensation of a witness is not to be made contigent on the success of a case in which the witness is called.

(i) *Dealing with trust property.* Money of the client or other trust property coming into the possession of the practitioner should be reported promptly, and, except with the client's knowledge and consent, should not be commingled with the practitioner's private property or be put to the practitioner's private use.

§ 1103.21 How far a practitioner may go in supporting a client's cause.

A practitioner shall put forth his best effort to maintain and defend the rights of his client. Fear of disfavor of the Commission or public unpopularity should not cause a practitioner to refrain from the full discharge of his duty. The client is entitled to the benefit of any and every remedy and defense authorized by law. The client may expect his counsel to assert every such remedy or defense. However, the practitioner shall act within the bounds of the law. A practitioner shall not violate the law or be involved in any manner of fraud or chicanery for any client.

§ 1103.22 Restraining clients from improprieties.

A practitioner should see that his clients act with the same restraint that the practitioner himself uses, particularly with reference to the client's conduct toward the Commission, fellow practitioners, witnesses and other litigants. If a client persists in improper conduct, the practitioner should terminate their relationship.

§ 1103.23 Confidences of a client.

(a) The practitioner's duty to preserve his client's confidence outlasts the practitioner's employment by the client, and this duty extends to the practitioner's employees as well. Neither practitioner nor his employees shall accept employment which involves the disclosure or use of a client's confidences without knowledge and consent of the client even though there are other available sources of information. A practitioner shall not continue employment when he discovers that this obligation presents a conflict in his duty between the former and the new client.

(b) If a practitioner is falsely accused by his client, he is not precluded from disclosing the truth in respect to the false accusation. The announced intention of a client to commit a crime is not included in the confidence which a practitioner is bound to respect. The practitioner may properly make such disclosures to prevent the act or protect those against whom that is threatened.

The Practitioner's Duties and Responsibilities Regarding Witnesses, Other Litigants and the Public

§ 1103.24 Use of adverse witnesses.

A practitioner shall not be deterred from seeking information from a witness connected with or reputed to be biased in favor of an adverse party, if the ascertainment of the truth requires that such a person be called as a witness in a proceeding.

§ 1103.25 Treatment of witnesses, litigants and other counsel.

(a) A practitioner shall always treat adverse witnesses and other litigants with fairness and due consideration. He should never minister to the prejudice of a client in a trial or conduct in a cause. The client has no right to demand that the practitioner representing him abuse the opposing party or indulge in offensive personal attacks.

(b) A practitioner shall not attempt to obstruct Commission investigations or corruptly to influence witnesses and potential witnesses during an investigation.

(c) In conducting a case it is improper for a practitioner to allude to the personal history or the personal peculiarities or idiosyncracies of practitioners on the other side, or otherwise engage in personal abuse of other practitioners.

§ 1103.26 Discussion of pending litigation in the public press.

Attempts to influence the action and attitude of the members and administrative law judges of the Commission through propaganda or through colored or distorted articles in the public press, should be avoided. However, it is not against the public interest or unfair to the Commission if the facts of pending litigation are made known to the public through the press in a fair and unbiased manner and in dispassionate terms. When the circumstances of a particular case appear to justify a statement to the public through the press, it is unethical to make it anonymously.

§ 1103.27 Candor and fairness in dealing with other litigants.

(a) The conduct of practitioners before the Commission and with other practitioners should be characterized by candor and fairness. The practitioner shall observe scrupulously the principles of fair dealing and just consideration for the rights of others.

(b) It is not candid or fair for a practitioner knowingly to misstate or misquote the contents of a paper, the testimony of a witness, the language or the argument of an opposing practitioner, or the language or effect of a decision or a text book; or, with knowledge of its invalidity to cite as authority a decision which has been overruled or otherwise impaired as a precedent or a statute which has been repealed; or in argument to assert as a fact that which has not been proved, or to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

(c) It is dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of cases.

(d) A practitioner shall not offer evidence which he knows the Commission should reject, in order to get the same before the Commission by argument for its admissibility, or arguments upon any point not properly calling for determination. He shall not introduce into an argument remarks or statements intended to influence the bystanders.

(e) A practitioner shall rely on his judgment concerning matters incidental to the trial which may, in some cases, affect the proceeding. For example, a practitioner should not force a matter to trial when there is affliction or bereavement on the part of the opposing practitioner if no harm will come from postponing the proceeding.

(f) A practitioner shall not ignore known customs or practice of the Commission, even when the law permits, without giving timely notice to the opposing practitioner.

(g) Insofar as is possible, important agreements affecting the rights of the clients should be made in writing. It is, however, dishonorable to avoid performance of an agreement fairly made only because it is not made in writing.

§ 1103.28 Negotiations with opposing party

A practitioner shall not in any way communicate upon the subject of controversy with a party represented by another practitioner except upon express agreement with the practitioner representing such party. He shall not negotiate or make compromises with the other party, but shall deal only with the opposing practitioner. The practitioner shall avoid everything that may tend to mislead a party not represented by a practitioner and should not advise that party as to the law.

§ 1103.29 Public communication and solicitation.

(a) A practitioner shall not make any public communication or solicitation for employment containing a false, fraudulent, misleading, or deceptive statement or claim. This prohibition includes, but is not limited to:

(1) the use of statements containing a material misrepresentation of fact or omission of a material fact necessary to keep the statement from being misleading;

(2) statements intended or likely to create an unjustifiable expectation; statements of fee information which are not complete and accurate;

(3) statements containing information on past performance or prediction of future success;

(4) statements of prior Commission employment outside the context of biographical information; statements containing a testimonial about or endorsement of a practitioner;

(5) statements containing an opinion as to the quality of a practitioner's services, or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format.

(b) A practitioner shall not solicit a potential client who has given the practitioner adequate notice that he does not want to receive communications from the practitioner, nor shall a practitioner make a solicitation which involves the use of undue influence.

(c) A practitioner shall not solicit a potential client who is apparently in a physical or mental condition which would make it unlikely that he could exercise reasonable, considered judgement as to the selection of a practitioner.

(d) A practitioner shall not pay or otherwise assist any other person who is not also a practitioner and a member or associate of the same firm to solicit employment for the practitioner.

(e) If a public communication is to be made through use of radio or television, it must be prerecorded and approved for broadcast by the practitioner. A recording of the actual transmission must be retained by the practitioner for a period of 1 year after the date of the final transmission.

(f) A paid advertisement must be identified as such unless it is apparent from the context that it is a paid advertisement.

(g) A practitioner shall not compensate or give anything of value to a representative of any communication medium in anticipation of or in return for professional publicity in a news item.

§ 1103.30 Acceptance of employment.

(a) The practitioner must decline to conduct a case or to make a defense when convinced that it is intended merely to harass or to injure the opposing party, or to work oppression or wrong. Otherwise, it is the practitioner's right, and having accepted retainer, it becomes the practitioner's duty, to insist upon the judgement of the Commission as to the merits of the client's claim. The practitioner's acceptance of a case is equivalent to the assertion that the client's case is proper for determination.

(b) No practitioner is obliged to act either as adviser or advocate for every potential client. The practitioner has the right to decline employment. Every practitioner shall decide what employment he will accept, what cases he will bring before the Commission for complainants, or contest for defendants or respondents.

§ 1103.31 Responsibility for litigation.

The practitioner bears the responsibility for advising as to questionable transactions, bringing questionable proceedings, or urging questionable defenses. Client's instructions cannot be used as an excuse for questionable practices.

§ 1103.32 Discovery of imposition and deception and duty to report corrupt or dishonest conduct.

(a) The practitioner, upon detecting fraud or deception practiced against the Commission or a party in a case, shall make every effort to rectify the practice by advising his client to forego any unjustly earned advantage. If such advice is refused, the practitioner should inform the injured party or that party's practitioner so that appropriate steps may be taken.

(b) Practitioners shall expose without fear or favor before the proper tribunals any corrupt or dishonest conduct and should accept without hestitation employment against a practitioner who has wronged his client. The practitioner upon the trial of a case in which perjury has been committed owes it to the Commission and to the public to bring the matter to the knowledge of the prosecuting authorities.

§ 1103.33 Responsibility when proposing a person for admission to practice before the Commission.

The practitioner shall aid in guarding the bar of the Commission against admission of candidates unfit or unqualified because deficient in either moral character or qualification. A practitioner shall propose no person for admission to practice before the Commission unless from personal knowledge or after reasonable inquiry he sincerely believes and is able to vouch that such person possesses the qualifications prescribed in § 1103.3.

§ 1103.34 Intermediaries.

(a) The services of a practitioner should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and practitioner. The responsibility and qualifications of the practitioner are individual. The practitioner shall avoid all relations which direct the performance of his duties in the interest of such intermediaries. The practitioner's relationship and responsibility to the client should be direct.

(b) The practitioner may accept employment from any organization (such as an association, club or trade organization) authorized by law to be a party to proceedings before the Commission, to render services in such proceedings in any matter in which the organization, as an entity, is interested. This employment should only include the rendering of such services to the members of the organization in respect to the individual affairs as are consistent with the free and faithful performance of his duties to the Commission.

(c) Nothing in this canon shall be construed as conflicting with § 1103.20(d).

§ 1103.35 Partnership or professional corporation names and titles.

In the formation of a partnership or professional corporation among practitioners care should be taken to avoid any misleading name or representation which would create a false impression as to the position or privileges of a member not duly authorized to practice. No person should be held as a practitioner who is not duly qualified under § 1103.2 or 1103.3 of these rules. No person who is not duly admitted to practice should be held out in a way which will give the impression that he is so admitted. No false or assumed or trade name should be used to disguise the practitioner or his partnership or professional corporation.

(11) Former §§ 1100.13–1100.16, §§ 1100.18–1100.21, and former paragraphs § 1100.4(a)–(d) are redesignated as Part 1104, and the newly redesignated Part 1104 is revised to read as follows:

PART 1104—PLEADINGS; GENERALLY

Sec.
1104.1 Address.
1104.2 Typographical specification generally.
1104.3 Copies.
1104.4 Attestation and verification.
1104.5 Affirmation or delegations under penalty of perjury in accordance with 18 U.S.C. 1621 in lieu of oath.
1104.6 Timely filing required.
1104.7 Computation and extension of time.
1104.8 Objectionable matter.
1104.9 [Reserved].
1104.10 Rejection of a deficient document.
1104.11 Amendments.
1104.12 Service of pleadings and papers.
1104.13 Replies and motions.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1104.1 Address.

Pleadings should be addressed to the Secretary, Interstate Commerce Commission, Washington, DC 20423, and should designate the docket number and title of the proceeding, if known.

§ 1104.2 Typographical specification generally.

Requirements. All pleadings should:

(a) Be on opaque, unglazed, durable paper not exceeding 8½ by 11 inches. Printing may appear on both sides of a page.

(b) Be doubled-spaced except long quotations which must be singled-spaced and indented.

(c) Be reproduced by printing, or by any other process that results in clear and permanently legible copies. Any print that cannot be reproduced by photography is not acceptable.

§ 1104.3 Copies.

The original and 6 copies of every pleading document or paper permitted or required to be filed under this subchapter must be furnished for the use of the Commission, unless otherwise specifically directed by another Commission regulation or notice in an individual proceeding.

§ 1104.4 Attestation and verification.

(a) *Signature of Attorney or Practitioner.* If a party is represented by a practitioner or an attorney, the original of each paper filed should be signed in ink by the practitioner or attorney, whose address should be stated. The signature of a practitioner or attorney constitutes a certification that the representative:

(1) Has read the pleading, document or paper;

(2) Is authorized to file it;

(3) Believes that there is good ground for the document;

(4) Has not interposed the document for delay;

A pleading, document or paper thus signed need not be verified or accompanied by affidavit unless required elsewhere in these rules.

(b) *Signature by one not authorized to represent others before the Commission.* The original of each document not signed by a practitioner or attorney must be:

(1) Signed in ink;

(2) Accompanied by the signer's address; and

(3) Verified, if it contains allegations of fact, under oath by the person, in whose behalf it is filed, or by a duly authorized officer of the corporation in whose behalf it is filed. If the pleading is a complaint, at least one complainant must sign and verify the pleading.

§ 1104.5 Affirmation or declarations under penalty of perjury in accordance with 18 U.S.C. 1621 in lieu of oath.

(a) An affirmation will be accepted in lieu of an oath.

(b) Whenever any rule of this Commission requires or permits matter to be supported, evidenced, established, or proved by sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, oath of office, or an oath required to be taken before a special official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proven by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury and dated, in the following form:

I ——————————, declare (certify, verify, or state) under penalty of perjury ("under the laws of the United States," if executed outside of the United States) that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this (specify type of document). Executed on (*date*).

Signature

(c) Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621 which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

§ 1104.6 Timely filing required.

Documents must be received for filing at the Commission's offices in Washington, DC within the time limits set for filing. The date of receipt at the Commission, and not the date of deposit in the mail, determines the timeliness of filing. However, if a document is mailed by United States express mail, postmarked at least one day prior to the due date, it will be accepted as timely. Other express mail, received by the private express mail carrier at least one day prior to the due date, also will be accepted as timely filed. The term express mail means that the carrier or delivery service offers next day delivery to Washington, D.C.

§ 1104.7 Computation and extension of time.

(a) *Computation.* In computing any period of time, the day of the act, event, or default upon which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is not a Saturday, Sunday or holiday. This rule applies to forward and backward measurement of time.

(b) *Extensions.* Any time period, except those provided by law or specified in these rules respecting informal complaints seeking damage may be extended by the Commission in its discretion, upon request and for good cause. Requests for extensions must be served on all parties of record at the same time and by the same means as service is made on the Commission, except if service is made on the Commission in person and personal service on other parties is not feasible, service on other parties should be made by first class or express mail. A request for an extension must be filed not less than 10 days before the due date. Only the original of the request and certificate of service need be filed with the Commission. If granted, the party making the request should promptly notify all parties to the proceeding of the extension and so certify to the Commission, except that this notification is not required in rulemaking proceedings.

(c) *Exception to time computation rules.* See 49 CFR Part 1152 for special abandonment rules.

§ 1104.8 Objectionable matter.

The Commission may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document.

§ 1104.9 [Reserved].

§ 1104.10 Rejection of a deficient document.

(a) The Commission may reject a document, submitted for filing if the Commission finds that the document does not comply with the rules.

(b) The Commission may either return the material unfiled or tentatively accept the material for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

§ 1104.11 Amendments.

Leave to amend any document is a matter of the Commission's discretion.

§ 1104.12 Service of pleading and papers.

(a) *Generally.* Every document filed with the Commission should include a certificate showing simultaneous service upon all parties to the proceeding. Service on the parties should be by the same method and class of service used in serving the Commission, with charges, if any, prepaid. One copy should be served on each party. If service on other parties is not feasible, service should be made by first-class or express mail. When a party is represented by a practitioner or attorney, service upon the practitioner is deemed to be service upon the party.

(b) *Exceptions.* Copies of letters to the Commission relating to oral argument under Part 1116, and subpoenas under § 1113.2, need not be served on other parties of the proceeding. Service of comments in rulemaking proceedings is not required, unless specifically directed by the Commission.

(c) *Sample Certificate of Service.*

I certify that I have this day served copies of document upon all parties of record in this proceeding, by (here state the method of making service which must be consistent with this part).

Signature Date

§ 1104.13 Replies and motions.

(a) *Time.* A party may file a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Commission, unless otherwise provided.

(b) *Number of copies.* The original of a reply or motion should be accompanied by the same number of copies required to be filed with the pleading to which the reply or motion is addressed.

(c) *Reply to a Reply.* A reply to a reply is not permitted.

PART 1105—GUIDELINES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

PART 1108—[REDESIGNATED]

(12) Former Part 1108 is redesignated as Part 1105.

(12A) The authority citation for the newly redesignated Part 1105 is revised to read as follows:

Authority: 49 U.S.C. 10321; 42 U.S.C. 4332; 5 U.S.C. 559.

PART 1106—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT OF 1975

(13) The part number and heading for Part 1106 remains unchanged.

(13A) The authority citation for Part 1106 is revised to read as follows:

Authority: 49 U.S.C. 10321; 42 U.S.C. 6362(b); 5 U.S.C. 559.

PART 1109—[REDESIGNATED]

(13B) Current Part 1109 is redesignated as Part 1137.

PARTS 1107-1109—[RESERVED].

(14) New parts 1107–1109 are added and reserved.

(15) Former Part 1103 is redesignated as Part 1110 and the newly redesignated Part 1110 is revised to read as follows:

PART 1110—PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS

Sec.
1110.1 Applicability.
1110.2 Opening of proceeding.
1110.3 Publication of notices.
1110.4 Participation.

Sec.
1110.5 Consideration of comments received.
1110.6 Petitions for extension of time to comment.
1110.7 Availability of dockets.
1110.8 Adoption of final rules.
1110.9 Petition for exemptions.
1110.10 Petitions for reconsideration.

Authority: 49 U.S.C. 10321; 5 U.S.C. 552, 553, and 559.

§ 1110.1 Applicability.

This part contains general rulemaking procedures that apply to the issuance, amendment, and repeal of rules, general policy statement, or other interpretation of rules or law of the Interstate Commerce Commission, adopted under the procedures of Section 553 of Title 5 of the United States Code (the Administrative Procedure Act).

§ 1110.2 Opening of proceeding.

(a) The Commission may open a rulemaking proceeding on its own motion. In doing so, it may consider the recommendations of other agencies of the United States and of other persons.

(b) Any person may petition the Commission to issue, amend, or repeal a rule.

(c) Each petition seeking the institution of a proceeding, filed under this section must—

(1) Be submitted, along with 15 copies if possible, to the Secretary, Interstate Commerce Commission, Washington, DC 20423;

(2) Set forth the text or substance of the rule or amendment proposed or specify the rule that the petitioner wants to have repealed or modified;

(3) Explain the interest of the petitioner in the action requested; and

(4) Contain any information and arguments available to the petitioner to support the action sought and may detail any environmental, energy, or small business considerations.

(d) In rail cases, the Commission will grant or deny a petition within 120 days of its receipt.

(e) If the Commission determines that a petition contains adequate justification, it will open a rulemaking proceeding pursuant to § 1110.3 and will notify the petitioner of its action.

(f) If the Commission determines that the petition does not contain adequate justification for opening a rulemaking proceeding, the petition will be denied, with a brief statement of the grounds for denial, and the petitioner will be notified of the Commission's action.

(g) If a petition under this section concerning a common carrier by railroad is granted, the Commission will proceed as soon as it is practicable. If the petition is denied, the Commission will publish a statement of the reasons for the denial in the **Federal Register.**

§ 1110.3 Publication of notices.

(a) Interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice may be issued as final without notice or other public rulemaking proceedings.

(b) General rulemaking proceedings will be opened by the issuance of either a notice of intent to institute a rulemaking proceeding, an advance notice of proposed rulemaking, or a notice of proposed rules. The Commission will publish the notice in the **Federal Register,** and it will invite the public to participate in the rulemaking proceeding. No notice will be issued when the Commission finds for good cause, that notice is impractica or unnecessary or contrary to the public interest.

(c) Notices of proposed rulemakings will include—

(1) The proposed rules, if prepared;

(2) A discussion of why the rulemakings are needed and what they are intended to accomplish;

(3) Identification of significant dates in the proceedings, such as dates by which comments must be filed or on which the rules are proposed to take effect;

(4) Any relevant addresses;

(5) The name and phone number of a individual within the Commission who can provide further information concerning the proceedings;

(6) Any supplementary information required; and

(7) Reference to the legal authority under which the rules are proposed.

(d) In addition to being published in the **Federal Register,** notices of propos rulemaking and subsequent notices ar decisions in rulemaking proceedings, will be served on the parties and mad available to the public through the Office of the Secretary. To the extent possible, the date of service will be th same as the date of publication in the **Federal Register.** When the service ar publication dates are not the same, th date of publication in the **Federal Register** is controlling for the purpose determining time periods set by these procedures or by notices issued in individual proceedings.

§ 1110.4 Participation.

Any person may participate in rulemaking proceedings by submittin written information or views. In addition, the Commission may invite persons to present oral arguments, participate in informal conferences, appear at informal fact-finding heari or participate in any other proceedin Information contained in written submissions will be given the same consideration.

§ 1110.5 Consideration of comments received.

All timely comments will be considered before final action is taken on a rulemaking proposal. Comments which are filed late will be considered so far as possible without incurring additional expense, delay, or prejudice to other parties.

§ 1110.6 Petitions for extension of time to comment.

(a) Any person may petition the Commission for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition and one copy must be submitted at least 10 days prior to the deadline for filing comments. The filing of the petition does not automatically extend the time for the filing of petitioner's comments.

(b) The Commission will grant the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, notice of it will be published in the **Federal Register**, and it will apply to all persons.

§ 1110.7 Availability of dockets.

Dockets of pending rulemaking proceedings are maintained in the Office of the Secretary. These dockets are available for inspection by any person, and copies may be obtained upon payment of the prescribed fee.

§ 1110.8 Adoption of final rules.

If, after consideration of all comments received, final rules are adopted, notice will be published in the **Federal Register**.

§ 1110.9 Petition for exemptions.

Any person may petition the Commission for a permanent or temporary exemption from any rule. Petitions should be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423, and should identify the rule involved and the arguments in favor of granting the exemption.

§ 1110.10 Petitions for reconsideration.

Any person may file a petition for reconsideration of the Commission's decision in a rulemaking proceeding. Petitions should be filed within 20 days of the date that the final decision is published in the **Federal Register** and should identify the interest of the petitioner, the specific action sought, and the arguments favoring that action.

(16) Former §§ 1100.26, 1100.29, 1100.30–1100.35, 1100.41, and former paragraphs 1100.24(a), 1100.25(a), (b), and (d), and 1100.44(a) are redesignated as Part 1111, and the newly redesignated Part 1111 is revised to read as follows:

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

Sec.
1111.1 Content of formal complaints; joinder.
1111.2 Amended and supplemental complaints.
1111.3 Copies; service.
1111.4 Answers and cross complaints.
1111.5 Motions to dismiss or to make more definite.
1111.6 Satisfaction of complaint.
1111.7 Investigations on the Commission's own motion.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1111.1 Content of formal complaints; joinder.

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Commission regulations, and should advise the Commission and the defendant fully in what respects these provisions or regulations have been violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issue raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing.

(b) *Requests for Oral Hearing.* A formal complaint should include a request that the proceeding be handled either under the modified procedure or at oral hearing, and a request for oral hearing should detail why oral hearing is required and should include at least two alternative hearing sites.

(c) *Multiple causes of action.* Two or more grounds of complaint concerning the same principle, subject, or statement of facts may be included in one complaint, but should be stated and numbered separately.

(d) *Joinder.* Two or more complainants may join in one complaint against one or more defendants if their respective causes of action concern substantially the same alleged violations and like facts.

§ 1111.2 Amended and supplemental complaints.

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to §§ 1111.4 and 1111.5, as if the amended or supplemental complaint was an original complaint.

§ 1111.3 Copies; service.

Formal complaints, amended or supplemental complaints, and cross complaints will be served by the Commission. The original of each formal complaint, or cross complaint must be accompanied by a sufficient number of copies to enable the Commission to serve one upon each defendant and to retain 6 copies in addition to the original.

§ 1111.4 Answers and cross complaints.

(a) *Generally.* An answer may be filed within the time provided in paragraph (b) of this section. Whether or not an answer is filed and served, the issue is joined at the conclusion of the time for filing answers, and the Commission may then proceed to a decision. In the alternative, the Commission may provide for the taking of evidence under the modified or oral hearing procedures, and in such a case the failure to answer a complaint will not bar a party from further participation in a proceeding or from the presentation of its evidence. An answer should be responsive to the complaint and should fully advise the Commission and the parties of the nature of the defense.

(b) *Time for filing; copies; service.* An answer must be filed within 20 days after the service of the complaint or within such additional time as the Commission may provide. The original and six copies of an answer must be filed with the Commission. The defendant must serve copies of the answer upon the complaint and any other defendants.

(c) *Cross complaints.* A cross complaint alleging violations by other parties to the proceeding or seeking relief against them may be filed with the answer. An answer to a cross complaint may be filed within 20 days after the service date of the cross complaint. The party shall serve copies of answer to a cross complaint upon the other parties.

§ 1111.5 Motions to dismiss or to make more definite.

An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint or cross complaint or a motion to make the complaint or cross complaint more definite. A motion to dismiss can be filed at anytime during a proceeding. A complainant or cross complainant may, within 10 days after an answer is filed, file a motion to make the answer more definite. Any motion to make more definite must specify the defects in the particular pleading and must describe fully the additional information or details thought to be necessary.

§ 1111.6 Satisfaction of complaint.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant must be filed (original only need be filed), setting forth when and how the complaint has been satisfied.

§ 1111.7 Investigations on the Commission's own motion.

(a) *Service of decision.* A decision instituting an investigation on the Commission's own motion will be served by the Commission upon respondents.

(b) *Default.* If within the time period stated in the decision instituting an investigation, a respondent fails to comply with any requirement specified in the decision, the respondent will be deemed in default and to have waived any further proceedings, and the investigation may be decided forthwith.

(17) Former §§ 1100.43, 1100.46, 1100.48, 1100.51, and former paragraphs 1100.44(b) and 1100.47(a) are redesignated as Part 1112, and the newly redesignated Part 1112 is revised to read as follows:

PART 1112—MODIFIED PROCEDURES

Sec.
1112.1 When modified procedure is used.
1112.2 Decisions directing modified procedure.
1112.3 Default for failure to comply with schedule; effect of default.
1112.4 Petitions to intervene.
1112.5 Joint pleadings.
1112.6 Verified statements; contents.
1112.7 Records in other Commission proceedings.
1112.8 Verification.
1112.9 Sample verification for statement of fact under modified procedure.
1112.10 Requests for oral hearings and cross examination.
1112.11 Authority of officers.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1112.1 When modified procedure is used.

The Commission may decide that a proceeding be heard under modified procedure when it appears that substantially all material issues of fact can be resolved through submission of written statements, and efficient disposition of the proceeding can be accomplished without oral testimony. Modified procedure may be ordered on the Commission's initiative, or upon approval of a request by any party.

§ 1112.2 Decisions directing modified procedure.

A decision directing that modified procedure be used will set out the schedule for filing verified statements by all parties and will list the names and addresses of all persons who at that time are on the service list in the proceeding. In this part, a statement responding to an opening statement is referred to as a "reply", and a statement responding to a reply is referred to as a "rebuttal". Replies to rebuttal material are not permitted.

§ 1112.3 Default for failure to comply with schedule; effect of default.

If a party fails to comply with the schedule for submission of verified statements, or any other requirements established by the modified procedure decision, that party will be deemed to be in default and to have waived any further participation in the proceeding. Thereafter, the proceeding may be disposed of without notice to and without participation by parties in default.

§ 1112.4 Petitions to intervene.

(a) The Commission may grant a petition to intervene in a proceeding set for modified procedure if intervention:

(1) Will not unduly disrupt the schedule for filing verified statements, except for good cause shown; and

(2) Would not unduly broaden the issues raised in the proceeding.

(b) The petition to intervene shall set out:

(1) The petitioner's interest in the proceeding;

(2) Whether the petitioner supports or opposes the relief sought or the action proposed or is otherwise concerned with the issues presented in the proceeding; and

(3) The petitioner's request, if any, for relief.

(c) Petitions to intervene are not required in investigation proceedings under the modified procedure involving rate-related matters, provided that the substantive requirements of (a) and (b) are met.

§ 1112.5 Joint pleadings.

Parties with common interests are encouraged to prepare joint pleadings whenever possible.

§ 1112.6 Verified statements; contents.

A verified statement should contain all the facts upon which the witness relies, and to the extent that it contains arguments, they should be based only on those facts. Parties filing reply and rebuttal verified statements will be considered to have admitted the truth of material allegations of fact contained in their opponents' statements unless those allegations are specifically challenged. Rebuttal statements shall be confined to issues raised in the reply statements to which they are directed.

§ 1112.7 Records in other Commission proceedings.

If any portion of the record before the Commission in any proceeding other than the proceeding at issue is offered in evidence, a true copy should be presented for the record.

§ 1112.8 Verification.

The original of any pleading filed must show the signature, capacity, and seal, if any, of the person administering the oath, and the date thereof.

§ 1112.9 Sample verification for statement of fact under modified procedure.

State of ———————,
County of ———————.
SS:
——————— being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.
Signed ———————.
Subscribed and sworn to before me this ——— day of ———————.
Notary Public of ———————.
My Commission expires
———————.

§ 1112.10 Requests for oral hearings and cross examination.

(a) *Requests.* Requests for oral hearings in matters originally assigned for handling under modified procedure should be included in the reply or rebuttal statement. The reasons why the matter cannot be properly resolved under modified procedure must be set out in full. Requests for cross examination of witnesses must include the name of the witness and the subject matter of the desired cross examination.

(b) *Disposition.* Unless material facts are in dispute, oral hearings will not be held. If held, oral hearings will normally be confined to material issues upon which the parties disagree. The decision setting a matter for oral hearing will define the scope of the hearing.

§ 1112.11 Authority of officers.

Except to the extent that they apply only to the conduct of a public hearing, the officer assigned to handle a proceeding under the modified procedure shall have the same authority as officers assigned to conduct oral hearings as described in 49 CFR § 1113.3 (a) and (b).

(18) Former §§ 1100.12, 1100.17, 1100.54, 1100.66–1100.70, 1100.72, 1100.74, 1100.75, 1100.80, 1100.81, 1100.84–1100.90 and former paragraphs 1100.53 (a) and (b) and 1100.82 (c), (d), and (e) are redesignated as Part 1113, and the newly redesignated Part 1113 is revised to read as follows:

PART 1113—ORAL HEARING

Sec.
1113.1 Scheduling hearings; continued hearings.
1113.2 Subpoenas.
1113.3 Authority of officers.
1113.4 Prehearing conferences.
1113.5 Stipulations.
1113.6 Appearances; withdrawal or absence from hearing.
1113.7 Intervention; petitions.
1113.8 Witness Examination; order of procedure.
1113.9 Prepared statements.
1113.10 Records in other Commission proceedings.
1113.11 Abstracts of documents.
1113.12 Exhibits.
1113.13 Filing evidence subsequent to hearing; copies.
1113.14 Objections to rulings.
1113.15 Interlocutory appeals.
1113.16 Oral argument before the hearing officer.
1113.17 Transcript of record.
1113.18 Briefs.
1113.19 Pleadings; part of the record.
1113.20–1113.30 [Reserved].
1113.31 Joint boards.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1113.1 Scheduling hearings; continued hearings.

(a) *Assignment; service and posting of notice.* In those proceedings in which an oral hearing is to be held, the Commission will assign a time and place for hearing. Notice of hearings will be posted in the Office of the Secretary of the Commission and will be served upon the parties and such other persons as may be entitled to receive notice under the Act.

(b) *Requests for changes in assignment.* Requests for postponements of date of hearing will be granted only in exceptional circumstances.

(c) *Continuances.* (1) A continuance may be granted at the descretion of the presiding officer.

(2) If the presiding officer announces the time and place of a continued hearing on the record, no further notice need be given.

(3) A joint board shall not set a date and place for a continued hearing withour first consulting the Commission. If consultation with the Commission is impractical, the hearing shall be adjourned by the joint board to such time and place as the Commission subsequently shall determine.

§ 1113.2 Subpoenas.

(a) *Issuance.* A subpoena may be issued upon the direction of the Commission on its own motion or upon request. A subpoena may be issued by the Commission or by the officer presiding at a hearing and must be signed by the Secretary or a member of the Commission.

(b) *Requests.* (1) A request for a subpoena to compel the appearance of a person at a hearing to give oral testimony, but not to produce documents, may be made either by letter (only the original need be filed with the Commission) or orally upon the record at the hearing. A showing of general relevance and reasonable scope of the evidence sought to be introduced through the subpoenaed person may be required.

(2) A request for a subpoena to compel a witness to produce documentary evidence should be made in writing by petition. The petition should specify with particularity the books, papers, or documents desired and facts expected to be proved, and should show the general relevance and reasonable scope of the evidence sought. The officer presiding at a hearing may grant a request for such a subpoena made orally upon the record.

(c) *Service.* The original subpoena should be exhibited to the person served, should be read to him if he is unable to read, and a copy should be delivered to him by the officer or person making service.

(d) *Return.* If service of subpoena is made by a United States marshal or his deputy, service should be evidenced by his return on the subpoena. If made by any other person, such person shall make an affidavit stating the date, time and manner of service; and return such affidavit on, or with, the original subpoena in accordance with the form thereon. In case of failure to make service the reasons for the failure should be stated on the original subpoeha. The written acceptance of service of a subpoena by the person subpoenaed will be sufficient without other evidence of return. The original subpoena bearing or accompanied by the required return, affidavit, statement, or acceptance of service, should be returned forthwith to the Secretary of the Commission, unless otherwise directed.

(e) *Witness fees.* A witness who is summoned and responds to the summons is entitled to the same fee as is paid for like service in the courts of the United States. Such fee is to be paid by the party at whose instance the testimony is taken at the time the subpoena is served, except that when the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered at the time of service.

§ 1113.3 Authority of officers.

(a) *General.* (1) The presiding officer has the authority to regulate the procedure in the hearing before him, and has authority to take all measures necessary or proper for the efficient performance of the duties assigned him. These include authority: (i) to hold hearings; (ii) to administer oaths and affirmations; (iii) to grant intervention; (iv) to accept any pleading; (v) to establish special rules of procedure appropriate to the effective handling of the particular proceeding; (vi) to examine witnesses; (vii) to issue subpoenas at the hearing; (viii) to dispose of requests for discovery; (ix) to hold conferences for the settlement and simplification of issues; (x) to rule on motions and dispose of procedural requests; (xi) to make initial decisions; (xii) to exclude any person from the hearing for contemptuous conduct; and (xiii) to take any other action authorized by this part, by the Administrative Procedure Act, or by the Interstate Commerce Act and related acts.

(2) The presiding officer has the authority: (i) to terminate examination or cross-examination of repetitious or cumulative nature; (ii) to limit direct examination to material matters; (iii) to limit cross-examination to disputed material facts; (iv) to require that principal examination or cross-examination be conducted by one or more counsel representing similar interests in proceedings where several parties are involved; (v) to set reasonable schedules for the presentation of witnesses; (vi) and to set reasonable time limits for the examination or cross-examination of witnesses. In order to enforce this paragraph, the officer may require a clear statement on the record of the nature of the testimony to be given by any witness.

(b) *Motions to dismiss; amendments.* (1) The presiding officer shall have power to decide any motion to dismiss the proceeding or other motion which involves final determination of the merits of the proceeding.

(2) The presiding officer may grant leave to amend any application or complaint except where the tendered

amendment would result in such a change in the geographical scope of the proceeding that it would have to be reassigned from an administrative law judge to a joint board, or vice versa.

(c) *Preparation of the decision by the prevailing party.* Any proceeding in which an oral hearing is held and in which the officer is able to announce his decision either:

(1) On the record after the close of the taking of testimony and the hearing of arguments by the officer, or

(2) By appropriate notification to the parties after the close of hearing, may be made the subject of an initial decision prepared by a party or parties in whose favor the officer decides, within a period specified by the officer, and subject to such changes as the officer considers appropriate in the draft prepared for him.

(d) *Recording; media coverage.* The presiding officer shall have authority to permit or to refuse to permit the recording of the hearing by means of live or delayed television or radio broadcast, or the use of a tape recorder or other electronic or photographic equipment by any person other than the official reporter.

§ 1113.4 Prehearing conferences.

(a) *Purposes.* Upon written notice by the Commission in any proceeding, or upon written or oral instruction of an officer, parties or their representatives may be directed to appear before an officer at a specified time and place for a conference, prior to or during the course of a hearing, or in lieu of personally appearing, to submit suggestions in writing, for the purpose of formulating issues and considering:

(1) The simplification of issues;

(2) The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification, or limitation;

(3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by any or all parties of matters of public record, such as annual reports and the like, to avoid the unnecessary introduction of proof;

(4) The procedure at the hearing;

(5) The limitation of the number of witnesses;

(6) The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and

(7) Such other matters, including disposition of requests for discovery, as may aid in the simplification of the evidence and disposition of the proceeding. Parties may request a prehearing conference.

(b) *Facts disclosed privileged.* Facts disclosed in the course of the prehearing conference are privileged and, except by agreement, will not be used against participating parties either before the Commission or elsewhere unless fully corroborated by other evidence.

(c) *Recordation and decision.* Action taken at the conference, including a recitation of the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and defining the issues, will be recorded in an appropriate decision unless the parties enter into a written stipulation as to such matters, or agree to a statement thereof made on the record by the officer.

(d) *Objection to the decision; subsequent proceedings.* If a decision is entered, the parties may, within 20 days of the date of service, or within such lesser time as is set by the officer, present objections on the grounds that the decision does not fully or correctly embody the agreements reached at the conference. Thereafter the terms of the written stipulation or statement of the officer, as the case may be, will determine the subsequent course of the proceedings, unless modified to prevent manifest injustice.

§ 1113.5 Stipulations.

Apart from the procedure contemplated by the prehearing provisions, the parties may, by stipulation in writing filed with the Commission at any stage of the proceeding, or orally made at the hearing, agree upon any pertinent facts in the proceeding. The parties should agree to facts in this manner whenever practicable.

§ 1113.6 Appearances; withdrawal or absence from hearing.

(a) *Who may appear.* Any individual may appear for himself. Any member of a partnership which is a party to any proceeding may appear for such partnerships upon adequate identification. A bona fide officer or a full-time employee of a corporation, association, or of an individual may appear for such corporation, association, or individual by permission of the officer presiding at the hearing. A party also may be represented by a practitioner.

(b) *Withdrawal or absence from hearing.* A practitioner who has entered his appearance at the hearing shall not be permitted to withdraw from the hearing, or willfully be absent therefrom, except for good cause and, wherever practicable, only with the permission of the presiding officer. If a person who has entered an appearance withdraws from the hearing in a manner other than that specified, the Commission or the Officer may take such action as, in the interest of justice and the protection of the lawful rights of all parties to the proceeding, the circumstances of the case may warrant, including the striking out of all or any part of any pleading of the offending party, and including the possible dismissal of the action or proceeding, or any part thereof, the entry of an order of default against that party, or if the withdrawal is without the permission of the presiding officer, disciplining of the practitioner concerned.

§ 1113.7 Intervention; petitions.

(a) *How requested.* Intervention will normally be granted only upon petition. In exceptional circumstances, where the issues would not be broadened or the proceeding delayed, an officer may, at his or her discretion, allow intervention upon motion made orally at the hearing.

(b) *Content generally.* A petition for leave to intervene must set forth the grounds for the proposed intervention, the position and interest of the petitioner in the proceeding, and whether petitioner's position is in support of or in opposition to the relief sought. If the proceeding is by formal complaint and affirmative relief is sought by petitioner, the petition should conform to the requirements for a formal complaint.

(c) *When filed.* A petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after, except for good cause shown.

(d) *Broadening issues; filing.* If the petition seeks a broadening of the issues and shows that they would not thereby be unduly broadened, and in respect thereof seeks affirmative relief, the petition should be filed in time to permit service upon and answer by the parties in advance of the hearing.

(e) *Copies; service; replies.* When a petition for leave to intervene is tendered at the hearing, sufficient copies of the petition must be provided for distribution to the parties represented at the hearing. If leave is granted at the hearing, one additional copy of the petition must be furnished for the use of the Commission. When a petition for leave to intervene is not tendered at the hearing, the original and three copies of the petition should be submitted to the Commission together with a certificate that service has been made by petitioner. Any reply in opposition to a petition for leave to intervene not tendered at the hearing must be filed within 20 days after service of the petition to intervene. At the discretion of the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies.

(f) *Disposition*. Leave to intervene will be granted only when the petitioner addresses issues reasonably pertinent to the issues already presented and which do not unduly broaden them. If leave is granted the petitioner becomes an intervener and a party to the proceeding.

§ 1113.8 Witness examination; order of procedure.

Witnesses will be orally examined under oath before the officer unless the facts are presented to the Commission in the manner provided under modified procedure. In formal complaint, application, and investigation proceedings, complainant, applicant, and respondent, respectively, shall open and close at the hearing. In the event of further hearings granted on petition, the petitioners requesting further hearing shall open and close the proceeding. Instances exist in which parties other than the respondent may open and close in investigations were the burden of proof is not upon the respondent. Interveners shall follow the party in whose behalf the intervention is made. The foregoing order of presentation may be varied by the officer.

§ 1113.9 Prepared statements.

With the approval of the officer, a witness may read into the record, as his testimony, statements of fact or expressions of opinion prepared by the witness, or written answers to interrogatories of counsel. A prepared statement of a witness who is present at the hearing may be received as an exhibit, provided that the statement does not include argument. Before any such statement is read or admitted in evidence, the witness shall deliver to the officer, the reporter, and to opposing counsel, as may be directed by the officer, a copy of such statement or of such interrogatories and the written answers thereto. The admissibility of the evidence contained in such statement will be subject to the same rules as if such testimony was produced orally, including the right of cross-examination of the witness. The officer may require that the witness testify orally if, in the officer's opinion, the memory or demeanor of the witness may be of importance.

§ 1113.10 Records in other Commission proceedings.

A portion of the record before the Commission in another proceeding may be offered in evidence at an oral hearing. A party making such an offer must provide, as an exhibit, a certified copy of the material sought to be introduced. A hearing officer may waive the requirement that a copy be provided, subject to such conditions as he or she may impose to assure that a copy will be available later, if needed, at no expense to the Commission and to assure that the interests of other parties are not prejudiced. An offer of evidence under this section will be subject to objection by other parties.

§ 1113.11 Abstracts of documents.

When documents, such as freight bills or bills of lading, are numerous, the officer may refuse to receive all the documents and in evidence instead admit only a limited number of representative documents. He may instruct, if the proffer be for the purpose of proving damage, that introduction be deferred until there is opportunity to comply with § 1133.2. If the proffer be for another purpose the officer may require the party in orderly fashion to abstract the relevant data from the documents, affording other parties reasonable opportunity to examine both the documents and the abstract, and thereupon offer such abstract in evidence in exhibit form.

§ 1113.12 Exhibits.

(a) *Copies*. Unless the officer otherwise directs, the original and one copy of each exhibit of a documentary character should be furnished for the use of the Commission. The original will be delivered to the reporter, and the copy to the officer. If the hearing is before a board, a copy of the exhibit should be furnished to each member of the board, unless the board otherwise directs. Unless the officer for cause directs otherwise, a reasonable number of copies should be furnished to counsel in attendance at the hearing.

(b) *Interchange prior to hearing*. Whenever practicable, the parties should interchange copies of exhibits or other pertinent material or matter before or at the commencement of the hearing; and the Commission or presiding officer may so direct.

(c) *When excluded how treated*. When exhibit has been identified, objected to, and excluded, the officer will develop whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it should be given an exhibit number for identification and be incorporated in the record. Exhibit numbers once used for identification will not be duplicated thereafter.

§ 1113.13 Filing evidence subsequent to hearing; copies.

Except as provided in this section or as expressly may be permitted in a particular instance, the Commission will not receive in evidence or consider as part of the record any documents, letters, or other writings submitted for consideration in connection with any proceeding after close of the hearing, and may return any such documents to the sender. Before the close of a hearing the officer may, at the request of a party or upon his own motion, or upon agreement of the parties, require that a party furnish additional documentary evidence that supplements the existing record, within a stated period of time. Documentary evidence to be furnished in this way will be given an exhibit number at the time of filing and the parties advised accordingly. Unless otherwise directed by the officer, the original and one copy of such submission should be filed with the Commission.

§ 1113.14 Objections to rulings.

It is sufficient that a party, at the time the ruling is made or sought, make known to the officer on the record the action which he desires the officer to take or his objection to the action of the officer and his grounds for that objection. An objection not pressed in brief will be considered as waived. Where no brief is filed an objection will be considered as waived if not pressed in an appeal or reply to an appeal, if filed, or in a separate petition dealing only with that objection.

§ 1113.15 Interlocutory appeals.

Rulings of the presiding officer may be appealed prior to service of the initial decision only if:

(a) The ruling denies or terminates any person's participation,

(b) The ruling grants a request for the inspection of documents not ordinarily available for public inspection,

(c) The ruling overrules an objection based on privilege, the result of which ruling is to require the presentation of testimony or documents, or

(d) The presiding officer finds that the ruling may result in substantial irreparable harm, substantial detriment to the public interest, or undue prejudice to a party.

§ 1113.16 Oral argument before the hearing officer.

At the discretion of the hearing officer and upon reasonable notice to the parties, oral argument may be made at the close of testimony before him as an alternative to the filing of written briefs.

Such argument, which should include requested findings and conclusions, will be recorded and made a part of the transcript of testimony, and will be available to the Commission for consideration in deciding the case. The making of such argument will not preclude oral argument before the Commission.

§ 1113.17 Transcript of record.

(a) *Filing.* After the close of the hearing, the complete transcript of the testimony taken and the exhibits shall be part of the record in the proceeding.

(b) *Corrections.* A suggested correction in a transcript ordinarily will be considered only if offered not later than 20 days after the date each transcript is filed with the Commission. A copy of the letter (original only need be filed with the Commission) requesting the suggested corrections should be served upon all parties of record and with 2 copies to the official reporter.

(c) *Objections to corrections.* Parties disagreeing with corrections suggested pursuant to paragraph (b) of this section should file written objections in the same manner as suggested corrections are to be filed. Objections to suggested corrections should be filed not later than 15 days after the filing with the Commission of suggested corrections. If no objections are timely filed, the Secretary of the Commission shall make the suggested corrections to the transcript. If objections are timely filed, the officer who presided at the hearing shall determine the merits of the suggested correction and enter an appropriate decision in the proceeding.

(d) *No free copies.* The Commission will not furnish free copies of the transcript to any party to any proceeding.

§ 1113.18 Briefs.

(a) *When filed.* In a proceeding which has been the subject of oral hearing, and in which briefs are to be filed, that fact will be stated by the officer on the record. The officer shall fix the time for filing briefs. Simultaneous filing will normally be required, and reply briefs will not normally be permitted.

(b) *Evidence abstract.* A brief filed after a hearing may contain an abstract of the evidence relied upon by the party filing it, preferably assembled by subjects, with reference to the pages of the record, if written, or exhibit where the evidence appears. In the event the party elects not to include a separate abstract in his brief, he should give specific reference to the portions of the record, whether transcript or otherwise, relied upon in support of the respective statements of fact made throughout the brief.

(c) *Requested findings.* Each brief should include such requests for specific findings, separately stated and numbered, as the party desires the Commission to make.

(d) *Exhibit reproduction.* Exhibits should not be reproduced in the brief, but may be shown, within reasonable limits, in an appendix to the brief. Analysis of such exhibits should be included in the brief where pertinent.

§ 1113.19 Pleadings: part of the record.

Matters of fact that are verified and filed prior to oral hearing and that are not specifically denied constitute evidence and are part of the record. A witness, who would present such evidence, must be made available for cross-examination if a request is reasonably made. This rule does not apply to protest against tariffs or schedules.

§ 1113.20-1113.30 [Reserved].

§ 1113.31 Joint boards.

(a) *Organization.* After a joint board has been established according to 49 U.S.C. 10342 et seq., it will select one of its members to act as chairman. If the person selected as chairman is absent from a meeting, the members attending shall select a temporary substitute chairman for that meeting.

(b) *Waiver of action by absence of a joint board.* If a joint board member fails to participate in a hearing after notice of the hearing, the failure to participate acts as a waiver of action on the part of the State from which the member was appointed.

(c) *Procedural ruling by chairman in case of disagreement.* If the members of a joint board or a majority of the board attending a hearing cannot agree upon the disposition of a procedural question arising at the hearing, the chairman, or acting chairman, shall decide the question.

(d) *Form of joint board's decision; service.* The board's decision will conform as nearly as possible to the form of decisions issued by the Commission. The board's decision will be served by the Commission.

(e) *Termination of joint board jurisdiction and subsequent procedure.* The jurisdiction of a joint board over a referred matter will terminate when the decision of the joint board is served by the Commission. Joint board jurisdiction also may be terminated by Commission decision, and it will terminate if—

(1) The board's conclusions are submitted without a written decision;

(2) Each state entitled to appoint a member waives action in writing from the appropriate state authority;

(3) All of the members of the board fail to appear at the hearing;

(4) A majority of the board fails to agree on substantive matters; or

(5) The board fails to act in accordance with 49 U.S.C. 10343(d)(2).

When jurisdiction of the joint board has been terminated without a decision by the board due to the reasons stated in paragraphs (e)(1)-(4) of this section, the Commission or a designated officer will enter a decision based upon the record, if any, made before the board or after further hearings, if required.

(19) Former §§ 1100.55-1100.65, 1100.73, 1100.76, 1100.77, 1100.79, 1100.80, and former paragraphs 1100.82(a) and (b) are redesignated as Part 1114, and the newly redesignated Part 1114 is revised to read as follows:

PART 1114—EVIDENCE; DISCOVERY

Subpart A—General Rules of Evidence

Sec.
1114.1 Admissibility.
1114.2 Official records.
1114.3 Admissibility of business records.
1114.4 Documents in Commission's files.
1114.5 Records in other Commission proceedings.
1114.6 Official notice of corroborative material.
1114.7 Exhibits.

Subpart B—Discovery

1114.21 Applicability; general provisions.
1114.22 Deposition.
1114.23 Depositions; location, officer, time, fees, absence, disqualification.
1114.24 Depositions; procedures.
1114.25 Effect of errors and irregularities in dispositions.
1114.26 Written interrogatories to parties.
1114.27 Request for admission.
1114.28 Depositions, requests for admission, written interrogatories, and responses thereto: inclusion in record.
1114.29 Supplementation of responses.
1114.30 Production of documents and records and entry upon land for inspection and other purposes.
1114.31 Failure to respond to discovery.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

Subpart A—General Rules of Evidence

§ 1114.1 Admissibility.

Any evidence which is sufficiently reliable and probative to support a decision under the provisions of the Administrative Procedure Act, or which would be admissible under the general statutes of the United States, or under the rules of evidence governing proceedings in matters not involving trial by jury in the courts of the United

States, will be admissible in hearings before the Commission. The rules of evidence will be applied in any proceeding to the end that necessary and proper evidence will be conveniently, inexpensively, and speedily produced, while preserving the substantial rights of the parties.

§ 1114.2 Official records.

An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by a deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of this office contain no such record or entry. This section does not prevent the proof of official records or of entry or lack of entry therein or official notice thereof by a method authorized by any applicable statute or by the rules of evidence.

§ 1114.3 Admissibility of business records.

Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it appears that it was made in the regular course of business, and that it was the regular course of business to make such memorandum or record at the time such record was made, or within a reasonable time thereafter.

§ 1114.4 Documents in Commission's files.

If a party offers in evidence any matter contained in a report or other document open to public inspection in the files of the Commission, such report or other document need not be made available at the hearing.

§ 1114.5 Records in other Commission proceedings.

If any portion of the record before the Commission in any proceeding other than the proceeding at issue is offered in evidence, a true copy will be presented for the record.

§ 1114.6 Official notice of corroborative material.

The Commission or a hearing officer may take notice of official records, records in other Commission proceedings, or other materials which are otherwise subject to specific rules governing admissibility regardless of compliance with the full technical provisions of such rules, where the admissibility of the evidence is for purposes of corroboration of testimony presented or to evaluate the credibility of testimony or allegations made in proceedings where the public interest is not otherwise adequately represented by counsel capable of fully complying with such rules.

§ 1114.7 Exhibits.

(a) *Generally.* Whenever practical the sheets of each exhibit and the lines of each sheet should be numbered. If the exhibit consists of five or more sheets, the first sheet or title-page should be confined to a brief statement of what the exhibit purports to show with reference by sheet and line to illustrative or typical examples contained therein. The exhibit should bear an identifying number, letter, or short title which will readily distinguish it from other exhibits offered by the same party. It is desirable that, whenever practicable, evidence should be condensed into tables. Whenever practicable, especially in proceedings in which it is likely that many documents will be offered, all the documents produced by a single witness should be assembled and bound together, suitably arranged and indexed, so that they may be identified and offered as one exhibit. Exhibits should not be argumentative and should be limited to statements of facts, and be relevant and material to the issue, which can better be shown in that form than by oral testimony.

(b) *Reference to tariff authority, routes, and distances.* All exhibits showing rates, fares, charges, or other tariff or schedule provisions must, by appropriate Interstate Commerce Commission number reference, indicate the tariff or schedule authority therefor. If distances are shown, they must also show the authority therefor, and, by lines, highways, or waterways, and junction points, the routes over which the distances are computed. The routes over which the distances are computed need not be shown when such distances are specifically published in a tariff or schedule lawfully on file with the Commission, or definitely ascertainable from a tariff or schedule on file with the Commission showing rates prescribed by the Commission and based on short line distances, or short-highway distances, provided the exhibit makes specific reference to such tariff or schedules as provided by this section.

Subpart B—Discovery

§ 1114.21 Applicability; general provisions.

(a) *When discovery is available.* (1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding. For the purpose of this subchapter, informal proceedings are those not required to be determined on the record after hearing and include informal complaints and all proceedings assigned for initial disposition to employee boards (except the review boards) under 49 CFR 1011.6.

(2) It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) *How discovery is obtained.* (1) In non-rail licensing proceedings governed by 49 CFR Part 1160, no discovery procedures may be used unless the Commission, upon its own motion or upon verified petition of a party, shall have entered a decision approving discovery.

(2) In other proceedings other than those governed by 49 CFR Part 1160, those discovery procedures providing for the service of written interrogatories and requests for admissions (49 CFR 1114.26 and 1114.27) may be used by parties without filing a petition and obtaining prior Commission approval. The other discovery procedures may be used only when the Commission, upon its own motion or upon verified petition of a party, has entered a decision approving discovery.

(3) Whenever possible a petition for discovery must be filed in sufficient time to allow for the filing of replies and for consideration by the Commission without requiring the postponement of

any hearing or the submission of initial statements under modified procedure. Use of discovery in those circumstances where no petition is required must also be accomplished whenever possible without requiring any such postponement.

(c) *Protective conditions.* Upon motion by any party, by the person from whom discovery is sought, or by any person with a reasonable interest in the data, information, or material sought to be discovered and for good cause shown, any order which justice requires may be entered to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding. Relief through a protective order may include one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time and place;

(3) That the discovery may be had only upon such terms and conditions as the Commission may impose to insure financial responsibility indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred;

(4) That the discovery may be had only by a method other than that selected by the party seeking discovery;

(5) That certain matters not be inquired into or that the scope of discovery be limited to certain matters;

(6) That discovery be conducted with no one present except persons designated in the protective order;

(7) That a deposition after being sealed be opened only by order of the Commission;

(8) That a trade secret or other confidential research development or commercial information not be disclosed or be disclosed only in a designated way; and

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened only upon direction or order of the Commission.

If the motion for a protective order is denied in whole or in part, the Commission may, on such terms and conditions as it deems just, enter an order requiring any party or person to provide or permit discovery. A protective order under this paragraph may only be sought after, or in conjunction with, an effort by any party to obtain relief under 49 CFR 1114.24(a), 1114.26(a), or 1114.31.

(d) *Sequence and timing of discovery.* Unless the Commission upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, should not operate to delay any party's discovery.

(e) *Stipulations regarding discovery.* Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Commission may:

(1) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner and when so taken may be used like other depositions; and

(2) Modify the procedures provided by these rules for other methods of discovery.

§ 1114.22 Deposition.

(a) *Purpose.* The testimony of any person, including a party, may be taken by deposition upon oral examination.

(b) *Petition.* The petition requesting an order to take a deposition and perpetuate testimony or to produce documents and materials:

(1) Should set forth the facts it desires to establish and the substance it expects to elicit;

(2) Should be served upon all parties to the proceeding and upon the person sought to be deposed and/or the custodian of the documents or materials sought to be produced;

(3) Should set forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition should be taken; and

(4) Should specify with particularity the documents and materials which the deponent is requested to produce.

(c) *Order.* If the Commission is convinced on its own initiative or by the petition requesting an order to take a deposition that the deposition will prevent a failure or delay of justice, it will serve an order upon the parties and the witness, naming the witness whose deposition is to be taken, specifying the time when, the place where, and the officer before whom the deposition is to be taken, and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The provisions for the taking of the deposition specified in the Commission's order may or may not be the same as requested in the petition. The deposition may then be taken in accordance with these rules, and the Commission may make orders of the character provided by 49 CFR 1114.31.

§ 1114.23 Depositions; location, officer, time, fees, absence, disqualification.

(a) *Where deposition should be taken.* Unless otherwise ordered or agreed to be stipulation, depositions should be taken in the city or municipality where the deponent is located.

(b) *Officer before whom taken.* Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions should be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Within a foreign country, depositions may be taken before an officer or person designated by the Commission or agreed upon by the parties by stipulation in writing to be filed with the Commission.

(c) *Fees.* A witness whose deposition is taken pursuant to these rules and the officer taking same, unless he be employed by the Commission, shall be entitled to the same fee paid for like service in the courts of the United States, which fee should be paid by the party at whose instance the deposition is taken.

(d) *Failure to attend or to serve subpoena; expenses.* (1) If the party who filed a petition for discovery fails to attend and proceed with the taking of the deposition and another party attends in person or by representative pursuant to an order of the Commission granting discovery the Commission may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees.

(2) If the party who filed a petition for discovery fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by representative because he expects the deposition of the witness to be taken, the Commission may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees.

(e) *Disqualification for interest.* No deposition should be taken before a person who is a relative or employee or representative or counsel of any of the parties, or is a relative or employee of such representative or counsel or is financially interested in the proceeding.

§ 1114.24 Depositions; procedures.

(a) *Examination.* Examination and cross-examination of witnesses should proceed as permitted at a hearing and should be limited to the subject matter specified in the order granting discovery. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, should be noted by the officer upon the deposition. Evidence objected to should be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and shall transmit them to the officer, who shall open the sealed envelope, propound the questions to the witness, and record the answers verbatim.

(b) *Use of depositions.* At the hearings, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership, association or governmental agency (other than this Commission, except in those instances where the Commission itself is a party to the proceeding) which is a party, may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer or Commission finds:

(i) That the witness is dead; or

(ii) That the witness is at a greater distance than 100 miles from the place of hearing or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally at public hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. Substitution of parties does not affect the right to use depositions previously taken.

(c) *Effect of taking or using depositions.* A party should not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this should not apply to the use of an adverse party of a deposition under paragraph (b)(2) of this section. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) *Motions to protect.* At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Commission may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in 49 CFR § 1114.21(c). If the order made terminates the examination, it should be resumed thereafter only if so ordered. Upon demand of the objecting party or deponent, the taking of the deposition should be suspended for the time necessary to make a motion for an order.

(e) *Recordation.* The officer before whom the deposition is to be taken shall observe the provisions of 49 CFR § 1113.6 respecting appearances and typographical specifications, shall put the witness under oath, and shall personally, or by someone acting under his direction and in his presence, record and transcribe the testimony of the witness as required by these rules.

(f) *Signing.* When the testimony is fully transcribed or otherwise recorded, the deposition should be submitted to the witness for examination and should be read to or by him unless such examination and reading are waived by the witness and the parties. Any changes in form or substance which the witness desires to make should be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The witness shall then sign the deposition, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 15 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used fully as though signed, unless, on a motion to suppress, it is found that the reasons given for refusal to sign require rejection of the deposition in whole or in part.

(g) *Attestation.* The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and that the officer is: (1) not a relative, employee, representative or counsel of any of the parties, (2) not a relative or employee of such representative or counsel, and (3) not financially interested in the proceeding.

(h) *Return.* The officer shall securely seal the deposition in an envelope endorsed with sufficient information to identify the proceeding and marked "Deposition of (here insert name of witness)" and shall either personally deliver or promptly send the original and one copy of all exhibits by registered mail to the Secretary of the Commission. A deposition to be offered in evidence must reach the Commission not later than 5 days before the date it is to be so offered.

(i) *Notice.* The party taking the deposition shall give prompt notice of its filing to all other parties.

(j) *Copies.* Upon payment of reasonable charges, the officer before whom the deposition is taken shall furnish a copy of it to any interested party or to the deponent.

§ 1114.25 Effect of errors and irregularities in depositions.

(a) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(b) *As to taking of deposition.* (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(c) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under 49 CFR 1114.23 and 1114.24 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

§ 1114.26 Written interrogatories to parties.

(a) *Availability; procedures for use.* Subject to the provisions of 49 CFR 1114.21(b)(2), any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation, partnership, association, or Governmental agency (other than this Commission, except in those instances where the Commission itself is a party to the proceeding), by any officer or agent, who shall furnish such information as is available to the party. Copies of any interrogatories served, and answers thereto, should also be filed with the Commission. Each interrogatory should be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated in lieu of an answer. The answers are to be signed by the person making them and subscribed by an appropriate verification generally in the form prescribed in 49 CFR 1112.9. Objections are to be signed by the representative or counsel making them. The person upon whom the interrogatories have been served shall serve a copy of the answers and objections within the time period designated by the party submitting the interrogatories, but not less than 15 days after the service thereof.

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies thereof, or compilation, abstracts, or summaries therefrom. If information sought is contained in computer runs, punchcards, or tapes which also contain privileged or proprietary information or information the disclosure of which is proscribed by the act, it will be sufficient response under these rules that the person upon whom the interrogatory has been served is willing to make available to and permit an independent professional organization not interested in the proceeding and paid by the party serving the interrogatory to extract from such runs, punchcards, or tapes the information sought in the interrogatory that is not privileged or proprietary information or information the disclosure of which is proscribed by the act.

(c) *Service of interrogatories in those proceedings not requiring a petition.* In those proceedings not requiring a petition for interrogatories, and unless under special circumstances and for good cause, no written interrogatories shall be served within 20 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when the written interrogatories are to be served in a foreign country, they shall not be served within 40 days prior to such date.

§ 1114.27 Request for admission.

(a) *Availability; procedures for use.* Subject to the provisions of 49 CFR 1114.21(b)(2), a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of 49 CFR 1114.21 set forth in the request, including the genuineness of any documents described in the request for admission. Copies of documents should be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Copies of any requests for admission served, and answers thereto, should also be filed with the Commission. Each matter of which an admission is requested should be separately set forth. The matter is admitted unless, within a period designated in the request, not less than 15 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his representative or counsel. If objection is made, the reasons therefor should be stated. The answer should specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial should fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; he may, subject to the provisions of 49 CFR 1114.31, deny the matter or set forth reasons why he cannot admit or deny it. Copies of any answers or objections should be filed with the Commission.

(b) *Effect of admission.* Any matter admitted under this rule is conclusively established unless upon petition and a showing of good cause the Commission enters an order permitting withdrawal or amendment of the admission. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

(c) *Service of written requests for admission in those proceedings not requiring a petition.* In those proceedings not requiring a petition for requests for admission, and unless under special circumstances and for good cause shown, no requests for admission should be served within 20 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when requests for admission are to be served in a foreign country they should not be served within 40 days prior to such date.

§ 1114.28 Depositions, requests for admission, written interrogatories, and responses thereto: inclusion in record.

At the oral hearing, or upon the submission of statements under the modified procedure, depositions, requests for admission and written interrogatories, and respective responses may be offered in evidence by the party at whose instance they were taken. If not offered by such party, they may be offered in whole or in part by any other party. If only part of a deposition, request for admission or written interrogatory, or response thereto is offered in evidence by a party, any other party (where the matter is being heard orally) may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts. Such depositions, requests for admission and written interrogatories, and responses thereto should be admissible in evidence subject to such objections as to competency of the witness, or competency, relevancy, or materiality of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.

§ 1114.29 Supplementation of responses.

A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement his response to include information thereafter acquired in the following instances:

(a) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:

(1) The identity and locations of persons having knowledge of discoverable matters, and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

(b) A party who knows or later learns that his response is incorrect is under a duty seasonably to correct his response.

(c) A duty to supplement responses may be imposed by order, agreement of the parties, or at any time prior to the hearing or the submission of verified statements under the modified procedure through new requests for supplementation of prior responses.

§ 1114.30 Production of documents and records and entry upon land for inspection and other purposes.

(a) *Scope.* Any party may be ordered and directed:

(1) To produce and permit the petitioning party to inspect any designated documents (including writings, drawings, graphs, charts, photographs, phonograph records, tapes, and other data compilations from which information can be obtained, translated, if necessary, with or without the use of detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the order is served, but if the writings or data compilations (including computer runs, punchcards, and tapes) include privileged or proprietary information or information the disclosure of which is proscribed by the act, such writings or data compilations need not be produced under this rule but may be provided pursuant to 49 CFR 1114.26(b); or

(2) To permit, subject to appropriate liability releases and safety and operating considerations, entry upon designated land or other property in the possession or control of the party upon whom the order is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(b) *Procedure.* Any petition filed pursuant to this rule should set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The petition should specify a reasonable time, place, and manner of making the inspection and performing the related acts.

§ 1114.31 Failure to respond to discovery.

(a) *Failure to answer.* If a deponent fails to answer or gives an evasive answer or incomplete answer to a question propounded under 49 CFR 1114.24(a), or a party fails to answer or gives evasive or incomplete answers to written interrogatories served pursuant to 49 CFR 1114.26(a), the party seeking discovery may apply for an order compelling an answer by motion filed with the Commission and served on all parties and deponents. Such motion to compel an answer must be filed with the Commission and served on all parties and deponents. Such motion to compel an answer must be filed with the Commission within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories. On matters relating to a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(b) *Failure to comply with order.* (1) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the Commission, such refusal may subject the refusing party or person to action by the Commission under 49 U.S.C. 10321(c)(3) and (d)(4) to compel appearance and compliance with the Commission's order.

(2) If any party or an officer, director, managing agent, or employee of a party or person refuses to obey an order made under paragraph (a) of this section requiring him to answer designated questions, or an order made under 49 CFR 1114.30 requiring him to produce any document or other thing for inspection, copying, testing, sampling, or photographing or to permit it to be done, or to permit entry upon land or other property, the Commission may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which questions were asked, or the character or description of the thing or land, or the contents of the paper, or any other designated facts should be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order:

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony:

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceedings or any party thereof.

(c) *Expenses on refusal to admit.* If a party, after being served with a request under 49 CFR 1114.27 to admit the genuineness of any document or the truth of any matter of fact, serves a sworn denial thereof, and if the party requesting the admission thereafter proves the genuineness of any such document or the truth of any such matter of fact the Commission may order the party making such denial to pay to such other party the reasonable expenses incurred in making that proof, including reasonable attorney's fees.

(d) *Failure of party to attend or serve answers.* If a party or a person or an officer, director, managing agent, or employee of a party or person willfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under 49 CFR 1114.26, after proper service of such interrogatories, the Commission on motion and notice may strike out all or any part of any pleading of that party or person, or dismiss the proceeding or any part thereof.

(e) *Expenses against United States.* Expenses and attorney's fees are not to be imposed upon the United States under this rule.

(20) Former § 1100.98 is redesignated as Part 1115, and the newly redesignated Part 1115 is revised to read as follows:

PART 1115—APPELLATE PROCEDURES

Sec.
1115.1 Scope of rule.
1115.2 Initial decisions.
1115.3 Commission actions other than initial decisions.
1115.4 Petitions to reopen administratively final actions.
1115.5 Petitions for other relief.
1115.6 Exhaustion of remedies and judicial review.

Authority: 49 U.S.C. 10321, 10322, and 10377; 5 U.S.C. 559.

§ 1115.1 Scope of rule.

(a) These appellate procedures apply in cases where a hearing is required by law or Commission action. They do not apply to informal matters such as car service, temporary authority, suspension, special permission actions, or to other matters of an interlocutory nature except as specifically provided below. Except as provided in paragraph (c) of this section, these procedures do not apply to appeals from decisions of individual Commission employees in purely procedural matters made pursuant to authority delegated to them by the Chairman of the Commission. (See 49 CFR Part 1152) Abandonment and discontinuance proceedings instituted under 49 USC 10903 are governed by separate appellate procedures exclusive to those proceedings. (See 49 CFR Part 1152)

(b) Requests for appellate relief may relate either to initial decisions or to Commission actions other than initial decisions. For each category, this rule describes the types of appeal permitted, the requirements to be observed in filing an appeal, provisions for stay of the action, and the status of the action in the absence of a stay.

(c) Appeals from the decisions of employees acting under authority delegated to them by the Chairman of the Commission pursuant to 49 CFR 1011.7 will be acted upon by the Chairman of the Commission. Appeals must be filed within 10 days of the date of the action taken by the employee, and responses to appeals must be filed within 10 days thereafter. Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

§ 1115.2 Initial decisions.

This category includes the initial decision of an administrative law judge, individual Commissioner, employee board, joint board, division, or panel of the Commission.

(a) An appeal of right is permitted.

(b) Appeals must be based on one or more of the following grounds:

(1) That a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record;

(2) That a necessary legal conclusion, or finding is contrary to law, Commission precedent, or policy;

(3) That an important question of law, policy, or discretion is involved which is without governing precedent;

(4) That prejudicial procedural error has occurred.

(c) Appeals must detail the assailed findings with supporting citations to the record and authorities.

(d) Appeals and replies shall not exceed 30 pages in length, including argument, and appendices or other attachments, but excluding a table of cases and an index of subject matter.

(e) Appeals must be filed within 20 days after the service date of the decision or within any further period (not to exceed 20 days) the Commission may authorize. In proceedings seeking motor carrier operating authority replies must be filed within 15 days of the date the appeal is due. In all other proceedings covered by these rules, replies must be filed within 20 days of the date the appeal is due.

(f) The timely filing of an appeal to an initial decision will stay the effect of the action pending determination of the appeal.

(g) If an appeal of an initial decision is not timely filed or the Commission does not stay the effectiveness on its own motion, the order set forth in the initial decision shall become the action of the Commission and be effective at the expiration of the time for filing, unless otherwise provided.

§ 1115.3 Commission actions other than initial decisions.

This category includes: a decision of a division in the first instance, where the requirement for an initial decision was voided (for rail proceedings pursuant to 49 U.S.C. 10327(c)) or waive (for nonrail proceedings pursuant to 49 U.S.C. 10322(c)); an action of the entire Commission in the first instance; and an action taken by a review board or division on an appeal filed under § 1115.2.

(a) A discretionary appeal is permitted. It will be designated a "petition for administrative review," except that, when it is related to an action of the entire Commission in the first instance, it must be designated a "petition to reopen."

(b) The petition will be granted only upon a showing of one or more of the following points:

(1) The prior action (all categories) will be affected materially because of new evidence or changed circumstances.

(2) The prior action was taken by a division in the first instance or by a review board or division in an appellant capacity, and involves a matter of general transportation importance.

(3) The prior action was taken by the entire Commission in the first instance, and involves material error.

(c) To the extent the petition requests further hearing, rehearing, reargument, or reconsideration, the petition must state in detail the nature of and reasons for the relief requested. When in a petition filed under this section, a party seeks an opportunity to introduce evidence, the evidence must be stated briefly, must not appear to be cumulative, and explanation must be given why it was not previously adduced.

(d) The petition and any reply must not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and must accompany those that exceed 10 pages in length.

(e) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as a division or the Commission may authorize. In proceedings seeking motor carrier authority replies must be filed within 15 days of the date the appeal is due. In all other proceedings covered by these rules, replies must be filed within 20 days of the date the appeal is due.

(f) The filing of a petition will not automatically stay the effect of a prior action, but the Commission may stay the effect of the action on its own motion or on petition. A petition to stay may be filed in advance of the petition for administrative review or petition to reopen and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Commission no later than 16 days after service of the action.

(1) In a rail proceeding, the action, if not stayed, will become effective 30 days after it is served, unless the acting body provides for the action to become effective at an earlier date. On the day the action is served parties may initiate judicial review.

(2) In a nonrail proceeding, the action, if not stayed, will be effective on the date it is served, and parties may initiate judicial review.

(3) In all final actions, the provisions of the action will take effect on the date of service, unless otherwise provided. On this date parties must comply with the terms, conditions, or orders of the effective decision.

§ 1115.4 Petitions to reopen administratively final actions.

A person at any time may file a petition to reopen any administratively final action of the Commission pursuant to the requirements of § 1115.3 (c) and (d) of this part. A petition to reopen an operating rights application proceeding must state in detail information sufficient to establish either fraud or ministerial mistake in the earlier decision. A petition to reopen all other proceedings must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and must include a request that the Commission make such a determination.

§ 1115.5 Petitions for other relief.

(a) A party may petition for a stay of an action pending a request for judicial review, for extention of the compliance date, or for modification of the date the terms of the decision take effect. The reasons for the desired relief must be stated in the petition, and the petition must be filed not less than 10 days prior to the date the terms of the action take effect. No reply need be filed. If a party elects to file a reply, the reply must reach the Commission no later than 5 days after the petition is filed.

(b) When the terms of a Commission action take effect on less than 15 days' notice, a petition for stay pending a request for judicial review must be filed prior to the institution of court action and as close to the service date as practicable. No reply need be filed. Where time permits, a party may elect to file a reply.

(c) A petition or reply must not exceed 10 pages in length.

§ 1115.6 Exhaustion of remedies and judicial review.

These rules do not relieve the requirement that a party exhaust its administrative remedies before going to court. Any action appealable as of right must be timely appealed. If an appeal, discretionary appeal, or petition seeking reopening is filed under § 1115.2 or § 1115.3 of this part, before or after a petition seeking judicial review is filed with the courts, the Commission will act upon the appeal or petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

(21) Former § 1100.93 is redesignated as Part 1116, and the newly redesignated Part 1116 is revised to read as follows.

PART 1116—ORAL ARGUMENT BEFORE THE COMMISSION

Sec.
1116.1 Requests.
1116.2 Manner or presentation.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1116.1 Requests.

(a) *Addressee.* Requests for oral argument should be addressed to the Secretary, Interstate Commerce Commission, Washington, DC 20423.

(b) *Who may request?* Any party may submit a written request for oral argument and state the reasons for the request. No replies from other parties to the request shall be made.

(c) *When to file a request.* Requests for oral argument should be filed within 20 days after the date of service of the decision, order, or requirement being appealed, unless the Commission by order prescribes a different time period.

(d) *Granting of request.* The Commission will rule upon requests by decision, and the granting of requests is entirely at the discretion of the Commission.

§ 1116.2 Manner of presentation.

Proponents of a rule or order will be heard first, and opponents will be heard second. One counsel only will usually be heard for each of the opposing interests, unless additional presentations are specifically authorized.

(22) Former § 1100.99 is redesignated as Part 1117, and the newly redesignated Part 1117 is revised to read as follows:

PART 1117—PETITIONS (FOR RELIEF) NOT OTHERWISE COVERED

§ 1117.1 Petitions.

A party seeking relief not provided for in any other rule may file a petition for such relief. The petition should contain (a) a short, plain statement of the grounds upon which the Commission's jurisdiction is based; (b) a short plain statement of the claim showing that the petitioner is entitled to relief; and (c) a demand for the relief the petitioner believes is appropriate.

(49 U.S.C. 10321; 5 U.S.C. 559)

(23) Former § 1100.39 and former paragraphs 1100.225 (a) and (b), (c), (e), (f), and (h) are redesignated as Part 1118 and the newly redesignated Part 1118 is revised to read as follows:

PART 1118—PROCEDURES IN INFORMAL PROCEEDINGS BEFORE CERTAIN EMPLOYEE BOARDS

Sec.
1118.1 Scope.
1118.2 Proceedings to be informal.
1118.3 Service of special permission applications.
1118.4 Appeals.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1118.1 Scope.

The rules in this part govern proceedings before the Finance Board, the Operations Boards, the Special Permission Board, the Released Rates Board, the Accounting and Valuation Board, the Tariff Rules Board, the Special Docket Board, the Tariff Integrity Board, and the Regional Motor Carrier Boards. Special rules, located elsewhere in this Part, should be consulted.

§ 1118.2 Proceedings to be informal.

The proceedings in all matters governed by this part will be informal. No transcript of these proceedings will be made. Subpoenas will not be issued and, except when applications, petitions, or statements are required to be attested, oaths will not be administered.

§ 1118.3 Service of special permission applications.

A special permission application requesting authority to change, cancel, or reissue tariff matter under suspension or continued in effect as a result of suspension should be simultaneously served on all parties to the investigation and suspension proceeding, and should include a certificate of service to that effect.

§ 1118.4 Appeals.

(a) *Standing to appeal.* Appeals of decisions of the Finance Board and replies to appeals may be filed only by a party to the proceeding. Appeals of the decisions of the other employee boards subject to this part and replies to appeals may be filed by any person.

(b) *Number of copies.* The original and six copies of each pleading or paper permitted or required to be filed under this section should be furnished for the use of the Commission.

(c) *Time for filing.* Except as provided in paragraph (e) of this section with respect to matters involving emergency temporary authority, appeals in proceedings governed by this part must be filed within 20 days after the date of service of the decision.

(d) *Where filed.* Appeals of decisions of a Regional Motor Carrier Board and replies to appeals should be filed with the regional office issuing the decision. All other appeals and replies to appeals should be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

(e) *Appeals in emergency temporary authority proceedings.* An applicant seeking reconsideration of a decision concerning emergency temporary authority must file a petition within 20 days after it is notified of the decision on the application. Any other interested person seeking reconsideration of a decision granting emergency temporary authority may file a petition at any time during the life of the authority. Replies may be filed within 15 days after the filing of the petition. Pleadings must be served on all parties of record.

(f) *Appeals in valuation proceedings.* An appeal of a tentative valuation must contain precise references to the matters objected to and must include a statement of the changes in the valuation desired by the appellant. When practicable, each object of appeal should be set up as a separately numbered item. An appeal against land values or areas must state the valuation section and zone on the Commission's maps in which the land is located. When appellant claims that property owned or used has been omitted, a full description of the property and its location must be included.

(g) *Decisions on appeal.* An appeal from an employee board's decision in a matter subject to this part will be reviewed by the board which may elect to modify its decision in the light of new facts or arguments presented on appeal. If the board elects not to modify its prior decision, the appeal will be forwarded to the appropriate appellate body for determination. If a modified decision is issued by the board, a further appeal lies under this part. A decision on appeal by an appellate body is administratively final, except for decisions of review boards in temporary authority or emergency temporary authority proceedings under 49 U.S.C. 10928.

(24) Former § 1100.94 is redesignated as Part 1119 and the newly redesignated Part 1119 is revised to read as follows:

PART 1119—COMPLIANCE WITH COMMISSION DECISIONS

§ 1119.1 Compliance.

A defendant or respondent directed by the Commission to do or desist from doing a particular thing must notify the Commission on or before the compliance date specified in the decision of the manner of compliance. Notification should be by verified affidavit showing simultaneous service upon all parties to the proceeding. Where a change in rates or schedules is directed, notification specifying the Interstate Commerce Commission tariff or schedule numbers must be given in addition to the filing of proper tariffs or schedules.

(49 U.S.C. 10321; 5 U.S.C. 559)

PART 1120—USE OF 1977-1978 STUDY OF MOTOR CARRIER PLATFORM HANDLING FACTORS

(25) Former Part 1104A is redesignated as Part 1120.

PARTS 1121, 1122, 1123, 1125, 1126, 1127 and 1129 [REDESIGNATED]

(26) Current Parts 1121, 1122, 1123, 1125, 1126, 1127 and 1129 are redesignated as Parts 1152, 1153, 1154, 1155, 1156, 1157, and 1140, respectively.

PARTS 1121-1129—[RESERVED]

(27) New Parts 1121–1129 are added and reserved.

PARTS 1130-1149—RATE PROCEDURES

PART 1130—INFORMAL COMPLAINTS

(28) Former §§ 1100.22, 1100.22a and 1100.23 are redesignated as Part 1130, and a center heading is added to precede the newly redesignated Part 1130 to read as set forth above.

(28A) The newly redesignated Part 1130 is revised to read as follows:

Sec.
1130.1 When no damages sought.
1130.2 When damages sought.
1130.3 Special procedures for dealing with unlawfully established tariffs or rates.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1130.1 When no damages sought.

(a) *Form and content; copies.* Informal complaint may be by letter or other writing and will be serially numbered as filed. The complaint must contain the essential elements of a formal complaint as specified at 49 CFR 1131.3 and 49 CFR 113.15 and may embrace supporting papers. The original and one copy must be filed with the Commission.

(b) *Correspondence handling.* When an informal complaint appears susceptible of informal adjustment, the Commission will send a copy or statement of the complaint to each subject of the complaint in an attempt to have it satisfied by correspondence, thereby avoiding the filing of a formal complaint.

(c) *Discontinuance of informal proceeding.* The filing of an informal complaint does not preclude complainant from filing a formal complaint. If a formal complaint is filed, the informal proceeding will be discontinued.

§ 1130.2 When damages sought.

(a) *Actual filing required.* Notification to the Commission that an informal complaint may or will be filed later seeking damages is not a filing within the meaning of the statute except as provided in paragraph (e) of this section.

(b) *Content.* An informal complaint seeking damages must be filed within the statutory period, and should identify with reasonable definiteness the involved shipments or transportation services. The complaint should include:

(1) A statement that complainant seeks to recover damages;

(2) The names of each individual seeking damages;

(3) The names and addresses of defendants against which claim is made;

(4) The commodities, the rate applied, the date on which the charges were paid, the names of the parties paying the charges, and, if different, the names of the parties bearing the charges;

(5) The period of time within which or the specific dates upon which the shipments were made, and the dates when they were delivered or tendered for delivery;

(6) The specific origin and destination points or, where they are numerous, the territorial or rate group of the origin and destination points and, if known, the routes of movement; and

(7) The nature and amount of the injury sustained by each claimant.

(c) *Statement of prior claim.* A complaint filed under paragraph (b) or (e) of this section containing a claim which has been the subject of a previous informal or formal complaint must specifically refer to the previous complaint.

(d) *Copies.* The original of an informal complaint seeking damages must be accompanied by a sufficient number of copies to enable the Commission to send one to each defendant named.

(e) *Special-docket proceedings.*—(1) *Petitions based on damages.* Where the Act provides for an award of damages for a violation, and a carrier is willing to pay them, or to waive collection of undercharges, petitions for appropriate authority should be filed by the carrier on the special docket by submitting either a Letter of Intent to Pay Reparations, a Letter of Intent to Pay Reparations and Waive Undercharges, or a Letter of Intent to Waive Undercharges. Such petitions, when not filed in connection with an Informal Complaint pending before the

Commission, must be filed within the statutory period and will be deemed the equivalent of an informal complaint and an answer admitting the matters stated in the petition. These petitions shall contain, as a minimum, the following information:

(i) The names and addresses of the complainants seeking damages.

(ii) The names of the defendants against which the claim is filed.

(iii) The amount of the claim.

(iv) The tariff authority for both the assailed and the sought rate.

(v) The dates on which, or within which, the shipments moved and, when necessary to show compliance with the statute of limitations, the dates when the shipments were delivered or tendered for delivery.

(vi) The points of origin and destination of the shipments and the routes of movement.

(vii) The commodity.

(viii) An admission by the carrier that the assailed rate was unreasonable, and a showing, where appropriate, that it has been removed from the tariff.

(ix) A statement certifying that all defendants against which the claim is lodged concur in the intent to pay reparations or waive undercharges.

(x) Evidence to show compliance with the statute of limitations.

(xi) A brief explanation of the circumstances causing the claim for damages and the precedent relied upon by the carrier in agreeing to honor it.

If a carrier is unable to file such petition within the statutory period and the claim is not already protected from the operation of the statute by informal complaint, a Letter of Registration setting forth the facts may be submitted by the carrier within the statutory period. This letter will also be deemed the equivalent of an informal complaint filed on behalf of the shipper or consignee and sufficient to stay the operation of the statute. However, an appropriate Letter of Intent must be filed within one year following receipt by the Commission of the Letter of Registration.

(2) *Petitions to waive collection of insignificant amounts.* If a rail carrier wishes to waive the collection of amounts due under 49 U.S.C. 10707(d)(2), when such amounts are more than $2,000.00, a petition for appropriate authority should be filed by the carrier on the special docket by submitting a Letter of Intent to Waive Insignificant Amounts. These petitions should contain the following information:

(i) The name and address of the customer for whom the carrier wishes to waive collection.

(ii) The name and addresses of the carriers involved in the intended waiver and a statement certifying that all carriers concur in the action.

(iii) The amount intended to be waived.

(iv) The number of the investigation and suspension case involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information.

(v) The points of origin and destination of the shipments and the routes of movement, if relevant.

(vi) A brief statement of justification for the intended waiver, including the anticipated costs of billing, collecting and/or litigating if the waiver is not permitted.

If the amount to be waived is $2,000.00 or less, no petition need be filed prior to waiver, provided that this exemption may be invoked by a carrier only once for any person (as defined at 49 U.S.C. 10102(16)) who uses the suspended rate during the suspension period. However, a Letter of Disposition informing the Commission of the action taken, the date of the action, and the amount waived shall be submitted to the Special Docket Board, Interstate Commerce Commission, Washington, D.C. 20423, within 30 days of the waiver.

(3) *Public Notice and Protest.* Petitions on the Special Docket to pay reparations, waive the collection of undercharges or waive the collection of insignificant amounts shall be made available by the Commission for public inspection five (5) days after receipt, in the Board of Suspension Public File Room, Room 4339, 12th & Constitution Avenue, NW., Washington, D.C. 20423 and remain available for 25 days. Any interested person may protest the granting of a petition by filing a Letter of Objection with the Special Docket Board within 30 days of Commission receipt of the petition. Letters of Objection shall identify the Special Docket number, shall clearly state the reasons for the objection, and shall certify that a copy of the Letter of Objection has been served on all parties named in the petition. A period of 15 days will be allowed for reply.

(4) *Uncontested petitions.* A petition which is not contested will be considered an order of the Commission authorizing the action contemplated in the petition 45 days after Commission receipt of the petition. Within 30 days after the expiration of the 45-day period the carrier filing the petition shall file a Letter of Disposition informing the Special Docket Board of the action taken, the date of the action, and the amount paid or waived.

(f) *Notification to the parties; six month's rule.* If an informal complaint seeking damages (other than a contested Special-docket petition) cannot be disposed of informally or is denied or withdrawn by complainant, the parties affected will be so notified in writing by the Commission. Contested Special-docket petitions either will be granted or denied by the entry of a decision. Unless within six months after the date on which a notice is mailed or a decision is served, a party either files a formal complaint or resubmits its informal complaint on an additional-fact basis, the matter in the complaint or petition will not be reconsidered. The claim will be considered abandoned and no complaint seeking damages on the same cause of action will be accepted unless filed within the statutory period. Any filing or resubmission satisfying the six months' requirement will be considered filed as of the date of the original filing and must specifically refer to that date and to the Commission's file number. An original and six copies of a petition for reconsideration should be filed.

§ 1130.3 Special procedures for dealing with unlawfully established tariffs or rates.

(a) *Scope of special rules.* (1) These special rules govern the filing and processing of complaints that allege that a tariff has been unlawfully established in violation of a provision of the Interstate Commerce Act, the Commission's tariff regulation (49 CFR 1300 et seq.), or decisions of the Commission or a court.

(2) These rules apply only to an unlawfully established tariff that would have been subject to rejection had the violation been detected before the tariff became effective.

(3) These rules do not apply to complaints alleging substantive violations, such as unreasonableness or discrimination.

(b) Definition of unlawfully established tariff. For the purposes of these rules a tariff is unlawfully established if it does any of the following:

(1) Fails to give proper statutory notice;

(2) Omits or uses symbols improperly;

(3) Contains typographical errors that prevent proper tariff application;

(4) Contains erroneous cancellation(s);

(5) Violates the Commission's tariff regulations, statutory provisions of the Interstate Commerce Act, or decisions, of the Commission or a court;

(6) Purports to change non-rail carrier rate schedules in effect less than 30 days; and

(7) Contains duplicating rate schedules.

(c) *Form and content of complaint.* (1) While no special form of complaint is required, the complaint must specifically identify the tariff in issue by name, number, publishing official, effective date and item number.

(2) The complaint must set out all the facts that the complainant believes demonstrate that the tariff has been unlawfully established.

(d) *Answer and reply.* (1) The issuing carrier or publishing agent may file an answer not later than 10 days after the complaint is filed.

(2) The complainant may file a reply not later than 10 days after the answer is filed.

(e) *Processing of complaints.* (1) Complaints will be serially numbered as filed.

(2) After reviewing the challenged tariff and the pleading, the Tariff Integrity Board will make necessary findings and determine whether the tariff has been unlawfully established in violation of the Interstate Commerce Act, the Commission's tariff regulations, or a Commission or court decision.

(3) If the Tariff Integrity Board finds that a tariff has been unlawfully established, it may issue a decision striking the tariff from the files. Unlawfully established tariff matter is invalid and may not be applied for services performed prior to, on, or after the date of service of the Tariff Integrity Board's decision.

(4) An administrative appeal of the Tariff Integrity Board's decision may be filed. The Board's decision will be stayed automatically pending the Commission's action on appeal.

(5) If there is a disputed issue of material fact, the Tariff Integrity Board will refer the matter to the Commission for handling under the formal complaint procedure (49 CFR 1131 et seq.).

(f) *Time limits.* (1) A complaint must be filed within 60 days of the tariff's effective date in order to be considered under these special rules.

(2) Complaints filed more than 60 days after a tariff's effective date will be handled under, and must comply with the Commission's formal complaint procedures.

(3) Requests for extensions of time to file answers or replies will be granted only in extraordinary circumstances.

(g) *Miscellaneous provisions.* (1) All pleadings (complaint, answer, reply) must comply with the attestation and verification procedures set forth at 49 CFR 1112.9.

(2) All pleadings should be addressed to the Secretary, Interstate Commerce Commission, Attention: Tariff Integrity Board, Washington, DC 20423.

(3) The complainant shall serve a copy of its complaint and reply, if any, on the issuing carrier or publishing agent.

(4) The issuing carrier or agent shall serve a copy of its answer on the complainant.

(5) All pleadings shall include a statement certifying that a copy of the pleading has been served on other parties.

(29) Former §§ 1100.25–1100.27, 1100.29, 1100.31, 1100.33–1100.35, and former paragraphs 1100.30(a) and 1100.44(a) are redesignated as Part 1131, and the newly redesignated Part 1131 is revised to read as follows:

PART 1131—FORMAL RATE COMPLAINTS, RAIL INTRASTATE PETITIONS AND INVESTIGATIONS

Sec.
1131.1 Content.
1131.2 When damages sought.
1131.3 [Reserved]
1131.4 Railroad allegations of unlawful intrastate rates.
1131.5 Other specifications.
1131.6 Multiple causes of action; joinder.
1131.7 Amended and supplemental formal complaints.
1131.8 Copies; service.
1131.9 Answers and cross complaints.
1131.10 Motions to dismiss or to make more definite.
1131.11 Satisifaction of complaint.

Authority: 49 U.S.C. 10321 and 11701; 5 U.S.C. 559.

§ 1131.1 Content.

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Commission regulations, and should advise the Commission and the defendant fully in what respects these provisions or regulations have been or are violated or will be violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing.

(b) *Requests for oral hearing.* A formal complaint should include a request that the proceeding be handled either under the modified procedure or at oral hearing, and a request for oral hearing should include at least two alternative hearing sites.

§ 1131.2 When damages sought.

(a) *Content.* A formal complaint that includes a request for an award of damages should set forth the information required to be contained in an informal complaint seeking damages (49 CFR 1130.3 (b) and (c)).

(b) *Specific request for damages.* Except under unusual circumstances, and for good cause shown, damages will not be awarded upon a complaint unless specifically requested or upon a new complaint by or for the same complainant which is based upon any finding in the original proceeding.

§ 1131.3 [Reserved]

§ 1131.4 Railroad allegations of unlawful intrastate rates.

(a) *Actions under 49 U.S.C. 11501(c).* A rail carrier may file a petition with the Commission to review the decision of any certified State authority in any administrative proceeding in which the lawfulness of an intrastate rate, classification, rule, or practice is determined. The petition must show in what way the standards and procedures applied by the State were not in accordance with Subtitle IV of Title 49 of the United States Code, and it must be served on the State authority and all parties to the proceedings before the State authority consistent with § 1104.12. Replies must be filed within 10 days after a carrier petition is filed, and must also be served. The Commission will act on the petition within 30 days.

(b) *Actions under 49 U.S.C. 11501(d).* A rail carrier may file an application with the Commission to prescribe an intrastate rate if the appropriate State authority fails to act within 120 days after the rail carrier filed with it a change in an intrastate rate, or a change in a classification, rule or practice that has the effect of changing an intrastate rate, to the level charged on similar traffic moving in interstate or foreign commerce. The application must include a copy of the change as filed with the State authority, the comparable interstate rate items, and a showing that the State authority failed to act within 120 days. The petition must be served on the State authority and all parties to the proceeding before the State authority consistent with § 1104.12.

§ 1131.5 Other specifications.

(a) *Tariff or schedule references.* A formal complaint that brings in issue any rate, fare, charge, schedule, classification, regulation or practice should specifically identify the pertinent tariff or schedule.

(b) *References to States in which transportation occurs.* A formal complaint under subchapter II of Chapter 105 of 49 U.S.C. should specifically name the States in and through which the transportation which gives rise to the complaint is performed.

§ 1131.6 Multiple causes of action; joinder.

(a) *Multiple causes of action.* Two or more grounds of complaint concerning the same principle, subject, or facts may be included in one complaint, but should be stated and numbered separately.

(b) *Multiple complainants.* Two or more complainants may join in one complaint against one or more defendants if their respective causes of action concern substantially the same alleged violation of the Act and like facts.

(c) *Defendants.* If complaint is made with respect to through transportation by continuous carriage or shipment, all persons subject to the Act participating therein, and against which a decision is sought, should be made defendants. If complaint is made regarding a classification or any of its provisions, ordinarily it will suffice to make defendants the persons operating one or more through routes between representative points of origin and destination, and serve notice of filing the complaint upon the tariff agent for the railroads which are subscribers to the tariff containing the challenged classification.

§ 1131.7 Amended and supplemental formal complaints.

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statuory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to §§ 1111.4 and 1111.5, as if the amended or supplemental complaint was an original complaint.

§ 1131.8 Copies; service.

Formal complaints amended or supplemental complaints, and cross complaints will be served by the Commission. The original of each complaint or cross complaint must be accompanied by a sufficient number of copies to enable the Commission to serve one upon each defendant and to retain six copies in addition to the original.

§ 1131.9 Answers and cross complaints.

(a) *Generally.* An answer may be filed within the time provided in paragraph (b) of this section. Whether or not an answer is filed and served, issue is joined at the conclusion of the time for filing answers, and the Commission may than proceed to a decision. In the alternative, the Commission may then proceed to a decision. In the alternative, the Commission may provide for the taking of evidence under the modified or oral hearing procedures, and in such a case the failure to answer a complaint will not bar a party from further participating in a proceeding or from the presentation of its evidence. An answer should be responsive to the complaint and should fully advise the Commission and the parties of the nature of the defense.

(b) *Time for filing; copies; service.* An answer must be filed within 20 days after the service of the complaint or within such additional time as the Commission may provide. The original and six copies of an answer must be filed with the Commission. The defendant must serve copies of the answer upon the complainant and any other defendants.

(c) *Cross complaints.* A cross complaint alleging violations by parties to the proceeding or seeking relief against them may be filed with the answer. An answer to a cross complaint may be filed within 20 days after the service date of the cross complaint. The party shall serve copies of answer to a cross complaint upon the other parties.

§ 1131.10 Motions to dismiss or to make more definite.

An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint or cross complaint or a motion to make the complaint or cross complaint more definite. A motion to dismiss can be filed at anytime during a proceeding. A complainant or a cross complainant may, within 10 days after an answer is filed, file a motion to make the answer more definite. Any motion to make more definite must specify the defects in the particular pleading and must describe fully the additional information or details thought to be necessary.

§ 1131.11 Satisfaction of complaint.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the opposing parties must be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.

(30) Former §§ 1100.40 and 1100.200 are redesignated as Part 1132 and the newly redesignated Part 1132 is revised to read as follows:

PART 1132—PROTESTS AGAINST TARIFFS; PROCEDURES IN CERTAIN SUSPENSION AND LONG AND SHORT HAUL RESTRICTION MATTERS.

Sec.
1132.1 Protests against tariffs.
1132.2 Protests in certain suspension and long and short haul restriction matters.

Authority: 49 U.S.C. 10321, 10707, 10708 and 10726; 5 U.S.C. 559.

§ 1132.1 Protests against tariffs.

(a) *Content.* The protested tariff or schedule sought to be suspended should be identified by making reference to: the name of the publishing carrier, freight forwarder, or agent; the Interstate Commerce Commission number; the specific items or particular provisions protested; and the effective date of the tariff or schedule. Reference should also be made to the tariff or schedule, and the specific provisions proposed to be superseded. The protest should state the grounds in support thereof, indicate in what respect the protested tariff or schedule is considered to be unlawful. Such protests will be considered as addressed to the discretion of the Commission. Should a protestant desire to proceed further against a tariff or schedule which is not suspended, or which has been suspended and the suspension vacated, a separate later formal complaint or petition should be filed.

(b) *When filed.* Protests against, and requests for suspension of, tariffs, or schedules filed under the Act will not be considered unless made in writing and filed with the Commission at Washington, DC. Protests and requests for suspension shall reach the Commission at least 12 days (except as provided in paragraphs (c) and (g) of this section) before the effective dates of the tariffs, schedules, or parts thereof to which they refer, unless the protested publications were filed on less than 30 days' notice in which event the protests (except as provided in paragraph (g) of this section) must reach the Commission not less than 5 days before the effective dates. Protests or petitions for investigation and suspension of tariffs filed on less than 10 days' notice will be accepted, *provided* that they reach the Suspension Board not later than 9:00 a.m. on the last workday before the tariffs' scheduled effective date. Appeals from decisions by the Suspension Board not to suspend or not to investigate matters in which the protests reached the Board later than 9 a.m. on the second working day before the protested tariffs' scheduled effective date will not be accepted. In an emergency, telegraphic protests will be acceptable if received within the time limits herein specified, provided they also fully comply with paragraphs (a) and (g) of this section and copies are immediately telegraphed by protestants to the proponent carriers or their publishing agents. However, protests against and requests for suspension of tariffs applicable on household goods as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, must reach the Commission no later than 27 days before the effective dates of the tariffs, schedules, or parts thereof to which they refer. Six copies of such telegrams should immediately be mailed by the protestants to the Commission at Washington.

(c) *Motor carrier tariff bureau filings.* When motor common carrier tariff bureaus file schedules of proposed general increases in rates and charges, or of proposed rate restructurings subject to the special procedures adopted in Ex Parte No. MC–82, *New Procedures in Motor Carrier Rev. Proc.* 340 I.C.C. 1 (1971), and set forth at 49 CFR Part 1139, protests thereto must reach the Commission at least 22 days before the published effective dates of those schedules. All statements should be served by express mail or an equivalent expedited delivery service upon any party undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Commission.

(d) *Copies; service.* In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC–82, *New Procedures in Motor Carrier Rev. Proc.* 339 I.C.C. 324, and set forth at 49 CFR Part 1139, an original and 11 copies of every protest or reply filed under this section should be furnished for the use of the Commission. Except as provided for proposals subject to the special procedures in Ex Parte No. MC–82, the original and six copies of each protest, except as provided in paragraph (e) of this section, or of each reply filed under this section, must be filed with the Commission, and one copy of the protest simultaneously must be served upon the publishing carrier, freight forwarder, or agent, and upon other persons known by protestants to be interested. If in the publication of an agency tariff, the proponent carrier elects to list itself with its full address on the cover page of the supplement or new tariff, service shall be made on such carrier simultaneously with service upon the Commission. These pleadings should be directed to the attention of the Suspension Board.

(e) *Passenger fare increases.* The original only of each protest or request for investigation and suspension of increased passenger fares need be filed with the Commission. Requests for suspension of charges in rail passenger fares must include a verified (notarized) complaint.

(f) *Reply to protest.* A reply to a protest filed under this section must reach the Commission not later than the fourth working day prior to the scheduled effective date of the protested schedules unless otherwise provided. Replies to protests against motor carrier rate bureau proposals other than proposals affecting tariffs for the transportation of household goods as defined in 49 CFR 1056.1(a) subject to Ex Parte No. MC–82 procedures to be assured of consideration, must reach the Commission no later than 14 days before the scheduled effective date of the protested schedules. Replies to protests against tariffs applicable on household goods (as defined in 49 CFR 1056.1(a)), published for the account of household goods carriers (as defined in 49 CFR 1040.2(b)) on not less than 45 days' notice shall be filed with the Commission not more than 5 days after the protest is filed.

(g) *Special requirements for protests against revisions to rail rates and charges and replies thereto.* (1) Protests against, and requests for suspension of, tariffs or schedules filed by rail carriers, or their publishing agents on 20 days' notice under the provisions of 49 U.S.C. 10762(c)(3) must reach the Commission at least 10 days before the proposed effective date of the protested matter. When the protested matter is filed on 10 days' notice under the provisions of 49 U.S.C. 10762(c)(3), the protest or requests for suspension must reach the Commission at least 5 days before the proposed effective date of the protested matter.

(2) Protests against and requests for suspension of, tariffs or schedules containing proposed rates, classifications, rules, or practices filed by rail carriers or their publishing agents shall also include a verified statement containing specific facts showing:

(i) It is substantially likely that the protestant will prevail on the merits pursuant to any applicable provisions of the law;

(ii) Without suspension, the proposed rate change will cause substantial injury to the protestants or the party represented by the protestants; and

(iii) Because of the peculiar economic circumstances of the protestant, investigation of the rate (subject to a refund by the carrier should the rate subsequently be found unlawful) will not protect the protestant. The burden is on the protestant to prove the matters described in paragraphs (g)(2), (i), (ii) and (iii) of this section.

(3) Where protestants allege that a rate is unreasonably high in violation of 49 U.S.C. 10701, they must submit evidence relating to market dominance pursuant to guidelines established in Ex Parte No. 320 (Sub-No. 2), 365 I.C.C. 118.

(4) Replies to verified statements filed under this section shall be verified.

(h) Except in extraordinary circumstances, the Suspension Board will act on protests against or requests for suspension of tariffs applicable on household goods as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, no later than 18 days before the effective dates of the tariffs, schedules, or parts thereof to which they refer. When the Commission acts initially on questions of investigation and suspension of tariffs applicable on household goods published for the account of household goods carriers and filed on not less than 45 days' notice, the Commission will act not later than 12 days before the tariffs' scheduled effective date. If the Commission concludes: not to investigate and suspend; to investigate, but not to suspend; or not to investigate (without suspension), its decision will not be subject to petitions for reconsideration, except at the Commission's discretion. (A petition to discontinue an investigation will be accepted if filed within 20 days of the service date of the decision ordering the investigation.) No petition other than a petition for discontinuance of an investigation will be accepted that does not reach the Commission by 4:00 p.m. as provided in paragraph (i) of this section.

(i) Except in extraordinary circumstances, the Commission will act on protests or requests for suspension of tariffs filed under paragraph (c) of this section no later than 5 days before the effective date of the tariffs, schedules, or parts thereof to which the protests refer. A decision at the suspension level by the entire Commission on the protests will not be subject to petitions for reconsideration, except at the Commission's discretion. No petition will be accepted that does not reach the

Commission by 4:00 p.m. (United States Standard Time or local Daylight Saving Time, whichever is in effect in Washington, DC) on the work-day following the Commission's action.

§ 1132.2 Procedures in certain suspension and long and short haul restriction matters.

(a) The proceedings of the Suspension Board will be informal. No transcriptions of such proceedings will be made. Subpoenas will not be issued and, except when applications or petitions are required to be attested, oaths will not be administered.

(b) Petitions for reconsideration of the following may be filed by any interested person within 20 days after the date of service:

(i) Investigation and suspension of tariff schedules;

(ii) Investigation (without suspension) of tariff schedules;

(iii) Granting, withholding, or denying relief from the long and short haul restriction provisions of 49 USC 10726;

(2) Decisions by an Appellate Division reversing, changing or modifying previous determinations by the Suspension Board and which result in orders for:

(i) Investigation and suspension of tariff schedules;

(ii) Investigation (without suspension) of tariff schedules;

(iii) Granting, withholding, or rescinding relief from the long and short haul restriction provisions of 49 USC 10726;

(3) Decisions by the Commission or a Division which result in orders for:

(i) Investigation and suspension of tariff schedules;

(ii) Investigation (without suspension) of tariff schedules;

(iii) Granting, modifying, or rescinding relief from the long and short haul restriction provisions of 49 USC 10726; See also § 1115.5. In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 339 I.C.C. 324, and set forth at 49 CFR Part 1139, and original and 15 copies of every protest or reply filed under this section should be furnished for the use of the Commission. Except as provided for proposals subject to the special procedures in Ex Parte No. MC-82, the original and six copies of every pleading, document or paper filed under this section must be furnished for the use of the Commission. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 20 days after the filing of such petition with the Commission but if the facts stated in any such petition discloses a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the rules of general applicability of the Rules of Practice.

(c) When the Suspension Board has declined to suspend a proposed tariff or schedule, or any part thereof, a petition in writing by any protestant or protestants may be filed with the Commission for reconsideration by the designated appellate division provided it reaches the Commission at least two work-days prior to the effective date of the tariff or schedule in question. However, when the Suspension Board has declined to suspend a protested change in rail rates filed on 10 days' notice under the provisions of 49 U.S.C. 10762(c)(3), the petition must be in the hands of the Suspension Board not later than 9 a.m., United States Standard or local Daylight Saving, whichever is in effect in Washington, D.C., on the work-day before the proposed effective date of the protested matter. Further, when the Suspension Board has declined to suspend a proposed tariff or schedule applicable on household goods as defined in 49 CFR 1056.1(a) published for the account of a household goods carrier as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, the petition must be filed within 2 work-days after the Suspension Board has acted. For the purpose of this section, a work day shall be considered as any day except Saturday, Sunday or a legal holiday in the District of Columbia. (A legal holiday of less than one day shall be considered a work-day within the meaning of this section). Petitions submitted under this section shall (except as provided in the case of a protested change in rail rates filed under the provisions of 49 U.S.C. 10762(c)(3) be filed with the Secretary of the Commission by 4 p.m. United States Standard Time or local Daylight Saving Time whichever is in effect in Washington, D.C. Telegraphic notice or the equivalent thereof must be given by the petitioners to the respondent or respondents. As no replies to the petitions for reconsideration are contemplated under this rule, petitioners will be expected, except in unusual circumstances, to rely wholly on the information previously filed with the Suspension Board. Written or telegraphic communication in intelligible form requesting reconsideration will be sufficient. Such request should contain the following prefatory statement: "This matter requires expedited handling under 49 CFR 1132.2". A petition not timely filed may be rejected by the Secretary.

(d) When the Suspension Board has declined to suspend a proposed tariff or schedule applicable on household goods as defined in 49 CFR 1056.1(a) published for the account of a household goods carrier as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, the designated appellate division will, except in extraordinary circumstances, act on petitions for reconsideration no later than 2 work-days after the petition is filed.

(31) Former § 1100.95 and former paragraph 1100.47(c) are redesignated as Part 1133, and the newly redesignated Part 1133 is revised to read as follows:

PART 1133—RECOVERY OF DAMAGES

Sec.
1133.1 Freight bill filing requirement under modified procedure.
1133.2 Statement of claimed damages based on Commission findings.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1133.1 Freight bill filing requirement under modified procedure.

If, under modified procedure (for general rules governing modified procedure, see Part 1112), an award of damages is sought, complainant should submit the paid freight bills or properly certified copies with its statement when there are not more than 10 shipments; if more than 10 shipments are involved, complainant should retain the documents.

§ 1133.2 Statement of claimed damages based on Commission findings.

(a) When the Commission finds that damages are due, but that the amount connot be ascertained upon the record before it, the complainant should immediately prepare a statement showing details of the shipments on which damages are claimed, in accordance with the following form:

Claim of ——— under decision of the Interstate Commerce Commission in Docket No. ———.

——— Date of shipment.
——— Date of delivery or tender of delivery.
——— Date charges were paid.
——— Car (or vessel) initials.
——— Car (or voyage) number.
——— Origin.
——— Destination.
——— Route.
——— Commodity.
——— Weight.
——— Rate.
——— Amount.
——— Rate.
——— Amount.

——— Reparation on basis of Commission's decision.
——— Charges paid by.[1]

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for reparation previously filed with the Commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here indicate any exceptions and explanation thereof).

———————————
(Claimant)

By ———————————
(Practitioner)

———————————
(Address)

———————————
(Date)

Total amount of reparation $———. The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date ——— Concurred[2] in: ———
Company ——— Company, Defendant
Collecting Carrier, Defendant[3]. ———
By ———, Auditor. By ———, Auditor.

(b) The statement should not include any shipment not covered by the Commission's findings, or any shipment on which complaint was not filed with the Commission within the statutory period. The filing of a statement will not stop the running of the statute of limitations as to shipments not covered by complaint or supplemental complaint. If the shipments moved over more than one route, a separate statement should be prepared for each route, and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes. The statement, together with the paid freight bills on the shipments, or true copies thereof, should then be forwarded to the carrier which collected the charges, for verification and certification as to its accuracy. If the statement is not forwarded immediately to the collecting carrier for certification, a letter request from defendants that forwarding be expedited will be considered to the end that steps be taken to have the statement forwarded immediately. All discrepancies, duplications, or other errors in the statements should be adjusted by the parties and corrected agreed statements submitted to the Commission. The certificate must be signed in ink by a general accounting officer of the carrier and should cover all of the information shown in the statement. If the carrier which collected the charges is not a defendant in the case, its certificate must be concurred in by like signature on behalf of a carrier defendant. Statements so prepared and certified shall be filed with the Commission whereupon it will consider entry of a decision awarding damages.

[1] Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

[2] For concurring certificate in case collecting carrier is not a defendant.

[3] If not a defendant, strike out the word "defendant."

PART 1134—PROCEDURES FOR THE ELIMINATION OF DISCRIMINATION AGAINST RECYCLABLES

(32) Former § 1100.250 is redesignated as new Part 1134 as follows:

§ 1100.250(a) redesignated as § 1134.1
§ 1100.250(b) redesignated as § 1134.2
§ 1100.250(c) redesignated as § 1134.3
§ 1100.250(d) redesignated as § 1134.4
§ 1100.250(e) redesignated as § 1134.5
§ 1100.250(f) redesignated as § 1134.6
§ 1100.250(g) redesignated as § 1134.7

(33) A part heading is added to the newly redesignated Part 1134 to read as set forth above.

(34) The authority citation to the newly redesignated Part 1134 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10710; 5 U.S.C. 559.

§§ 1134.1–1134.7 [Amended]

(35) In the newly redesignated Part 1134, the italicized paragraph headings of former paragraphs 1100.250 (a) through (g) become the section headings of the newly redesignated §§ 1134.1–1134.7.

§ 1134.2 [Amended]

(36) In the newly redesignated § 1134.2, "section 2 of the Interstate Commerce Act" in the second sentence, is revised to read "49 U.S.C. 10741."

§ 1134.6 [Amended]

(37) In the newly redesignated § 1134.6, former paragraphs (1) and (2) are redesignated as paragraphs (a) and (b).

(38) In the newly redesignated § 1134.6, "rule 70 of the rules of practice, 49 CFR 1100.70" in paragraph (b) is revised to read "49 CFR 1113.7."

(39) The newly redesignated § 1134.7 is revised to read as follows:

§ 1134.7 Other procedures.

In all other particulars, the proceeding shall be governed by the Rules of General Applicability of the Commission.

PART 1135—RAILROAD COST RECOVERY PROCEDURES

(40) Former Part 1102 is redesignated as Part 1135, and the part heading of the newly redesignated Part 1135 is revised to read as set forth above.

(41) The authority citation to the newly redesignated Part 1135 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10707; 5 U.S.C. 559.

§ 1135.1 [Amended]

(42) In the newly redesignated § 1135.1, the section heading is revised to read as follows:

"§ 1135.1 Quarterly adjustment of rates."

(43) In the newly redesignated § 1135.1, the italicized heading is removed from paragraph (f).

PART 1136—RAIL AND MOTOR CARRIER COMMUTATION OF SUBURBAN PASSENGER FARE INCREASE PROCEEDINGS

(44) Former Part 1105 is redesignated as Part 1136, and the part heading of the newly redesignated Part 1136 is revised to read as set forth above.

(45) The authority citation to the newly redesignated Part 1136 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10707, and 10708; 5 U.S.C. 559.

§ 1136.4 [Amended]

(46) In the newly redesignated § 1136.4, the word "part" is removed, and "49 CFR" is added in its place.

§ 1136.5 [Amended]

(47) In the newly redesignated § 1136.5, "Rule 50 and Form No. 6 of the Commission's General Rules of Practice" is revised to read "49 CFR 1112.9."

(48) In the newly redesignated § 1136.5, "provisions of the General Rules of Practice, Part 1100 of this chapter" in the third sentence is revised to read "Rules of General Applicability of the Rules of Practice."

PART 1137—PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

(49) Former Part 1109 is redesignated as Part 1137 as follows: § 1109.5 redesignated as § 1137.1 and § 1109.15 redesignated as § 1137.2, and the part heading of the newly redesignated Part 1137 is revised to read as set forth above.

(50) The authority citation to the newly redesignated Part 1137 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10705, and 10728; 5 U.S.C. 559.

§ 1137.1 [Amended]

(51) In paragraph (p) and the first sentence of paragraph (t) of the newly redesignated § 1137.1, the words "order of the" are removed, and the word "decision" is added to follow "Commission."

(52) The authority citation which follows the newly redesignated § 1137.1 is removed.

(53) The newly redesignated § 1137.1 is further amended by revising paragraph (b) to read as follows:

§ 1137.1 Divisions of revenue proceedings.

* * * * *

(b) The Commission will serve notices of intent to file formal complaints and amended notices thereof. The original of each notice of intent or amendment thereto must be accompanied by copies in sufficient number to enable the Commission to serve one upon each party, including, when bankrupt lines are involved each receiver or trustee, and retain six copies in addition to the original.

§ 1137.2 [Amended]

(54) In the newly redesignated § 1137.2, "section 15 (18) of the Act" in paragraph (b)(2) is revised to read "49 U.S.C. 10728."

(55) In the newly redesignated § 1137.2, "(49 CFR 1100.45 to 1100.54)" in paragraph (f) is revised to read "(49 CFR Part 1112)."

(56) In the newly redesignated § 1137.2, the words "must be verified and" are added to follow "under this section" in the first sentence of paragraph (g).

(57) In the newly redesignated § 1137.2, "information of the type specified in § 1100.1 (regulation proposed in Ex Parte No. 320)" in the first sentence of paragraph (h)(3) is revised to read "evidence prepared in accordance with the guidelines established in Ex Parte No. 320 (Sub-No. 2), 365 ICC 118."

(58) The authority citation which follows the newly redesignated § 1137.2 is removed.

PART 1138—PROCEDURES FOR REQUESTING SURCHARGE COST AND REVENUES FROM RAIL CARRIERS APPLYING A COMMODITY ORIENTED SURCHARGE OR CANCELLING THE APPLICATION OF A JOINT RATE PURSUANT TO 49 U.S.C. 10705(a)

(59) Former Part 1031a is redesignated as Part 1138.

(60) The authority citation to the newly redesignated Part 1138 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10701a; 5 U.S.C. 559.

(61) The authority citation which follows Appendix C in the newly redesignated Appendix C is removed.

PART 1139—MOTOR CARRIER COST RECOVERY PROCEDURES

(62) Former Part 1104 is redesignated as Part 1139 and the heading of the newly redesignated Part 1139 is revised to read as set forth above.

(63) The authority citation to the newly redesignated Part 1139 is revised to read as follows:

Authority: 49 U.S.C. 10321 AND 10708; 5 U.S.C. 559.

(64) Subpart A of the newly redesignated Part 1139 is revised to read as follows:

Subpart A—Common Carriers of General Commodities

Sec.
1139.1 Application.
1139.2 Traffic study.
1139.3 Cost study.
1139.4 Revenue need.
1139.5 Affiliate data.
1139.6 Official notice.
1139.7 Service.
1139.8 Availability of underlying data.
Appendix I to Subpart A
Appendix II to Subpart A

Subpart A—Common Carriers of General Commodities

§ 1139.1 Application.

(a) Upon the filing by the tariff publishing agencies named hereinafter on behalf of their motor common carrier members, or by such other agencies as the Commission may by order otherwise designate, of agency tariff schedules which contain (1) proposed general increases in rates or charges on general freight where such proposal would result in an increase of $1 million or more in the annual operating revenues on the tariff affected by the proposal, or (2) a proposed general adjustment with the objective of restructuring the rates on a wide range of traffic, involving both increases and reductions in rates and charges, where such proposal would result in a net increase of $1 million or more in annual operating revenues, the motor common carriers of general freight on whose behalf such schedules are filed shall, concurrently with the filing of those tariff schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase or rate restructuring. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the publishing of an effective date at least 45 days later than the date of filing, to enable proper evaluation of the evidence presented. Data to be submitted in accordance with §§ 1139.2–1139.5 of this part represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented at the time of filing of the schedules. If a formal proceeding is instituted, the carriers are not precluded from updating the evidence submitted at the time of filing of the schedules to reflect the contemporary situation.

(b) The motor common carriers of general freight whcih are subject to the provisions of this section are those which are members of the following tariff publishing agencies:

Central and Southern Motor Freight Tariff Association, Inc.
Central States Motor Freight Bureau, Inc.
The Eastern Central Motor Carriers Association, Inc.
Middle Atlantic Conference
Middlewest Motor Freight Bureau
The New England Motor Rate Bureau, Inc.
Pacific Inland Tariff Bureau, Inc.
Rocky Mountain Motor Tariff Bureau, Inc.
Southern Motor Carriers Rate Conference

(c) Upon the filing of tariff schedules other than those described hereinabove, the carriers or their tariff publishing agencies shall be required to comply with such procedures as the Commission may direct in the event an investigation is instituted. In any proceeding involving a proposed rate restructuring which would produce additional net revenue of less than $1 million the carriers will be required to submit only the data sought in §§ 1139.2 and 1139.3. Nothing stated in this part shall relieve the carriers of their burden of proof imposed under the Interstate Commerce Act.

§ 1139.2 Traffic study.

(a) The respondents shall submit a traffic study for the most current 12-month calendar year available, which shall be referred to as the "base-calendar year—actual." This year shall be the calendar year that has ended at least 7 months prior to the published effective date of the tariff schedules. If the effective date is less than 7 months following the end of the preceding calendar year, than the second preceding calendar year shall be considered at the "base-calendar year—

actual." The study shall include a probability sampling of the actual traffic handled during identical time periods for each study carrier.

(b) The study carriers shall consist of those carriers subject to the requirements for allocation of expenses between line-haul and pickup and delivery services, as provided in part 1207 of this chapter, Instructions 27 and 9002, which participate in one of the motor carrier industry's Continuous Traffic Studies, and which derive either $1 million or more in annual operating revenues from this issue traffic or 1 percent or more of the total annual operating revenues of all carriers from the issue traffic. A list of such carriers and the appropriate revenue data shall be submitted to corroborate the selection of the study carriers. "Issue traffic" consists of those shipments on which the freight rates or charges would be affected by the rate proposal.

(c) Respondents shall take a sample of the traffic handled by the study carriers according to acceptable standards of probability sampling principles and practices, and shall explain and evaluate the probability sample from the standpoint of: purpose, sample design (including explanation of estimation procedure and disclosure of sampling errors for derived characteristics), quality control aspects involved in processing and tabulating data and any statistical analysis performed on the sampled data.[4]

(d) For cost and revenue purposes, the "carried" tariff basis shall be used. "Carried" tariff means the issue traffic handled solely by the study carriers, either single-line or interline. Estimates of current revenues applicable to the issue traffic should reflect all rates and charges in effect no later than 45 days prior to the date of tariff filing.

§ 1139.3 Cost study.

(a) The respondents shall submit a cost study. Highway Form B may be used for this purpose. Service unit-costs shall be developed for each individual study carrier, adjusted by size of shipment and length of haul, and shall be applied to respective individual carrier's traffic service units as developed from its traffic study. Operating ratios shall be determined for the issue traffic handled by the study carriers on the "carried" basis by individual weight brackets included within the rate proposal, for: (1) the traffic study year, that is, the "base-calendar year—actual," as hereinbefore defined, (2) a "present proforma year" reflecting conditions prevailing on a date no later than 45 days prior to the date of the tariff filing, and (3) a "restated proforma year" based on conditions anticipated on the effective date of the proposed rates, with a separation indicating projected operating ratios on two bases, namely, "based on current revenues," and "based on proposed revenues". Operating ratios shall also be shown for all other traffic not affected by the rate proposal for the same weight brackets as shown for the issue traffic, but only for the period indicated in paragraph (a)(1) of this section.

(b) In addition to the operating ratios, the cost study shall also be used to develop and provide the revenue-to-cost comparisons required in Appendix I hereto for the same time periods indicated for the operating ratios plus a "restated proforma year" based on constructed revenue need.

(c) For both the operating ratios and the revenue-to-cost comparisons in Appendix I, the "each-to-each" costing method, ie., the application of each individual study carrier's unit-cost to its traffic service units, applies only to the "base calendar year—actual." The application of possible labor and nonlabor cost increases for the purpose of updating the "base calendar year—actual" cost data may be accomplished by the use of either individual carrier data for each of the study carriers, or the composite carrier data for those study carriers whose revenue from the issue traffic amount to 50 percent or more of their total system revenues for the "base calendar year—actual." The sample values for expenses and revenues shall be expanded to full year values without adjustments to known annual report figures of any carrier.

(d) Where cost studies are developed through the use of computer processing techniques, there shall be submitted a manual application of the costing procedures used for one traffic and cost study carrier (study carrier) in order to demonstrate the procedures by which the computer program distributes the annual report statistics, and applies service unit-costs to each shipment. An illustration of the application of service unit-costs to the applicable traffic service units generated by one single-line sample shipment and by one interline sample shipment shall also be submitted. These sample shipments shall be on the "Carried" basis.

§ 1139.4 Revenue need.

Traffic and cost study carrier, i.e., the study carriers, shall submit evidence of the sum of money, in addition to operating expenses, including that needed to attract debt and equity capital, which they require to insure financial stability and the capacity to render service. This evidence shall include data required by Appendix I, parts I and II, and Appendix II.

§ 1139.5 Affiliate data.

Each individual traffic and cost study carrier having transactions with affiliates, subject to the reporting requirements of schedules 9009–A and 9009–B in the annual report for class I motor carriers, shall submit appropriate data and analyses reflecting the effect on the parent carrier's profits of transactions with affiliates. Such data and analyses shall be adequately supported, and there shall be submitted such underlying will permit a reconciliation of these data to the data supplied in the appropriate schedules of each carrier's annual report.

§ 1139.6 Official notice.

The Commission will take official notice of all of the proponent carriers' annual and quarterly reports on file with the Commission.

§ 1139.7 Service.

The detailed information called for herein shall be in writing and shall be verified by a person or persons having knowledge thereof. The original and 16 copies of each verified statement for the use of the Commission shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. One copy of each statement shall be sent by first-class mail to each of the regional offices of the Commission in the area affected by the proposed increase, where it will be open to public inspection. A copy of each statement shall be mailed by first-class mail to each party of record in the last formal proceeding concerning a general rate increase in the affected area or territory. However, one copy of each statement shall be sent by express mail to any person undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Commission. Otherwise, the service requirements of 49 CFR 1104.12 should be observed. Information with respect to carrier affiliates may be served on the parties in summary form, if so desired. A copy of each statement shall be furnished to any interested person on request.

§ 1139.8 Availability of underlying data.

All underlying data used in preparation of the material outlined

[4] Although not adopted by the Commission, attention is called to a staff report, "Guidelines for the Presentation of the Results of Sample Studies," February 1, 1971, available from the Superintendent of Documents.

above shall be made available in the office of the party serving such verified matter during usual office hours for inspection by any party of record desiring to do so, and shall be made available to the Commission upon request therefor. The underlying data shall be made available also at the hearing, but only if and to the extent specifically requested in writing and required by any party for the purpose of cross-examination. Since Appendix I data are to be submitted on a combined carrier basis, any underlying individual carrier data used to complete Appendix I should be furnished to the Commission for its use as well as for the use of parties opposing the sought increases.

APPENDIX I.—REVENUE NEED AND ALLOCATION TO TRAFFIC AT ISSUE

[Cost allocation—see part II, line 13, ☐ Method A, ☐ Method B; check one; provide both]

Line No.	Item	Source [1]	Base calendar year—actual [2]	Present proforma year [3]	Restated proforma year [4]		
					Based on current revenues	Based on proposed revenues	Based on constructed revenue need [5]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
		Part I. Revenue Need					
1	Operating revenue	A.R. Sch. 2998, L. 3	$	$	$	$	$
2	Operating expenses	A.R. Sch. 2998, L. 10					
3	Lease of distinct operating unit (net)	A.R. Sch. 2998, Net of Ls. 12 and 13					
4	Miscellaneous deductions less other income	A.R. Sch. 2998 (L. 27 minus L. 20)					
5	Interest included in miscellaneous deductions	A.R. Sch. 2998, L. 23					
6	Income taxes on ordinary income [6]	A.R. Sch. 2998, L. 29					
7	Extraordinary and prior period items	A.R. Sch. 2998, L. 34					
8	Net income or loss [7]	A.R. Sch. 2998, L. 35					
9	Sum of money above operating expenses	Sum of Ls. 4, 6 and 8					
10	Percent owned and leased property to net tangible property (3 decimals).	A.R. Sch. 100, Col. (c) (L. 21+L. 23)÷L. 26	%	%	%	%	%
11	Sum of money related to transportation	(L. 9×—% in L. 10) plus L. 3					
12	System revenue need items and projected revenue need	L. 2 plus L. 11					
		Part II. Allocation to Traffic at Issue					
13	Constant costs and sum of money allocated to issue traffic	See Method A ( ) and Method B ( ), check one; provide both.					
14	Variable expenses from traffic at issue (90% variable excluding return on investment).[8]	From traffic and cost study					
15	Operating revenues from traffic at issue [9]	From traffic study					
16	Constant costs and sum of money allocated to issue traffic plus variable expenses.	L. 13 plus L. 14	$	$	$	$	$
17	Revenue to cost comparison (1 decimal)	L. 15÷L. 16	%	%	%	%	%

See Methods A and B and footnotes on following pages.

METHOD A.—CONSTANT COSTS AND SUM OF MONEY ALLOCATED TO ISSUE TRAFFIC BASED ON TON AND TON-MILE METHOD (SEE NOTE A)

Line No.	Item	Source for columns 3 and 4	Base calendar year—actual	Present proforma year	Restated proforma year		
					Based on current revenues	Based on proposed revenues	Based on constructed revenue need
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
(a)	System constant costs	L. (b)+L. (c)	$	$	$	$	$
(b)	Not related to distance	(See Note B)					
(c)	Related to distance	(See Note B)	$	$	$	$	$
(d)	Percent not related to distance (3 decimals)	L. (b)÷L. (a)	%	%	%	%	%
(e)	Percent related to distance (3 decimals)	L. (c)÷L. (a)	%	%	%	%	%
(f)	System sum of money	Appendix A, part I, L. 11	$	$	$	$	$
(g)	Not related to distance	L. (f)×L. (d)					
(h)	Related to distance	L. (f)×L. (e)					
(i)	Total system constant costs plus sum of money	L. (a)+L. (f)					
(j)	Not related to distance	L. (b)+L. (g)					
(k)	Related to distance	L. (c)+L. (h)	$	$	$	$	$
(l)	Tons carried on issue and nonissue traffic combined	From traffic study (see Note C)					
(m)	Ton-miles	do					
(n)	Issue traffic tons carried	do					
(o)	Issue traffic ton-miles	do					
(p)	Percent of issue traffic tons to system tons (3 decimals)	L. (n)÷L. (l)	%	%	%	%	%
(q)	Percent of issue traffic ton-miles to system ton-miles (3 decimals).	L. (o)÷L. (m)	%	%	%	%	%
		Constant Costs and Sum of Money Allocated To Issue Traffic					
(r)	Not related to distance	L. (p)×L. (j)	$	$	$	$	$
(s)	Related to distance	L. (q)×L. (k)	$	$	$	$	$
(t)	Total (enter amount in appendix A, part II, line 13)	L. (r)+L. (s)	$	$	$	$	$

NOTE A.—This procedure allocates constant costs and the sum of money based on the ton and ton-mile method and should be submitted for the information of the Commission. How much of the constant and sum of money costs may or should be recovered by any specific segment of traffic rest on (1) considerations including value of service, demand, and ability to pay, and (2) considerations which involve matters relating to regulatory policy.

NOTE B.—Separate the amount of constant costs, including unrelated, by using Statement No. 6-68, Highway Form B, Schedule A, Line III. Assign the dollars in columns (6), (7), (8), and (9) times 10 percent to line (b), and the dollars in columns (4) and (5) times 10 percent to line (c).

NOTE C.—Show tons and ton-miles on issue and nonissue traffic based on an expansion of the sample to a full year.

METHOD B—CONSTANT COSTS AND SUN OF MONEY ALLOCATED TO ISSUE TRAFFIC BASED ON DOLLAR (EXPENSE) METHOD (SEE NOTE A)

Line No.	Item	Source for columns 3 and 4	Base calendar year—actual	Present proforma year	Restated proforma year: Based on current revenues	Restated proforma year: Based on proposed revenues	Restated proforma year: Based on constructed revenue need
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
(a)	System constant cost (excluding	Note B	$	$	$	$	$
(b)	System sum of money	Appendix A, part I, line II					
(c)	Total system constant costs plus sum of money	Line (a) plus line (b)					
(d)	Variable expenses on issue traffic	From traffic and cost study; Note C-					
(e)	Variable expenses on issue and nonissue traffic combined	From traffic and cost study; Note D-					
(f)	Percent relationship (3 decimals)	Line (d) ÷ line (e)	%	%	%	%	%
(g)	Constant costs and sum of money allocated to issue traffic (enter amount in appendix A, part II, line 13).	Line (c) × line (f)	$	$	$	$	$

NOTE A.—This procedure allocates constant costs and the sum of money based on the dollar (expense) method and should be submitted for the information of the Commission. How much of the constant and sum of money costs may or should be recovered by any specific segment of traffic rests on (1) considerations including value of service, demand, and ability to pay, and (2) consideration which invlove matters relating to regulatory policy.

NOTE B.—Determine the amount of constant costs, including unrelated, by using Statement No. 6-68, Highway Form B, Schedule A, Line 111, column (3) multiplied by 10 percent; insert this amount on line (a).

NOTE C.—Determine the amount of variable costs, including unrelated, by using Statement No. 6-68, Highway Form B, Schedule A, line 111, column (3) multiplied b y 90 percent to obtain the variable portion.

NOTE D.—Show variable expenses allocated to the issue traffic based on an expansion of a sample to a full year.

Footnotes to Appendix I:

Explanatory: The Purpose of appendix A is twofold, namely: (1) to obtain, through part 1, *Revenue Need*, an indication of the past actual, present, and restated system revenue needs of the traffic and cost study carriers, which, along with the financial data required in appendix B, will facilitate an analysis of the financial stability of these carriers, and (2) to allocate a part of these system revenue needs to the traffic at issue as provided for in part II, line 13. It is that portion of constant and sum of money costs resulting from this allocation plus the related variable expenses (line 14) which produces the total costs assigned to the issue traffic (line 16) which is then compared to the issue traffic revenues in the revenue-to-cost comparison shown on line 17. This comparison provides some indication of how much the total issue traffic is contributing to the carriers' overall revenue needs; and serves as a reference point for the consideration of ratemaking factors, other than costs, which may influence the appropriateness of the issue traffic's contribution.

Appendix A data should be completed and submitted for all traffic and cost study carriers combined. However, data for the "base calendar year—actual," column (3), should be developed and completed for each traffic and cost study carrier and the results combined for all such carriers. The data in part I, columns (4) through (7), which reflect an updating of revenue need data for the "base calendar year—actual" to present and restated levels, should be developed on either an individual carrier basis, or on a composite carrier basis comprised of all traffic and cost study carriers. Data in part II, line 14 columns (4) through (7), which reflect an updating of the cost and traffic study data for the "base calendar year—actual" to present and restated levels, should be developed by the use of either individual carrier data for each of the study carriers, or the composite carrier data for those study carriers whose revenues from the issue traffic amount to 50 percent or more of their total system revenues for the "base calendar year—actual." However, for line 14, the method selected should be the same as that used to update the operating ratios to present and restated levels as required in .3 *Cost study*. As indicated above, appendix A data should be completed and submitted only for all traffic and cost study carriers combined. Since appendix A are to be submitted on a combined carrier basis, any underlying individual carrier data used to complete this appendix should be furnished to the Commission for its use as well as for the use of parties opposing the sought increases. Data in columns (4) through (7) must be appropriately explained and supported. Each of the dollar figures called for in these columns shall be accompanied by an explanation of the bases or methods of restatement, including explicit identification of all projected or assumed changes in revenues, in wage rates, in price levels of other expenses and property items, and in productivity, as compared with the preceeding (actual) year results. Note that the time periods referred to in appendix A, that is, "Base calendar year—actual," "Present proforma year" and "Restated proforma year" are the same time periods indicated in § 1104.3, *Cost study*.

[1] Sources in this column apply to column (3) "Base calendar year—actual." Data for columns (4) through (7) should rely on column (3) as a base in order to reflect data for the "Present proforma year" and the "Restated proforma year." Annual report sources apply to class I motor carriers for class II carriers use comparable sources.

[2] The data in column (3) should reflect the revenue need data (part 1), and the traffic and cost study data (part II), for the traffic study year. That is, the "Base calendar year—actual," which should coincide with the "Base calendar year—actual" referred to in the *Cost study* (§ 1104.3). Parts I and II should be completed for each individual study carrier—the purpose being to allocate a portion of each carrier's system revenue need to the traffic at issue as provided for in part II. The results for all study carriers should then be aggregated and submitted on a combined carrier basis.

[3] The data in column (4) should be based on present wage, price and productivity levels and reflect conditions prevailing on a date no later than the 45 days prior to the date of the tariff filing.

[4] The data in columns (5), (6), and (7) should be based on wage, price, and productivity levels anticipated on the effective date of the proposed rates.

[5] The purpose of this column is to obtain data on what system revenue needs of the study carriers *should* be at a giving time. Part I should consider the sum of money in addition to operating expenses (including that needed to attract debt and equity capital) which the carriers feel they require to insure financial stability and the capacity to render service.

[6] In columns (4) through (7), show income taxes based on estimated taxable income reduced by the taxes applicable to other income such as, for example, capital gains transactions.

[7] In columns (4) through (7), determine the net income based on data shown for lines 1 though 7. In column (7), the estimate of the net income needed should be supported by evidence that it is a just and reasonable amount.

[8] Show expenses and revenues allocated to the total issue traffic based on an expansion of the sample to a full year. The amount shown on line 14 for variable expenses should agree with that shown in Method B, line (d).

APPENDIX II.—FINANCIAL RATIOS (TRAFFIC AND COST STUDY CARRIER ————)

[Complete appendix B for each traffic and cost study carrier and for all such carriers combined]

Line No.	Item	Source [1]	Third preceding calendar year (actual)	Second preceding calendar year (actual)	First preceding calendar year (actual or estimated)
	(1)	(2)	(3)	(4)	(5)
1	Current assets [2]	A.R. Sch. 100, L. 18	$	$	$
2	Net carrier operating property (owned) [2]	A.R. Sch. 100, L. 21			
3	Net carrier operating property (owned plus leased to others) [2]	A.R. Sch. 100, L. 21+L. 23			
4	Net tangible property [2]	A.R. Sch. 100, L. 26			
5	Intangibles [2]	A.R. Sch. 100, L. 32			
6	Current liabilities [2]	A.R. Sch. 101, L. 13			
7	Long-term debt [2]	A.R. Sch. 101, L. 15+L. 25			
8	Shareholders' equity [2]	A.R. Sch. 101, L. 55			
9	Operating revenues	A.R. Sch. 2998, L. 3			
10	Depreciation plus or minus depreciation adjustment	A.R. Sch. 2998, L. 6+ or−L. 7			
11	Operating expenses	A.R. Sch. 2998, L. 10			
12	Net carrier operating income	A.R. Sch. 2998, L. 14			
13	Ordinary income before income taxes	A.R. Sch. 2998, L. 28			
14	Net income or loss	A.R. Sch. 2998, L. 35			
15	Net income or loss plus or minus depreciation [3]	L. 10 Plus L. 14	$	$	$
16	Percent owned and leased property to net tangible property (3 decimals)	L. 3÷L. 4	%	%	%
17	Investment in owned and leased property plus working capital [4]		$	$	$
18	Shareholders' equity less intangibles	L. 8−L. 5	$	$	$
19	Long-term debt plus shareholders' equity less intangibles	L. 7+L. 18	$	$	$
20	Operating ratio (2 decimals)	L. 11÷L. 9	%	%	%
21	Current ratio (2 decimals)	L. 1÷L. 6			
22	Ratio net income or loss to operating revenue (2 decimals)	L. 14÷L. 9	%	%	%
23	Rate of return on owned and leased operating property plus working capital (2 decimals).	L. 12÷L. 17	%	%	%
24	Rate of return on shareholders' equity less intangibles (2 decimals)	L. 14÷L. 18	%	%	%
25	Capital structure ratio (2 decimals)	L. 7÷L. 19	%	%	%

APPENDIX II.—FINANCIAL RATIOS (TRAFFIC AND COST STUDY CARRIER ————)—Continued

[Complete appendix B for each traffic and cost study carrier and for all such carriers combined]

Line No.	Item	Source [1]	Third preceding calendar year (actual)	Second preceding calendar year (actual)	First preceding calendar year (actual or estimated)
	(1)	(2)	(3)	(4)	(5)
26	Throwoff to debt ratio (2 decimals)	L. 15÷L. 7	%	%	%
27	Ratio long-term debt to shareholders' equity less intangibles (2 decimals)	L. 7+L. 18	%	%	%

[1] Annual report sources refer to 1970 Motor Carrier Annual Report Form A for Class I Motor Carriers of Property. For class II carriers use the comparable sources. For years prior to 1970 use the comparable annual report sources.

[2] Show average of beginning and end of year figures.

[3] If carrier shows a net income, the amount shown for depreciation should be added to it; if a net loss, then the net loss and the amount for depreciation should be netted and the appropriate figure shown.

[4] Multiply the percent on line 16 by the difference between line 1 and line 6. Add the resulting amount to line 3.

Schedule B [Amended]

(65) In Schedule B to the newly redesignated Part 1139, "Section 22 of the Interstate Commerce Act," under the explanatory notes for column (e) is revised to read "49 U.S.C. 10721, 10722, 10723 and 10724.

Appendix I to Subpart B [Amended]

(66) The authority citation which follows "Appendix I to Subpart B" of the newly redesignated Part 1139 is removed.

PART 1140—REASONABLY EXPECTED COSTS UNDER 49 U.S.C. 10705a

(67) Former Part 1129 is redesignated as Part 1140.

(68) A new Part 1141 is added to read as follows:

PART 1141—PROCEDURES TO CALCULATE INTEREST RATES

§ 1141.1 Procedures to calculate interest rates.

Interest rates to be computed following a Commission decision shall be the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days.

(49 U.S.C. 10707(d)(1))

PARTS 1142—1149—[RESERVED]

(6) New parts 1142–1149 are added and reserved.

PARTS 1150-1169—LICENSING PROCEDURES

PARTS 1150-1159—RAIL LICENSING PROCEDURES

PART 1151—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

(70) Former Part 1120 is redesignated as Part 1150 and two center headings are added to precede the newly redesignated Part 1150 as set forth above.

(71) The authority citation to the newly redesignated Part 1150 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, and 10951; 5 U.S.C. 559.

PART 1151—FEEDER RAILROAD DEVELOPMENT PROGRAM

(72) Former Part 1128 is redesignated as Part 1151.

(73) The authority citation to the newly redesignated Part 1151 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10910; 5 U.S.C. 559.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

(74) Former Part 1121 is redesignated as Part 1152 as follows:

(a) §§1121.10–1121.11 redesignated as §§1152.1–1152.2 respectively;
(b) §§1121.20–1121.25 redesignated as §§1152.10–1152.15 respectively;
(c) §§1121.30–1121.34 redesignated as §§1152.20–1152.24 respectively;
(d) §§1121.36–1121.39 redesignated as §§1152.25–1152.28 respectively;
(e) §§1121.40–1121.47 redesignated as §§1152.30–1152.37 respectively;
(f) §§1121.60–1121.63 redesignated as §§1152.40–1152.43 respectively.

(75) The authority citation to the newly redesignated Part 1152 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10903—10905; 5 U.S.C. 559; 45 U.S.C. 904 and 915.

§ 1152.1 [Amended]

(76) In the newly redesignated § 1152.1, the statutory references are revised as follows:

(a) In paragraph (a), "Section 1 (18) of the Interstate Commerce Act " (Act)" in the first sentence is revised to read "49 U.S.C. 10903".

(b) In paragraph (a), "Section 1a of the Act" in the third sentence, is revised to read "49 U.S.C. 10903".

(c) In paragraph (a), "Section 1a" in the fourth sentence is revised to read "Section 10903(a)".

(d) In paragraph (b), "Part I of the Act" in the fourth sentence is revised to read "Title 49, subtitle IV, chapter 105".

§ 1152.2 [Amended]

(77) In the newly redesignated § 1152.2, the statutory references are revised as follows:

(a) In paragraph (b), "(49 U.S.C. 1 et seq.)" is revised to read "(49 U.S.C. 10101 et seq.)".

(b) In paragraph (d), "section 1a of the Act" is revised to read "49 U.S.C. 10903".

(c) In paragraph (e), "Part I of the Act" is revised to read "49 U.S.C., Subtitle IV, chapter 105".

(d) In paragraph (h), "section 20 of the Act" is revised to read "49 U.S.C. 11145".

(e) In paragraph (i), "section 1a(6)(a) of the Act" is revised to read "49 U.S.C. 10905".

§ 1152.10 [Amended]

(78) In the newly redesignated § 1152.10, "section 1a(6)(a) of the Act", which appears in paragraph (b)(4), is revised to read "49 U.S.C. 10905".

§ 1152.13 [Amended]

(79) In the newly redesignated § 1152.13, the statutory references in paragraph (d) are revised as follows:

(a) In the first sentence, "section 1a(5)(b) of the Act" is revised to read "49 U.S.C. 10904(e)(3)".

(b) In the second sentence, "section 1a(5)(b)" is revised to read "section 10904(e)(3)".

§ 1152.15 [Amended]

(80) In the newly redesignated § 1152.15, "Section 1a(5)(a) of the Act" is revised to read "49 U.S.C. 10904(e)(1)".

§ 1152.25 [Amended]

(81) In the newly designated § 1152.25, "49 U.S.C. 1121.138(c)" which appears in paragraph (d)(4) is revised to read "49 CFR 1157.27(c)".

§ 1152.28 [Amended]

(82) In the newly redesignated § 1152.28, the statutory references in paragraph (d) are revised as follows:

(a) "Section 1a(4) of the act" is revised to read "49 U.S.C. 10903".

(b) "Section 1a(6) of the act" is revised to read "49 U.S.C. 10906".

§ 1152.30 [Amended]

(83) In the newly redesignated § 1152.30, the statutory references are revised as follows:

(a) In paragraph (a)(1), "section 1a(7) and section 1a(11)(b) of the act direct" in the first sentence is revised to read "49 U.S.C. 10905 directs".

(b) In paragraph (a)(1), "section 1a(6)(ii)(A) of the act" in the second sentence is revised to read "section 10905".

(c) In paragraph (a)(2), "section 1a(6)(a)(i) of the act" is revised to read "49 U.S.C. 10905".

(84) In the newly redesignated Part 1152, subpart E is removed, subpart F is redesignated as subpart E, and the authority citation which precedes the newly redesignated Subpart E is removed.

(85) In the newly redesignated Part 1152, Appendices A and B are redesignated as Appendices I and II.

PART 1153—DISCONTINUANCE OR CHANGE OF RAIL OR FERRY OPERATIONS UNDER 49 U.S.C. 10908 OR 10909

(86) Former Part 1122 and § 1100.246 are redesignated as Part 1153 as follows:

§§ 1122.1–1122.8 redesignated as §§ 1152.1–1153.8; respectively;

§ 1100.246 redesignated as § 1153.9.

(87) The authority citation to the newly redesignated Part 1153 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10908; 5 U.S.C. 559.

(88) In the newly redesignated Part 1153, the part heading is revised to read as set forth above.

(89) The newly redesignated § 1153.1 is revised to read as follows:

§ 1153.1 Scope of rules in this part.

The rules in this part govern the procedure to be followed by carriers subject to 49 U.S.C. chapter 105 which file a notice under 49 U.S.C. 10908, or a petition under 49 U.S.C. 10909, with respect to a proposed discontinuance or change, in whole or in part, of the operation or service of any train or ferry.

§ 1153.2 [Amended]

(90) In the newly redesignated § 1153.2, the statutory references are revised as follows:

(a) In paragraph (b), "paragraph (1) of section 13a" is revised to read "49 U.S.C. 10909".

(b) In paragraph (c), "paragraph (2) of section 13a" is revised to read "49 U.S.C. 10909".

§ 1153.9 [Amended]

(91) In the newly redesignated § 1153.9, paragraphs (a), (b), and (c) are removed and paragraphs (d) through (i) are redesignated as (a) through (f).

(92) In this newly redesignated § 1153.9, the cross references are revised to read as follows:

(a) In the first sentence of the newly redesignated paragraph (b), "section 13a(1)" is revised to read "49 U.S.C. 10908", and "section 13a(2)" is revised to read "49 U.S.C. 10909".

(b) In the newly redesignated paragraph (c), "section 13a(1)" in the first sentence is revised to read "49 U.S.C. 10908".

(c) In the newly redesignated paragraph (e), "section 13a(1) of the act" in the third sentence is revised to read "49 U.S.C. 10908".

(d) In the newly redesignated paragraph (e), "Rule 246 of the Commission's Rules of Practice" in the eighth sentence is revised to read "49 CFR 1153.9".

(e) In the newly redesignated paragraph (f), "Section 13a(2)" in the first sentence is revised to read "49 U.S.C. 10109".

(f) In the newly redesignated paragraph (i), the reference to "paragraph (e)" in the last sentence is revised to read "paragraph (b)".

(93) In the newly redesignated § 1153.9(f), "complying with Rule 38" is removed from the second sentence and the following language is added in its place:

"setting forth specifically the grounds on which it is made and the interest of protestant in the proceeding, either promptly after the petition is filed or, if the Commission issues a notice, within the time specified in the notice, and by filing the original and 6 copies with the Commission and simultaneously serving one copy on the applicant;"

PART 1154—DETERMINATION OF AVOIDABLE LOSSES

(94) Former Part 1123 is redesignated as Part 1154.

(95) The authority citation to the newly redesignated Part 1154 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10905; 5 U.S.C. 559

§ 1154.1 [Amended]

(96) In the newly redesignated § 1154.1, "part 1 of the Interstate Commerce Act," in the first sentence, is revised to read "Title 49, subtitle IV, chapter 105."

§ 1154.5 [Amended]

(97) In the newly redesignated § 1154.5, "rule 15 of the general rules of practice (§ 1100.15 of this chapter)" is revised to read "49 CFR 1104.4".

PART 1155—STANDARDS FOR DETERMINING RAIL SERVICE CONTINUATION SUBSIDIES

(98) Former Part 1125 is redesignated as Part 1155.

(99) The authority to the newly redesignated Part 1155 is revised as follows:

Authority: 49 U.S.C 10321 and 10905; 5 U.S.C. 559.

§ 1155.2 [Amended]

(100) In the newly redesignated § 1155.2, "section 20 of the Interstate Commerce Act" which appears in the seventh and eighth paragraphs is revised to read "49 U.S.C. 11145".

PART 1156—SUBMISSION OF COST DATA TO JUSTIFY REIMBURSEMENT FOR DIRECTED SERVICE

(101) Former Part 1126 redesignated as Part 1156.

(102) The authority citation to the newly redesignated Part 1156 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10905; 5 U.S.C. 559.

PART 1157—STANDARDS FOR DETERMINING COMMUTER RAIL SERVICE CONTINUATION SUBSIDIES

(103) Former Part 1127 is redesignated as Part 1157.

(104) The authority citation to the newly redesignated Part 1157 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10362; 5 U.S.C. 559.

PARTS 1158-1159—[RESERVED]

(105) New parts 1158–1159 ar added and reserved.

PARTS 1160-1169—NONRAIL LICENSING PROCEDURES

(106) Sections 1100.251, 1100.252 and 1100.253 are redesignated as Part 1160, Subparts A, B, and C respectively, and a center heading is added to precede the newly redesignated Part 1160 as set forth above.

(107) The newly redesignated Part 1160 is revised to read as follows:

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

Subpart A—How To Apply for Operating Authority

Sec.
1160.1 Applications governed by these rules.
1160.2 Applications for operating authority which require only fitness proof ("fitness only" applications).
1160.3 Procedures used generally.
1160.4 Starting the application process: Form OP-1.
1160.5 Information to be submitted by applicants (except fitness only applications).
1160.6 Applicant's verified statements (except fitness only applications).
1160.7 Information to be submitted in fitness only applications.
1160.8 The applicant's verified statement in fitness only applications.
1160.9 Where to send the application.
1160.10 Commission review of the application.
1160.11 Changing the request for authority or filing supplementary evidence after the application is filed.
1160.12 After publication in the Federal Register.
1160.13 Furnishing a copy of the application package to interested persons.
1160.14 Opposed applications.
1160.15 Filing a reply statement.
1160.16 After all statements are submitted.
1160.17 Applicant withdrawal.
1160.18 Caption summary.
1160.19 Compliance.
1160.20 Appeals to rejections of the application.
1160.21 Tacking or rejoinder of authority.
1160.22 Freight forwarder applicants only.
1160.23 Water carrier applicants only.

Subpart B—How To Oppose Requests for Authority

1160.40 Definitions.
1160.41 Time for filing.
1160.42 Contents of the protest.
1160.43 Qualifications format.
1160.44 Factual evidence format (except fitness only applications).
1160.45 Factual evidence format for fitness only applications: Scope.
1160.46 Requests for oral hearing by a protestant.
1160.47 To whom the protest is sent.
1160.48 Obtaining a copy of the application.
1160.49 Withdrawal.

Subpart C—General Rules Governing the Application Process

1160.60 Contacting another party.
Sec.
1160.61 Serving copies of pleadings, letters; the certificate of service.
1160.62 Copies.
1160.63 Requests for extension of time.
1160.64 Petition to clarify or interpret formally an operating authority.
1160.65 Replies to motions.
1160.66 Consolidation of applications.
1160.67 Marking contents on envelopes, and submission of pleadings.
1160.68 Requesting oral hearing.

Authority: 49 U.S.C. 10321 and 10921; 5 U.S.C. 559.

Subpart A—How To Apply for Operating Authority

§ 1160.1 Applications governed by these rules.

These rules govern the handling of applications for permanent operating authority of the following type:

(a) Applications for certificates and permits to operate as a motor common or contract carrier of passengers or property.

(b) Applications for permits to operate as a freight forwarder.

(c) Applications for certificates, permits, and exemptions for water carrier transportation of property and passengers.

(d) Applications for licenses to operate as a broker of motor vehicle transportation.

§ 1160.2 Applications for operating authority which require only fitness proof ("fitness only" applications).

There are certain types of authority which can be obtained by an applicant showing only that it is fit, willing and able to perform the service and to comply with the law and Commission regulations. These are listed below. The applicant does not provide any supporting witness testimony. The application can be opposed only on the grounds that applicant is not fit or does not fall within the statutory definition. These applicants shall skip §§ 1160.5 and 1160.6 and substitute the information called for in §§ 1160.7 and 1160.8.

(a) Motor common carrier of property transportation to serve any community not regularly served by a certificated motor common carrier.

(b) Motor common carrier of property transportation to provide service as a direct substitute for complete abandonment of all rail service in a community.

(c) Motor common carrier transportation for the United States Government of property (except used household goods, hazardous or secret materials, and sensitive weapons and munitions).

(d) Motor common carrier property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds.

(e) Motor common or contract carrier of property transportation of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agriculture limestone and other soil conditioners, and agricultural fertilizers, when the transportation is provided with the owner of the motor vehicle in the vehicle (except in emergency situations). After issuance of the authority, such transportation (measured by tonnage) shall not exceed, on an annual basis, the transportation provided by the motor vehicle (measured by tonnage) which is exempt from the Commission's jurisdiction under 49 US.C. 10526(a)(6).

(f) Transportation for the U.S. Government of used household goods which transportation is incidental to a pack-and-crate service on behalf of the Department of Defense.

(g) Motor carrier brokerage of general commodities (except household goods).

§ 1160.3 Procedures used generally.

(a) *Modified procedure.* Most cases are handled under the modified procedure. The applicant and protestants send statements made under oath (verified statements) to each other and to the ICC. There are no personal appearances or formal hearings.

(b) *Oral hearings.* Oral hearings are used infrequently. Either an applicant or a protestant may request oral hearing at any time during the proceeding. The rules governing requests for oral hearing are set forth at § 1160.68 of this part.

§ 1160.4 Starting the application process: Form OP-1.

(a) All applicants shall use form OP-1.

(b) Obtain the form at Commission regional and field offices, or call the Office of the Secretary at (202) 275-7833.

§ 1160.5 Information to be submitted by applicants (except fitness only applications).

(a) A completed application form, OP-1.

(b) A caption summary which describes the authority sought.

(c) A separate verified statement from the applicant, as described in § 1160.6 of this part.

(d) Verified certifications of witness or shipper support (see the appendix to the OP-1 form).

(1) *Motor common carriers of property.* Applicants for this authority normally file verified certifications of witness or shipper support. Alternatively, an applicant may elect to

file other evidence showing that the service proposed will serve a useful public purpose, responsible to a public demand or need. This evidence shall be submitted in part (10) of applicant's verified statement, as shown in § 1160.6 of this part.

(2) *Water carrier exemption applications.* No shipper or witness support evidence is required.

§ 1160.6 Applicant's verified statement (except fitness only applications).

Applicant shall file the information described in this paragraph according to the type of application being filed (see KEY). The information shall be provided in separately numbered paragraphs. If a particular item seems inapplicable, write "N/A."

KEY FOR REGULAR APPLICATIONS

(1) Motor common carrier of property application.
(2) Motor common carrier of passengers application.
(3) Motor contract carrier of property application.
(4) Motor contract carrier of passengers application.
(5) Passenger broker application.
(6) Freight forwarder application.
(7) Water common carrier application.
(8) Water contract carrier application.
(9) Water carrier exemption application.

INFORMATION TO BE SUBMITTED

(1) Legal name and domicile of applicant. (All.)

(2) Name of witness presenting evidence of applicant and why this person is qualified to speak for applicant (as, position with applicant and experience). (All.)

(3) Authority requested in this application. (All.)

(4) Brief description of present ICC regulated operations, or, any other transportation experience. Do not submit copies of existing authority unless they are an issue in the application. (All.)

(5) *Description of equipment.* It is not necessary to list separately all pieces. A summary is preferred. If applicant has no equipment, it shall specify its plan to obtain equipment (e.g., owner-operators under lease). (All except 5.)

(6) *Safety evidence.* Motor carriers holding ICC authority should indicate that they are in compliance with DOT safety regulations. New entrants shall state the following:

I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations.

Note applicants.—These regulations are found in Title 49, Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling this toll free number: (800) 424-9158.

(7) Service now provided to supporting shipper or witness, if any or, service provided within area sought by application. (All.)

(8) Description of service that will be provided if this application is granted. State whether services of this type are not now available. (All.)

(9) Name and address of persons or shippers now served under contract (Four only.)

(10) Any other evidence in support of the application. *Motor common carrier of property applicants:* If no shipper support statements are being provided, applicant shall submit other evidence under this paragraph.

(11) Legal argument supporting the application. (Optional for all.)

(12) Any oral hearing request (Optional for all). *Verification:* Separate verification of this statement is not necessary. Applicant understands that the oath in the application form applies to this statement.

§ 1160.7 Information to be submitted in fitness only applications.

(a) A completed OP-1 form, except for the appendix.

(b) A caption summary describing the authority sought.

(c) A separate verified statement from the applicant, as described in § 1160.8 of this part.

§ 1160.8 The applicant's verified statement in fitness only applications.

Applicant shall file the information described in this paragraph according to the type of application being filed (see following KEY). The information shall be provided in separately numbered paragraphs. If a particular item seems inapplicable, write "N/A."

KEY FOR FITNESS ONLY APPLICATIONS

(1) Motor carrier applications.
(2) Property broker applications.

INFORMATION TO BE SUBMITTED

(1) Legal name and domicile of applicant. (Both.)

(2) Name of witness presenting evidence and why this person is qualified to speak for applicant (as, position with applicant and experience). (All.)

(3) Authority requested in this application. (Both.)

(4) Description of equipment. It is not necessary to list separately each piece. A summary is preferred. If applicant has no equipment, it shall specify its plans to obtain equipment (e.g., owner-operators under lease). (1 only.)

(5) *Safety evidence:* Motor carriers holding ICC authority shall indicate that they are in compliance with DOT safety regulations. New entrants shall state the following:

I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicle and the safe transportation of hazardous materials, and I will comply with these regulations.

Note to applicants.—These regulations are found in Title 49 of the Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling this toll free number: (800) 424-9158. (1 only.)

(6) *Application under § 1160.2(a).* If the application is to serve a "community not regularly served", describe the location of the community and the highways which serve the community. If known, state the last known date of service from other carriers and their identity, and the date when service was requested from these carriers. (1 only.)

(7) *Application under § 1160.2(b):* Motor carrier applicants for transportation service as a direct substitute for complete abandonment of all rail service to a community shall file the following information:

(i) Docket number, approval date and effective date of the Commission's decision approving the abandonment; or, date of the Commission's recommendation or pronouncement in a noncertificate abandonment.

(ii) Description of the location of the points sought to be served, indicating to what portion of the rail line they are adjacent (submit maps where obscure rural points are involved), and cross-referencing each specific community to the pertinent abandonment proceeding relied on.

(iii) Certification that rail service was offered at the points for which authority is sought.

(iv) Certification that all rail service has been terminated (give date if known), or

(v) If rail service has not yet terminated, state that fact and submit certification that, after rail service does cease on the line to be abandoned, no rail service by any carrier will remain to the involved community.

(vi) When the certification in paragraph (g)(5) of this section is made, and applicant has otherwise established its right to a certificate, the Commission will issue a certificate subject to the filing, when rail service is terminated, of another certification that *all* service has ceased at the granted points.

(vii) *Filing period:* Applications under this subsection must be filed no later than 120 days (plus extensions) after the effective date of the Certificate of Abandonment issued by the Commission, or, in a non-certificate abandonment, 120 days after the issuance of a recommendation or other pronouncement by the Commission regarding the abandonment.

(8) *Verification:* Separate verification of any statement made under § 1160.8 is not necessary. Applicant understands that the oath in the application form applies to these statements.

§ 1160.9 Where to send the application.

(a) The original and one copy shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, with the proper application fee. Make checks payable to the Interstate Commerce Commission.

(b) One copy of the application shall be sent to the ICC regional office in which applicant is domiciled. A copy of the caption summary only is sent to the State transportation regulatory body of applicant's domicile.

§ 1160.10 Commission review of the application.

(a) ICC staff will review the application for correctness, completeness, and for adequacy of the evidence (the prima facie case).

(1) Minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected. Applications that are in substantial compliance with these rules may be accepted.

(3) A review board will decide whether there is adequate evidence so that the full scope of the authority applicant seeks may be published in the **Federal Register**. If there is not, the application will be rejected in a letter. An applicant may appeal rejections under paragraphs (a) (2) and (3) of this section. See § 1160.20. If an applicant chooses to resubmit the application, it shall refer to its prior application by docket number and give the ICC fee number stamped on the canceled check so as to avoid a second fee being assessed. If no appeal or resubmittal is made, the fee will not be refunded. The date of refiling will be considered the filed date of the application.

(b) The caption summary will be published in the **Federal Register** to give notice to the public in case anyone wishes to oppose the application. The application will be published in the form of a grant of authority.

(c) If the **Federal Register** publication does not properly describe the authority being sought because of ministerial error, applicant shall inform the ICC's Section of Operating Rights as soon as possible. Where notification is received within 10 days of the publication, ministerial errors will be corrected and the notice will be republished. Notifications after 10 days will result in republication only at the Commission's discretion and may result in an application being rejected without prejudice to refiling.

§ 1160.11 Changing the request for authority or filing supplementary evidence after the application is filed.

(a) An applicant may not supplement evidence once the application is filed (unless directed to do so by the Commission).

(b) Amendments to the application are not permissible.

§ 1160.12 After publication in the Federal Register.

(a) Interested persons have 45 days to file protests. See Subpart B of this part.

(b) If no one opposes the application, the grant published in the **Federal Register** will become effective.

(c) If no one opposes the application for an extension of authority, the grant published in the **Federal Register** will be made effective by issuance of a certificate, permit, or license. If no one opposes an application for initial authority, the grant published in the **Federal Register** will be made effective by a Commission notice outlining compliance requirements which must be met before applicant commences the proposed service.

§ 1160.13 Furnishing a copy of the application package to interested persons.

(a) Applicant's representative is required to furnish a copy of the application package to interested persons after publication. The request must be made in writing to applicant's representative and must contain a check or money order for $10, payable to applicant's representative. Applicant's representative need not supply copies to any person not sending the appropriate payment. Applicant's representative is required to mail the copy within 3 days of the receipt of the request being received. Noncompliance with this rule may result in dismissal of the application.

(b) Representative of applicants and potential protestants are urged to communicate by telephone if problems occur in the furnishing of the application. Requests for extension of time where no attempt has been made to correct matters informally are looked upon with disfavor.

§ 1160.14 Opposed applications.

If the application is opposed, opposing parties are required to send a copy of their protest to the applicant.

§ 1160.15 Filing a reply statement.

(a) If the application is opposed, applicant may file a reply statement. This statement is due at the Commission within 60 days of the **Federal Register** publication.

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The reply statement need not be notarized or verified. Applicant understands that the oath in the application form applies to all evidence submitted in the application. Separate legal arguments by counsel need not be notarized or verified.

§ 1160.16 After all statements are submitted.

(a) When the proceeding is to be handled under the modified procedure, the next notification to the parties will be the service of the initial decision.

(b) If the proceeding is to be handled by oral hearing, parties will receive a notice to this effect.

§ 1160.17 Applicant withdrawal.

If the applicant wishes to withdraw an application, it shall request dismissal in writing.

§ 1160.18 Caption summary.

The caption summary, which shall accompany all applications, shall be in the form prescribed by the Commission. Commission field and regional offices offer assistance in preparing correct caption summaries, or examples may be found in the daily **Federal Register.**

§ 1160.19 Compliance.

Prior to beginning operations under a certificate, permit, or license, compliance must be made with the following statutory and regulatory requirements for obtaining insurance or bonding, filing tariffs or schedules, and designating agents to receive service of process.

(a) For Motor Common Carriers of Property: 49 CFR Parts 1043, 1044, and 1310.

(b) For Motor Contract Carriers of Property: 49 CFR Parts 1043, 1044, and 1307.

(c) For Motor Common and Contract Carriers of Passengers: 49 CFR Parts 1043, 1044, and 1306.

(d) For Motor Brokers of Motor Vehicle Transportation: 49 CFR Parts 1043 and 1044.

(e) For Water Carriers: 49 CFR Parts 1308; 49 U.S.C. 10329.

(f) For Freight Forwarders: 49 CFR Parts 1084 and 1309; 49 U.S.C. 10329.

§ 1160.201 Appeals to rejections of the application.

(a) Where a review board or other decisional body rejects an application, applicant has a right of appeal. The appeal must be filed at the Commission within 10 days of the date of the letter of rejection.

(b) If the appeal is successful and the filing is found to be proper, the application shall be deemed to have been properly filed as of the decision date of the appeal.

§ 1160.21 Tacking or joinder of authority.

An applicant for irregular-route motor common carrier authority which holds regular-route motor carrier authority shall indicate this in its caption summary. The caption summary shall indicate the subnumbers of this regular-route authority. The purpose of this requirement is to inform the public that direct operations are able to be performed after combining the irregular- and regular-route authorities.

§ 1160.22 Freight forwarders applicants only.

An applicant for freight forwarder authority shall submit the following additional information: Applicant shall state whether it is a person engaged principally in the business of manufacturing, buying, or selling articles and commodities, and whether it controls, is controlled by, or is under common control with any such person. If yes, applicant shall describe such persons and advise to what extent such persons use the services of freight forwarders; or if applicant is such a person, whether it performs its own similar operations of assembling, consolidating, and shipping in connection with the transportation of such articles or commodities.

§ 1160.23 Water carrier applicants only.

(a) If an exemption is being claimed, applicant shall describe the operations proposed to be exempted and in each instance refer to the statutory provisions under which the exemption is claimed.

(b) If an applicant for exemption under 49 U.S.C. 10544(f) is engaged solely in transporting the property of the parent company, it shall list persons owning all or substantially all of the voting stock of the applicant.

(c) If an applicant seeks approval of dual operations under 49 U.S.C. 10930, it shall specify those that would result from a grant of the application.

(d) An applicant for exemption under 49 U.S.C. 10544(e) shall furnish a copy of the charter, lease, or other agreement under which it proposes to operate.

(e) If applicant is a water common carrier seeking a revised certificate covering extension of service pursuant to 49 U.S.C. 10922(e)(3)(B), the following shall be furnished: (1) Describe the portion of the waterway project newly opened for navigation, including the U.S. Engineer District, project number, description of project, and date opened for navigation; (2) Describe operation performed thus far on uncompleted portion of waterway newly opened for navigation, including date service was extended and points served; see § 1166.3; (3) Describe operations performed under present certificate authorizing service on previously completed portion of waterway, naming points served, indicating when service commenced, and if operation has been continuous.

Subpart B—How To Oppose Requests for Authority

§ 1160.40 Definitions.

A person wishing to oppose a request for permanent authority files a protest. A person filing a valid protest becomes a protestant.

§ 1160.41 Time for filing.

A protest shall be filed (received at the Commission) within 45 days after notice of the application appears in the **Federal Register**. A copy of the protest shall be sent to applicant's representative at the same time. Failure timely to file a protest waives further participation in the proceeding.

§ 1160.42 Contents of the protest.

(a) All information upon which the protestant plans to rely is put into the protest.

(b) A protest must be verified, as follows:

I, ______________, verify under penalty of perjury under laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.)

____

(Signature and date)

(c) A protest not in substantial compliance with these rules may be rejected.

(d) A protestant files two separate types of evidence. The first is its qualifications evidence, see § 1160.43. All protestants shall submit qualifications evidence under the format in § 1160.43. Protestants shall also file factual evidence, according to the guidelines in § 1160.44 or 1160.45.

§ 1160.43 Qualifications format.

This information shall be submitted in separately numbered paragraphs:

(a) Docket number of application being opposed.

(b) Name and domicile of protestant, including lead docket number, if any.

(c) Name and address of protestant's representative.

(d) Name and address of witness presenting the evidence, and why qualified to speak for protesting party.

(e) Description of the extent to which the person seeking to protest possesses authority to handle the traffic for which authority is applied, is willing and able to provide service that meets the reasonable needs of the shippers or public involved, and has either performed service within the scope of the application during the 12–month period before the application was filed or has actively in good faith solicited service within the scope of the application during that period; or

(f) Description of any application which the prospective protestant has pending before the Commission which was filed before applicant's application and which is substantially for the same traffic; or

(g) Description of any other legitimate interest not contrary to the transportation policy set forth in 49 U.S.C. 10101(a), or of any right to intervene under a statute. A person seeking to qualify under this paragraph shall describe in detail the circumstances which warrant its participation and how they are consistent with 49 U.S.C. 10101(a). The Commission shall normally permit such person to intervene when it shows that a proceeding is novel or of first impression, is of industrywide importance, or has significant economic impact.

Note.—A motor contract carrier of property may not protest an application to provide transportation as a motor common carrier of property.

§ 1160.44 Factual evidence format (except fitness only applications).

(a) A summary, description or copy of the specific authorities in conflict with that sought in the application. Protests containing copies of authority or authority abstracts which are more than 5 pages in length may be rejected.

(b) A description of the type and amount of equipment and facilities available to meet the avowed purpose of the application.

(c) A description of present operations that pertain to the application, including a description of the specific services provided to those supporting the application or within the same territory.

(d) Adverse impacts on its business generally and on the public, such as: (1) need to close terminals or other facilities; (2) number of employees that would be furloughed or dismissed; (3) resulting imbalance or inefficiencies caused to its operations; (4) effects on fuel efficiency; or (5) inability to continue its existing service to the public due to a reduction in total business, or loss of essential services that would not be replaced, or other factors.

(e) Evidence that applicant is not fit, willing or able to comply with the appropriate statutes or regulations governing its activities.

(f) Legal or other argument (optional).

(g) Verification.

(h) Certificate of service.

(i) Any request for oral hearing.

§ 1160.45 Factual evidence format for fitness only applications: Scope.

The types of applications listed in section 1160.2 may be protested on the grounds listed here. Factual evidence in opposition shall consist of the following, where applicable:

(a) A description of the specific grounds upon which it is alleged that applicant cannot meet the statutory fitness criteria.

(b) Alternatively, evidence that the application does not properly fall within the scope of one of the statutorily described categories.

Note.—If the Commission finds that the application does not properly fall within the scope of one of the categories, the application shall be dismissed without prejudice to the filing of an application for authority under other criteria.

(c) Legal argument (optional).

(d) Verification.

(e) Certificate of service.

(f) Any request for oral hearing.

§ 1160.46 Requests for oral hearing by a protestant.

It is the policy of the Commission to handle application proceedings under Subpart A of this part using the modified procedure if at all possible. See § 1160.68. Protestants shall file any request at the end of their protest.

§ 1160.47 To whom the protest is sent.

(a) An original and one copy of the protest shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423. The docket number of the proceeding shall be placed conspicuously on the top of the first page of the protest.

(b) Concurrently with the filing in paragraph (a) of this section, a copy shall be sent to applicant's representative.

§ 1160.48 Obtaining a copy of the application.

A copy of the application is available for inspection at the Commission's offices in Washington, DC, or the regional office of applicant's domicile. In addition, applicant is required to send a copy to interested persons upon payment of a $10 charge. See § 1160.13.

§ 1160.49 Withdrawal.

A protestant wishing to withdraw from a proceeding shall inform the Commission and the applicant in writing.

Subpart C—General Rules Governing the Application Process

§ 1160.60 Contacting another party.

When a person wishes to contact a party or serve a pleading or letter on that party, it shall do so through its representative. The phone number and address of applicant's representative shall be listed in the **Federal Register.**

§ 1160.61 Serving copies of pleadings, letters; the certificate of service.

(a) When the rules require service of a pleading or letter on another party, that material shall be mailed or delivered by hand to the party concurrently with its service on the Commission. See, in addition, 49 CFR 1105.8.

(b) All pleadings other than the application shall contain a statement (certificate of service) that the pleading has been served in accordance with paragraph (a) of this section.

(c) An applicant must serve all pleadings and letters on the Commission and all known participants in the proceeding, except that a reply to a motion need only be served on the moving party.

(d) A protestant need serve only the Commission and applicant with pleadings or letters.

(e) All pleadings or letters, unless otherwise specified, shall be sent to the Office of the Secretary.

§ 1160.62 Copies.

All material forwarded to the Commission in Washington, DC, except for telegraphic material, shall consist of an original and one copy.

§ 1160.63 Requests for extension of time.

(a) Requests for extensions of time are granted only in extraordinary circumstances. Parties' or their representatives' workload, personnel changes, or scheduling problems are not sufficient cause.

(b) No extensions will be granted for more than 3 working days.

(c) Requests shall be made in documentary form (letter or telegraph) addressed to the Section of Operating Rights, with a notice of the request sent to known parties. The Commission will notify the requesting party as soon as possible of the decision. The requesting party shall immediately notify all known parties of the action taken on the request.

(d) If the time for filing a protest is extended, the time for submitting applicant's reply is automatically extended.

(e) Oral communications with Commission personnel pertaining to the merits of an extension request are a violation of the Commission's Code of Ethics for Practitioners.

§ 1160.64 Petition to clarify or interpret formally an operating authority.

(a) A person seeking to clarify or interpret its operating authority shall file a petition under these rules.

(b) No application form need be used. Petitioner shall file its entire argument with the petition, with the fee of $100. The petition shall be sent to the Office of the Secretary.

(c) Notice of the petition will be published in the **Federal Register.** Interested persons may obtain copies of the petition from petitioner's representative in the same manner as provided in § 1160.13. Petitioner may file a rebuttal to any opposing argument.

§ 1160.65 Replies to motions.

Replies to motions filed under these rules are due within 10 days of the date the motion is filed at the Commission.

§ 1160.66 Consolidation of applications.

(a) Applicants may request consolidation of applications. The request shall be made when the applications to be consolidated are filed. Requests for consolidation shall be made in writing to the Section of Operating Rights.

(b) Requests to consolidate applications not currently filed shall only be considered to the extent that the applications are filed within 5 days of each other.

(c) Representatives of the consolidating applicants shall indicate their agreement with the consolidating either in the initial request or in their individual submissions. If mutual agreement has been reached in advance, one representative may indicate representatives' assent to the consolidation.

(d) The application will be published in the **Federal Register** and their consolidation will be indicated. Protestants my file a single protest which will apply to all the proceedings.

§ 1160.67 Marking contents on envelopes, and submission of pleadings.

(a) Send all documents to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, unless the rules specify otherwise.

(b) The Commission requests that persons participating in proceedings under these rules mark the lower left-hand corner of the envelope with the docket number, where known, (not the full title) and the pleading type. To assist the Commission further, use these designations where appropriate:

APPLICATION
PROTEST
REPLY TO PROTEST
EXTENSION OF TIME REQUEST
MOTION
REPLY TO MOTION
APPEAL
REPLY TO APPEAL
DISMISSAL BY APPLICANT
PROTESTANT WITHDRAWAL
PETITION TO CLARIFY

§ 1160.68 Requesting oral hearing.

(a) If a protestant (or applicant) believes that a proceeding should be orally heard the person may request an oral hearing. It is the policy of the Commission to handle applications proceedings under Subpart A of this part using the modified procedure if at all possible.

(b) The request shall specifically state the evidence that would be presented, the reason why evidence is material to determine the merits of the proceeding, why an oral hearing with cross-examination is necessary to bring it out, and what evidence already in the record would be contravened (with specific page reference).

(c) The Commission intends to assign matters for oral hearing only where use of modified procedures would prejudice a party, material issues of decisional fact cannot adequately be resolved without an oral hearing, or assignment of an application for oral hearing is otherwise required by the public interest.

(d) Denial of an oral hearing request will not be made in writing where the denial is made prior to issuance of the initial decision. The request will be deemed denied when the proceeding is handled under the modified procedure.

(108) Former paragraphs 1100.245 (a) through (e) and former Form 7 in Appendix B to Part 1100 are redesignated as Part 1161, and the newly redesignated Part 1161 is revised to read as follows:

PART 1161—PROCEDURES FOR ISSUANCE OF CERTIFICATES OF REGISTRATION

Sec.
1161.1 Scope of rules.
1161.2 Notice.
1161.3 Conduct of, and participation in, State Commission proceedings.
1161.4 Applications to the Interstate Commerce Commission for Certificates of Registration.
1161.5 Appeals of State Commission decisions.
Appendix—Form of Notice of Filing State Applications

Authority: 49 U.S.C. 10321 and 10931; 5 U.S.C. 559.

§ 1161.1 Scope of rules.

These rules govern applications for Certificates of Registration which are based upon intrastate certificates of public convenience and necessity issued by a State Commission that contain a concurrent finding that the public convenience and necessity require operations in interstate and foreign commerce. They implement 49 U.S.C. 10931.

§ 1161.2 Notice.

In accordance with rules prescribed by the State Commissions, a person seeking a Certificate of Registration shall notify the State Commission with which the intrastate application is filed of its intent to apply for a Certificate of Registration, at the time of filing the intrastate application. Notice of interested persons will be given by publication in the Federal Register of a summary of the authority sought as prepared by the State Commission and transmitted to the Interstate Commerce Commission at Washington, DC in the format described in the Appendix to this part. In order to afford interested persons a reasonable opportunity to be heard, the summary must be forwarded to the Interstate Commerce Commission sufficiently in advance of any hearings that may be scheduled on the application. No other notice by applicant to interested persons is necessary, unless the State Commission requires it.

§ 1161.3 Conduct of, and participation in, State Commission application proceedings.

The rules of the State Commission will govern the conduct of State Commission proceedings that may be held. Protests and requests for information will be directed to the State Commission. The record made in the State Commission proceeding will be made available to the parties upon payment of costs prescribed by the State Commission.

§ 1161.4 Applications to the Interstate Commerce Commission for Certificates of Registration.

(a) *Time for filing.* Within 30 days after service by the State Commission of a certificate authorizing intrastate operations and containing the recitations required by 49 U.S.C. 10931, the holder of the State certificate shall file with the Interstate Commerce Commission at Washington, DC, an Application for Motor Certificate of Registration, Form OP-OR-100. Except for cause shown, failure to file an application for a Certificate of Registration within the 30-day time period will waive any right to obtain a Certificate of Registration.

(b) *Notice.* Notice of the date of filing of the application and the docket number assigned will be sent by the Interstate Commerce Commission to the applicant and those persons upon whom copies of the application were served by the applicant as specified in the application form.

(c) *Parties.* Any party, which opposed the authorization of operations in interstate or foreign commerce, in the State Commission proceeding will be deemed to be a party in the Certificate of Registration proceeding. No other person will be permitted to participate except upon a showing of substantial reasons.

§ 1161.5 Appeals of State Commission decisions.

Any party which opposed the authorization of operations in interstate or foreign commerce, in the State Commission proceeding may file with the Interstate Commerce Commission at Washington, DC, an appeal of the State Commission decision. Appeals should be filed within 30 days after the date of the filing of an application with the Interstate Commerce Commission for a Certificate of Registration. The appeal (and six copies) should be accompanied by a certified copy of the complete record made before the State Commission, including a transcript of any testimony taken and any exhibits filed, at the expense of the person appealing (unless the record has already been filed by another party). A reply (and six copies) to an appeal may be filed and served within 20 days after the final date for filing appeals. Copies of each appeal and reply shall be served on the State Commission and on all other parties to the State Commission proceeding. The filing of an appeal will not affect the institution of the motor carrier operations in intrastate commerce authorized by the State certificate. Failure to file an appeal waives opposition and further participation in the application proceeding for a Certificate of Registration. Applications for Certificates of Registration and related appeals will be handled in a single proceeding by an appellate division of the Interstate Commerce Commission. A decision issued by an appellate division is final.

Appendix—Form of Notice of Filing State Applications

Part I

(To be completed by applicant)

Notice is hereby given that the below named applicant has filed with ———

(Name of State Commission)

an application for a certificate to conduct motor common carrier operations in intrastate commerce; that, in connection with such operations, applicant also is seeking authority to engage in transportation in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations which may be authorized to be conducted; and that the intrastate and interstate operations proposed to be conducted are as set forth below.

1. ——————————

(Name and business address of applicant)

——————————

——————————

(Street) (City) (State)

2.— ——————————

(Name and address of applicant's representative, if any)

——————————

(Street) (City) (State)

3. Describe in full the operations proposed to be conducted in intrastate commerce, together with the extent to which applicant is seeking authority in connection with such intrastate operations to engage in transportation in interstate and foreign commerce.

——————————

(Signature)

——————————

(Title)

Date ———— 19——.

Part II

(To be completed by State Commission)

Date of filing application ————

Docket number assigned ————

Date and time and place application has been assigned for hearing, if known ————

——————————

——————————

(Signature)

——————————

(Title)

——————————

(Name of State Commission)

Date this notice forwarded to Interstate Commerce Commission, Washington, DC 20423, ————, 19——.

Instructions

This form is for use in giving notice to interested persons regarding the filing of intrastate motor carrier applications in connection with which the applicant also desires authority to engage in interstate and foreign commerce pursuant to 49 U.S.C. 10931. It should be filed in duplicate (along with the intrastate application) with the State Commission, which will forward it to the Secretary, Interstate Commerce Commission, Washington, DC 20423.

The description in Part I, item 3 should include the commodities (or passengers) sought to be transported, the points to be served, and the routes over which, or territories within which, such transportation is to be performed. Care should be taken to insure that the description, which will be published in the **Federal Register**, fully informs interested persons of the type and scope of the proposed intrastate operations, and the extent to which applicant desires authority to engage in transportation in interstate or foreign commerce in connection with such intrastate operations.

PART 1162—TEMPORARY AUTHORITY PROCEDURES UNDER 49 U.S.C. 10928

(109) Former Part 1131 is redesignated as Part 1162.

(110) In the newly redesignated Part 1162, the part heading is revised to read as set forth above.

(111) In the newly redesignated Part 1162, the authority citation is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10928; 5 U.S.C. 559.

(112) The newly redesignated §§ 1162.1–1162.7 are designated as Subpart A in Part 1162, the heading of which is added to read as follows:

Subpart A—Motor Carrier Procedures

§ 1162.1 [Amended]

(113) In the newly redesignated § 1162.1, the statutory references are revised as follows:

(a) In paragraph (a), "section 210a(a) of the Interstate Commerce Act, as amended, 49 U.S.C. 310a(a)" is revised to read "49 U.S.C. 10928".

(b) In paragraph (b)(1), "section 210a(a)" is revised to read "49 U.S.C. 10928".

(c) In paragraph (b)(2), "section 203(a)(14) of the Interstate Commerce Act (49 U.S.C. 303(a)(14))" is revised to read "49 U.S.C. 10102(12)".

(d) In paragraph (b)(3), "section 203(a)(15) of the Interstate Commerce Act (49 U.S.C. 303(a)(15))" is revised to read "49 U.S.C. 10102(13)".

(e) In paragraph (b)(5), "section 203(a)(1) of the Interstate Commerce Act (49 U.S.C. 303(a)(1)" is revised to read "49 U.S.C. 10102".

§ 1162.3 [Amended]

(114) In the newly redesignated § 1162.3, "section 217 of the Interstate Commerce Act in the case of common carriers and of section 218 of the act in the case of contract carriers" is revised to read "49 U.S.C. 10761 and 10762".

§ 1162.4 [Amended]

(115) In the newly redesignated § 1162.4 "section 203(a)(15) of the Interstate Commerce Act" is revised to read "49 U.S.C. 10102(12)".

(116) In the newly redesignated § 1162.4, the word "transportation" is added to the end of paragraph (a)(4).

(117) In the newly redesignated § 1162.4, "Commission's Rules of Practice" in paragraph (c)(1)(iv) is revised to read "applicable rules"'.

§ 1162.5 [Amended]

(118) In the newly redesignated § 1162.5, the statutory references are revised as follows:

(a) In paragraph (a)(2), "section 217 of the Interstate Commerce Act" is revised to read "49 U.S.C. 10761 and 10762".

(b) In paragraph (a)(3), "section 218 of the Interstate Commerce Act" is revised to read "49 U.S.C. 10761 and 10762".

(119) In the newly redesignated § 1162.5, "Bureau of Operations" in paragraph (a)(2) is revised to read "Commission".

(120) In the newly redesignated § 1162.5, the work "of" which precedes "points of origin" in the fourth sentence of paragraph (a)(3) is removed.

§ 1162.6 [Amended]

(121) In the newly redesignated § 1162.6, "in the Commission's General and Special Rules of Practice." in paragraph (d) is revised to read "at".

(122) Former Part 1131a is redesignated as §§ 1162.10–1162.14 as follows:

§1131a.1 redesignated as § 1161.10
§1131a.2 redesignated as § 1162.11
§1131a.3 redesignated as § 1162.12
§1131a.4 redesignated as § 1162.13
§1131a.5 redesignated as § 1162.14

(123) The newly redesignated §§ 1162.10–1162.14 are designated as Subpart B in Part 1162, the heading of which is added to read as follows:

Subpart B—Water Carrier Procedures

§ 1162.10 [Amended]

(124) In the newly redesignated § 1162.10, the statutory references are revised as follows:

(a) In paragraph (a), "section 311(a) of the Interstate Commerce Act, as amended, 49 U.S.C. 911(a)" is revised to read "49 U.S.C. 10928".

(b) In paragraph (b), "section 302 of the Interstate Commerce Act" is revised to read "49 U.S.C. 10102".

§ 1162.11 [Amended]

(125) In the newly redesignated § 1162.11, "Office of Consumer Protection" in paragraph (a) is revised to read "Office of Compliance and Consumer Assistance".

§ 1162.12 [Amended]

(126) In the newly redesignated § 1162.12, the statutory references are revised as follows:

(a) In paragraph (c), "section 311(a) of the Interstate Commerce Act" is revised to read "49 U.S.C. 10928".

(b) In paragraph (d), "section 306 of the Interstate Commerce Act" is revised to read "49 U.S.C. 10761 and 10762".

§ 1162.13 [Amended]

(127) In the newly redesignated § 1162.13, "section 302(e) of the Interstate Commerce Act" in paragraph (a)(2) is revised to read "49 U.S.C. 10102(29)".

(128) In the newly redesignated § 1162.13, the word "water" is added to precede the words "contract carrier" in the second sentence of paragraph (a)(2), and the words "by water carrier" which follow, are removed.

(129) In the newly redesignated § 1162.13, the word "regulated" in the first sentence of paragraph (a)(3) is revised to read "related".

PART 1163—TEMPORARY OPERATING AUTHORITIES AND APPROVALS

(130) Former Part 1101 is redesignated as Part 1163.

(131) The authority citation for the newly redesignated Part 1163 is revised to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 558 and 559.

§ 1163.1 [Amended]

(132) In the newly redesignated § 1163.1, the statutory references are revised as follows:

(a) In paragraph (a), "210a(a) or 311(a) of the Interstate Commerce Act (49 U.S.C. 310a(a), 911(a))" is revised to read "49 U.S.C. 11349".

(b) In paragraph (b), "section 210a(a) or 311(b) of the Interstate Commerce Act (49 U.S.C. 310a(b), 911(b))" is revised to read "49 U.S.C. 11349".

(133) The newly redesignated § 1163.1 is further amended by adding a new paragraph (c) to read as follows:

§ 1163.1 Extension of temporary operating authority on approval.

* * * * *

(c) When an applicant has not made a timely and sufficient application for renewal, or new, authority or approval in accordance with applicable Commission rules, the Commission will determine upon written request of any interested party, or upon its own initiative, whether any temporary authority granted under 49 U.S.C. 10928 may be continued in force beyond the expiration date of such temporary authority for an extended term as defined in paragraph (a) of this section. A written request for such a determination must be filed with the Regional Motor Carrier Board with which the temporary authority application was filed not later than 30 days prior to expiration of the temporary authority.

§ 1163.2 [Amended]

(134) In the newly redesignated § 1163.2, "section 210a(a) of the Interstate Commerce Act (49 U.S.C. 310a(a))" in the introductory paragraph is revised to read "49 U.S.C. 10928".

PART 1164—OWNER-OPERATOR FOOD TRANSPORTATION

(135) Former Part 1138 is redesignated as Part 1164.

(136) In the newly redesignated Part 1164, the authority citation is revised to read as follows:

Authority: 49 U.S.C. 10321, 10922(b)(4)(E), 10923(b)(5)(A), and 11145 and 5 U.S.C. 559.

PART 1165—RESTRICTION REMOVALS

(137) Former Part 1137 is redesignated as Part 1165.

(138) In the newly redesignated Part 1165, the part heading is revised to read as set forth above.

(139) The authority citation to the newly redesignated Part 1165 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10922(h); 5 U.S.C. 559.

§ 1165.26 [Amended]

(140) In the newly redesignated § 1165.26, revise the word "section", which is the last word in the section to read "part".

(141) Former Part 1140 is redesignated as Part 1166, and the newly redesignated Part 1166 is revised to read as follows:

PART 1166—EXTENSIONS OF OPERATIONS BY WATER COMMON CARRIER

Sec.
1166.1 Applicability.
1166.2 Issuance of a certificate without proof of public convenience and necessity.
1166.3 Conditions and procedures.

Authority: 49 U.S.C. 10321 and 10922; 5 U.S.C. 559.

§ 1166.1 Applicability.

The rules in this part provide special procedures by which water common carriers subject to the Commission's jurisdiction under subchapter III of chapter 105 of title 49 of the United States Code operating over a given waterway may extend their operations over newly completed sections of that waterway as they are opened to navigation. These rules implement 49 U.S.C. 10922(f)(3)(B).

§ 1166.2 Issuance of a certificate without proof of public convenience and necessity.

If a water carrier complies with the conditions and procedures set forth in § 1166.3 of this part, a certificate of public convenience and necessity covering extended operations over a newly opened section of a waterway will be issued without proof of public convenience and necessity.

§ 1166.3 Conditions and procedures.

To obtain a certificate under this part, a water carrier must—

(a) Hold authority to operate over a previously opened portion of the waterway involved;

(b) Institute service over the newly completed portion of the waterway within 120 days after it is opened to navigation; and

(c) File its application, on Commission form OP-1, not later than the date of the filing of tariffs establishing rates and charges for transportation of passengers or property over the portion of the waterway embraced in the application, and in no event later than the date on which the extended operations are instituted.

PART 1167—COMPENSATED INTERCORPORATE HAULING OPERATIONS

(142) Former Part 1136 is redesignated as Part 1167.

(143) The authority citation to the newly redesignated Part 1167 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10524; 5 U.S.C. 559.

PARTS 1168-1174—[RESERVED]

(144) New parts 1168–1174 are added and reserved.

PARTS 1175-1199—FINANCE PROCEDURES

PARTS 1175-1179—SECURITIES, SECURITY INTERESTS AND FINANCIAL STRUCTURE

PART 1175—ISSUANCE OF SECURITIES AND ASSUMPTION OF OBLIGATIONS AND LIABILITIES

(145) Former Part 1115 is redesignated as Part 1175 as follows:

§§ 1115.1–1115.6 redesignated as §§ 1175.2–1175.7 respectively;

§ 1115.25 redesignated as 1175.10;

Appendix remains as Appendix.

(146) Two center headings are added to precede the newly redesignated Part 1175 as set forth above.

(147) The authority citation to the newly redesignated Part 1175 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10301–10302; 5 U.S.C. 559.

(148) In the newly redesignated Part 1175, a new § 1175.1 is added to read as follows:

§ 1175.1 Procedures.

(a) *Execution.* The original application or report shall bear the date of execution and be signed in ink by or on behalf of each applicant or respondent. Execution shall be by the applicant or respondent if an individual, by all partners, if a partnership, unless satisfactory evidence is furnished of a partner's authority to bind the partnership, and, if a corporation, an association or other form of organization, execution shall be by its president or other execution officer. Each signer shall also sign a certificate showing that the signer has knowledge of the matters set forth in the document and is duly authorized to verify and file the document.

(b) *Filing, service, number of copies.* The original and six copies of each application, and two copies of each report shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. Copies of applications shall be served in the manner and on the persons required in the form or instructions and proof of service shall be part of the original application. No service of copies or reports is required.

(c) *Incorporation by reference.* If any required document has been previously filed with the Commission in connection with another proceeding, it will be sufficient to refer to the docket number under which it was previously filed, provided that any changes in the document occurring in the document after the previous filing shall be shown in an exhibit identified to correspond with the required document. *Exception:* Income statements and balance sheets or supporting detail for items therein may not be incorporated by reference to annual or quarterly reports or to other proceedings unless the form or report specifically permits such incorporation by reference.

(d) *Responses.* Responses on forms or to instructions shall be full and complete. If an item is not applicable, the report or application shall so state. If information required is unknown or unavailable a statement to that effect and the reasons why the material is not set forth shall be made.

(e) *Typographical specifications.* See 49 CFR 1104.2. (149) The newly redesignated §§ 1175.1–1175.7 are designated as Subpart A to Part 1175 and a heading for Subpart A is added to read as follows:

Subpart A—Applications

§ 1175.2 [Amended]

(150) In the newly redesignated § 1175.2, "sections 20a and 214 of the act" in the first sentence is revised to read "49 U.S.C. 11301 and 11302".

§ 1175.3 [Amended]

(151) In newly redesignated § 1175.3, the statutory references are revised as follows:

(a) In paragraph (a), "part I of the Act" is revised to read "subchapter I of chapter 105 of the act".

(b) In paragraph (a), "part II" is revised to read "subchapter II of chapter 105 of the act".

(c) In paragraph (a), "part I" is revised to read "subchapter I of chapter 105 of the Act".

(d) In paragraph (b), "section 5(2) of the Act" is revised to read "49 U.S.C. 11344".

(e) In paragraph (b), "section 5(3)" is revised to read "49 U.S.C. 11348".

(f) In paragraph (b), "sections 20a or 214" is revised to read "49 U.S.C. 11301 and 11302".

(g) In paragraph (c), "section 20a(1) of the Act" is revised to read "49 U.S.C. 11301(a)(2)."

(152) In the newly redesignated § 1175.3, the words "an order" in paragraph (b) are revised to read "decision".

§ 1170.4 [Amended]

(153) In the newly redesignated § 1175.4, the words "Commission's General Rules of Practice" at the end of paragraph (c) are revised to read "Rules of General Applicability, 49 CFR, Parts 1100–1129".

(154) In the newly redesignated § 1175.4, paragraph (e) is removed.

§ 1175.5 [Amended]

(155) In the newly redesignated § 1175.5, the statutory references are revised to read as follows:

(a) In paragraph (a), "paragraph (9) of section 20a of the Act" is revised to read "49 U.S.C. 11301(c)".

(b) In paragraph (c), "paragraph (9) of section 20a and in the proviso of section 214" is revised to read "49 U.S.C. 11301(b)(2) and 11302(b)".

(c) In paragraph (d), "section 214" is revised to read "49 U.S.C. 11302".

§ 1175.7 [Amended]

(156) In the newly redesignated § 1175.7, "sections 20a or 214" in paragraph (a) is revised to read "49 U.S.C. 11301 and 11302".

(157) In the newly redesignated Part 1175, the heading "COMPETITIVE BIDDING EXEMPTION" is revised to read as follows:

Subpart B—Competitive Bidding Exemption

§ 1175.10 [Amended]

(158) In the newly redesignated § 1175.10, the statutory references are revised as follows:

(a) In paragraph (a), "section 20a" is revised to read "49 U.S.C. 11301".

(b) In paragraph (b), "section 20a of the Act" is revised to read "49 U.S.C. 11301".

(159) In the newly redesignated § 1175.10(b), remove the words which follow the date "June 18, 1952".

(160) In the newly redesignated § 1175.10(c), the reference to "Part 1110 of this Chapter" is revised to read "49 CFR 1170.3(e)".

(161) In the newly redesignated Part 1175, the last paragraph of the Appendix, which begins "The foregoing requirements . . ." is removed.

PART 1176—CHANGES IN SECURITIES OR INSTRUMENTS AND FILING CERTIFICATES AND REPORTS

(162) Former Part 1114 is redesignated as Part 1176.

(163) In the newly redesignated Part 1176, the heading is revised to read as set forth above.

(164) The authority citation to the newly redesignated Part 1176 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11301–11302; 5 U.S.C. 559.

§ 1176.1 [Amended]

(165) In the newly redesignated § 1176.1, the reference to "Rule 15 of the General Rules of Practice (§ 1100.15 of this Chapter)" in paragraph (a) is revised to read "49 CFR 1104.4".

(166) In the newly redesignated § 1171.1, the statutory references are revised as follows:

(a) In paragraph (e)(1)(ii), "paragraph (3) of section 20b, 49 U.S.C. 20b" is revised to read "49 U.S.C. 11363".

(b) In paragraph (f), "(to the extent not inconsistent with paragraph (1) of section 20b, 49 U.S.C. 20b)" is revised to read "49 U.S.C. 11361".

(c) In paragraph (h), "paragraph (1) of section 20b of the Interstate Commerce Act (49 U.S.C. 20b)" is revised to read "49 U.S.C. 11361".

(d) In paragraph (h), "paragraph (3) of section 20b" is revised to read "49 U.S.C. 11362".

§ 1176.2 [Amended]

(167) In the newly redesignated § 1176.2, "paragraph (9) of section 20a of the Interstate Commerce Act, 49 U.S.C. 20a or otherwise" is in paragraph (h) is revised to read "49 U.S.C. 11301(b)(2)".

(168) In the newly redesignated § 1176.2, "Rule 84 of the General Rules of Practice (§ 1100.84 of this chapter)" in paragraph (1) is revised to read "49 CFR 1114.7".

§ 1176.3 [Amended]

(169) In the newly redesignated § 1176.3, the statutory references are revised as follows:

(a) In paragraph (a), "section 20a of the Interstate Commerce Act (49 U.S.C. 20a)" is revised to read "49 U.S.C. 11301".

(b) In paragraph (e), "paragraph (2) of section 20b (49 U.S.C. 20b)" is revised to read "49 U.S.C. 11362(a)".

§ 1176.4 [Amended]

(170) In the newly redesignated § 1176.4, "section 20a of the Interstate Commerce Act (49 U.S.C. 20a)" is revised to read "49 U.S.C. 11301".

PART 1177—RECORDATION OF DOCUMENTS

(171) Part 1116 is redesignated as Part 1177.

(172) The authority citation to the newly redesignated Part 1177 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11303; 5 U.S.C. 559.

PART 1178-1179—[RESERVED]

(173) New parts 1178–1179 are added and reserved.

PARTS 1180-1189—COMBINATIONS AND OWNERSHIP

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

(174) Former Part 1111 is redesignated as Part 1180, and a center heading is added to precede the newly redesignated Part 1180 as set forth above.

(175) The authority citation to the newly redesignated Part 1180 is revised to read as follows:

Authority: 49 U.S.C. 10321, 11341, 11345 and 11346; 5 U.S.C. 559; 45 U.S.C. 904 and 915.

(176) The authority citation to Subpart B of the newly redesignated Part 1180 is removed.

PART 1181—TRANSFERS OF OPERATING RIGHTS UNDER 49 U.S.C. 10926

(177) Former Parts 1132, 1141, 1151, 1133 and former § 1045.11 are redesignated as Part 1181 as follows:

(a) §§ 1132.1–1132.5 redesignated as §§ 1181.1 through 1181.5 respectively;
(b) §§ 1141.1–1141.10 redesignated as §§ 1181.10 through 1181.19 respectively;
(c) §§ 1151.1–1151.7 redesignated as §§ 1181.20 through 1181.26 respectively;
(d) §§ 1133.1–1133.2 redesignated as §§ 1181.30 through 1181.31 respectively;
(e) §§ 1045.11 redesignated § 1181.32.

(178) In the newly redesignated Part 1181, the part heading is revised to read as set forth above.

(179) The authority citation to the newly redesignated Part 1181 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10926; 5 U.S.C. 559.

(180) The newly redesignated §§ 1181.1–1181.5 are designated as Subpart A to Part 1181, the heading of which is added to read as follows:

Subpart A—Motor Carrier Operating Rights

§ 1181.1 [Amended]

(181) In the newly redesignated § 1181.1, the note which follows paragraph (a) is removed.

(182) The newly redesignated §§ 1181.10–1181.19 are designated as Subpart B to Part 1184, the heading of which is added to read as follows:

Subpart B—Water Carrier Operating Rights

§ 1181.11 [Amended]

(183) In the newly redesignated § 1181.11, the heading is revised to read as follows:

"§ 1181.11 Transfers effected under 49 U.S.C. § 11343–44."

(184) In the newly redesignated § 1181.11, the statutory references are revised as follows:

(a) In the first sentence, "section 5(13) of the Interstate Commerce Act" is revised to read "49 U.S.C. § 10102 (18), (7), (21), (11), or (27)".

(b) In the first sentence, "section 5(2) of the act" is revised to read "49 U.S.C. § 11343–44".

(c) In the second sentence, "section 5(2) of the act" is revised to read "49 U.S.C. 11343–44".

§ 1181.12 [Amended]

(185) In the newly redesignated § 1181.12, the heading is revised to read as follows:

"§ 1181.12 Transfers not effected under 49 U.S.C. §§ 11343–44."

(186) In the newly redesignated § 1181.12, the statutory references are revised as follows:

(a) In the introductory text and paragraph (g), "section 5(13) of the act" is revised to read "49 U.S.C. 10101 (18), (7), (21), (11), or (27)".

(b) In the introductory text, "section 5(2) of the act" is revised to read "49 U.S.C. 11343–44".

(c) In paragraph (g), "section 5 of the act" is revised to read "49 U.S.C. 11343(c)".

(187) In the newly redesignated § 1181.12, the words "Part III of" are removed from paragraph (o).

§ 1181.14 [Amended]

(188) In the newly redesignated § 1181.14, "Rule 15 of the General Rules of Practice (§ 1100.15 of this chapter)" is revised to read "49 CFR 1104.4".

§ 1181.15 [Amended]

(189) In the newly redesignated § 1181.15, "Rule 225 of the General Rules of Practice" in paragraph (c) is revised to read "49 CFR Part 1118".

(190) The authority citation which follows the newly redesignated § 1181.15 is removed.

(191) In the newly redesignated § 1181.15, the statutory references are revised as follows:

(a) In paragraph (e), "Section 5(2) of the act" is revised to read "49 U.S.C. 11343–44".

(b) In paragraph (e), "Section 5(2) of the proceedings" is revised to read "proceedings under 49 U.S.C. 11343–44".

§ 1181.16 [Amended]

(192) In the newly redesignated §1181.16, the words "Part III of" are removed from paragraph (d).

(193) The newly redesignated §§ 1181.20–1181.26 are designated as Subpart C to Part 1181, the heading of which is added to read as follows:

Subpart C—Freight Forwarder Operating Rights

§ 1181.21 [Amended]

(194) In the newly redesignated § 1181.21, "or is a carrier subject to Part I, II, or III of the Interstate Commerce Act" in paragraph (g) is revised to read "or is carrier subject to Title 49, subtitle IV, Chapter 105".

(195) In the newly redesignated § 1181.21, "Part IV of" in paragraph (j) is removed.

§ 1181.23 [Amended]

(196) In the newly redesignated § 1181.23, "Rules 15 of the Commission's General Rules of Practice (§ 1100.15 of this subchapter)" is revised to read "49 CFR 1104.4".

(197) The newly redesignated § 1181.24 is amended as follows:

(a) In paragraph (e)(1), "section 17(8) of the Interstate Commerce Act" is revised to read "49 U.S.C. 10324".

(b) In paragraph (e)(2), "general rules of practice (Part 1100 of this Chapter)" is revised to read "Rules of General Applicability, 49 CFR 1100–1129".

(c) In paragraph (e)(2), "Part 1151 of this Chapter)" is revised to read "Subpart C of this Part".

(d) In paragraph (e)(3), "Motor Carrier Board" is revised to read "Review Board".

(e) In paragraph (e)(3), "Special rules of practice, set forth in Rule 225 of the Commission's general rules of practice (49 CFR 1100.225)" is revised to read "49 CFR Part 1118".

§ 1181.24 [Amended]

(198) The authority citation which follows the newly redesignated § 1181.24 is removed.

§ 1181.25 [Amended]

(199) In the newly redesignated § 1181.25, "Part IV of" in the second sentence of paragraph (d) is removed.

(200) The newly redesignated §§ 1181.30–1181.32 are designated as Subpart D to Part 1181, the heading of which is added to read as follows:

Subpart D—Broker Licenses

(201) In former Part 1133, remove the cross reference which appeared after the table of contents and before the text.

§ 1181.30 [Amended]

(202) In the newly redesignated § 1181.30, "section 211 of the Interstate Commerce Act" in paragraph (a) is revised to read "49 U.S.C. 10924".

(203) The authority citation which follows the newly redesignated § 1181.30 is removed.

§ 1181.31 [Amended]

(204) In the newly redesignated § 1181.31, "Rule 225 of the General Rules of Practice" is revised to read "49 CFR Part 1118".

(205) The authority citation which follows the newly redesignated § 1187.37 is removed.

(206) In the newly redesignated Part 1181, a new Subpart E is added to read as follows:

Subpart E—Procedures for Changing the Name or Business Form of a Motor Carrier, Broker, or Freight Forwarder

Sec.
1181.40 Scope.
1181.41 Procedures.

§ 1181.40 Scope.

The term transfer as used in 49 CFR Part 1811 does not apply to transactions to accomplish changes in the form of a business, such as the incorporation of a partnership or sole proprietorship. Note these procedures also apply when a corporation or partnership changes its legal name or when any entity changes its trade name or assumed name.

§ 1181.41 Procedures.

To accomplish such changes, a letter providing the information set forth below should be addressed to the Office of the Secretary, Applications and Fee Unit, Interstate Commerce Commission, Washington, D.C. 20423. The envelope should be marked NAME CHANGE. The information required is (a) the docket number(s) and name of the carrier requesting the change; (b) a copy of the articles of incorporation on the state certificate reflecting the corporation; (c) the name(s) of the owner(s) of the stock and the distribution of the shares; (d) the name of the officers and directors of the corporation; and (e) a statement that there is no change in the ownership, management or control of the business.

PART 1182—MOTOR CARRIER APPLICATIONS TO CONSOLIDATE, MERGE, OR ACQUIRE CONTROL UNDER 49 U.S.C. 11343–11344

(207) Former §§ 1100.240–1100.244 are redesignated as new Part 1182 as follows:

§ 1100.240 redesignated as § 1182.1
§ 1100.241 redesignated as § 1182.2
§ 1100.242 redesignated as § 1182.3
§ 1100.243 redesignated as § 1182.4
§ 1100.244 redesignated as § 1182.5

(208) In the newly designated Part 1182, the part heading is added to read as set forth above:

(209) The authority citation to the newly redesignated Part 1182 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11343, 11344 and 11345a; 5 U.S.C. 559.

§ 1182.1 [Amended]

(210) The newly redesignated § 1182.1, is amended as follows:

(a) The section heading is revised to read as follows:

"§ 1182.1 *Applications under 49 U.S.C. 11343–11344.*"

(b) In paragraph (b), the first sentence is removed and the following is inserted in its place:

"Applicants for authority under 49 U.S.C. 11343–11344 to consolidate, merge, purchase, or lease operating rights and properties of a motor carrier shall complete application form OP–F–44. Applicants for authority under 49 U.S.C. 11343–11344 to acquire control of a motor carrier or motor carriers through ownership of stock, or otherwise, shall complete application form OP–F–45. The filing fee for either application is $700, payable at time and place of application, payable to the Interstate Commerce Commission. Once accepted, filing fees will not be refunded. If an application is rejected, the fee will be refunded. Separate fees need not be paid on related applications filed by the same applicant(s) which would be the subject of one proceeding. (See 49 CFR 1002.2(c) regarding directly related applications)."

(c) In paragraph (b), remove the word "the" which precedes "forms" within the parentheses and change the second "or" to "and" in the last sentence.

(d) In paragraph (c)(2), the word "from" in the first sentence is revised to read "of".

(e) In paragraph (c)(2), the words "from the filing requirement" are removed from the second sentence.

(f) In paragraph (c)(2), the third sentence is revised to read as follows: "Applicants may not file their application until after the Commission has rendered a decision on the waiver request."

(g) In the introductory text of paragraph (c)(4), the word "the" which precedes "modified procedure" is removed.

(h) In paragraph (c)(4)(i), the word "upon" is revised to read "on".

(i) In paragraph (c)(4)(ii), "(See rule 240(g) *infra.*)" is revised to read "(See 49 CFR 1182.1(g))".

(j) In paragraph (d)(1), the word "those" is added between "are" and "filed" in the second sentence.

(k) In paragraphs (d) (1) and (2), "49 U.S.C. 11344", is revised to read "49 U.S.C. 11343–11344".

(l) In paragraph (d)(2), the parentheses which appear around the word "lead" are removed.

(m) In paragraph (e), "(2) two" is revised to read "two (2)".

(n) In paragraph (e), "10423" is revised to read "20423".

(o) In paragraph (f)(1), the words "Interstate Commerce" which precede the word "Commission" are removed.

(p) In paragraph (f)(2), "rule 240(g) *infra*" which appears in parentheses is revised to read "49 CFR 1182.1(g)".

(q) In paragraph (f)(3), the words "because of ministerial error" and "Interstate Commerce" are removed.

(r) In paragraph (g)(2), "Also" and the commas which precede and follow the word "simultaneously" in the second sentence, and "the" which precedes

(s) In paragraph (g)(3), the word "infra" which follows the cross reference is removed.

(t) In paragraph (g)(4), the word "optional" in the first sentence is removed, and the "an" which precedes that word is revised to read "a".

(u) In paragraph (g)(4), the parentheses which enclose the word "optional" in the second sentence are removed.

(v) In paragraph (i)(3), the parentheses are removed, the words "shall be" are added to precede "served", and "upon" which follows "served" is revised to read "on".

(w) In paragraph (j)(1), the words "to be" and the "the" which precedes "modified" are removed.

(x) In paragraph (j)(2), the words "to be" are removed, and "this" is revised to read "that".

(y) In paragraph (k), the word "with" in the second sentence is revised to read "indicating".

(211) Section 1182.1 is further amended by revising paragraphs (a) and (c)(3) to read as follows:

§ 1182.1 Applications under 49 U.S.C. 11343-11344.

(a) *Procedures used generally.* The Commission uses two types of procedures. Most cases are processed under *modified procedure* (the evidentiary record is composed entirely of written statements). Occasionally, a case involves extraordinary substantive issues, the resolution of which requires testimony from persons at an *oral hearing.* These rules govern both types of proceedings. It is the Commission's policy to process cases under modified procedure whenever possible.

* * * * *

(c) * * *

(3) *Caption summary.* Each application shall be accompanied by a caption summary describing the proposed transaction, and indicating (i) whether any portion of the operating rights involved in the transaction is proposed to be cancelled or restricted, (ii) whether an application under 49 U.S.C. 11349 to perform temporarily the service proposed to be acquired in the permanent application has been filed, and (iii) whether another application has been filed under provisions of Title 49, Subtitle IV, U.S. Code, "Transportation" which is directly related to the proposed transaction. (See 49 CFR 1182.1(d) regarding directly related applications.)

* * * * *

(212) In the newly redesignated §1182.2, the heading and paragraphs (a) and (b) are revised to read as follows:

§ 1182.2 How to oppose an application.

(a) *Filing a protest.*

(1) Protests to an acquisition application shall be filed (received at the Commission), within 45 days from the date of the application is published in the **Federal Register.**

(2) A protest shall also be served on applicants' representatives.

(3) Failure to file a timely protest waives further participation in the proceeding.

(b) *Contents of a protest.*

(1) Protests shall be verified.

(2) All information upon which the protestant plans to rely shall be put in the protest including the grounds on which the protest is made and the protestant's interest in the proceeding, and any request for oral hearing. See 49 CFR 1182.3.

(3) A protest may include a request that the Commission allow (i) additional evidentiary submissions from the parties to a proceeding or (ii) further procedural steps to develop the evidentiary record (e.g. discovery). The request must demonstrate that this procedure is necessary to resolve the *specific issues* giving rise to the request. If the Commission finds, whether on its own motion, or that of a party, that the record requires supplementation, it shall issue a decision indicating the additional information required and the time frames within which such information must be submitted. Upon receipt of such information the record will be closed and the case will go forward to decision.

* * * * *

§ 1182.3 [Amended]

(213) The newly redesignated § 1182.3 is amended as follows:

(a) In the introductory text of paragraph (a), the word "the" which follows the word "using" is removed.

(b) In paragraph (a)(2), the word "determine" and "it" that follows the word "which" are removed, and "the evidence" is added to follow the word "out".

(c) In paragraph (b)(2), the "s" on the end of the word "proceedings" and the word "to" between "mailing" and "them" are removed.

(d) In paragraph (b)(3), the parenthetical phrase is removed.

(e) In paragraph (c)(1), the semicolon is revised to be a comma.

(f) In paragraph (d), the part of the sentence which follows the comma and begins with the word "failing" is removed.

(g) In paragraph (e), the second sentence is removed.

§ 1182.5 [Amended]

(214) The newly redesignated § 1182.5 is amended as follows:

(a) In the heading and paragraphs (a)(1), (e)(3), (f)(1), (f)(2), (f)(3), (g), (h)(1) and (h)(2), the references to "49 U.S.C. 11344" are revised to read "49 U.S.C. 11343–11344".

(b) In paragraph (b), "by an appropriate decisional body", and the letter "s" on the words "hearings" and "proceedings" in the third sentence are removed.

(c) In paragraph (b), "where it is" in the forth sentence is revised to read "when".

(d) In paragraph (c)(1), the word "an" which precedes "application" is removed, and "form OP-F-46. The application fee is $60." is added to follow "applications".

(e) In paragraphs (d), (f)(4), and (i)(2), "upon" is revised to read "on".

(f) In paragraph (f)(3), "of record" in the second sentence is removed.

(g) In paragraph (g), the commas which follow the words "oppose" and "seasonably" are removed.

(h) In paragraph (i), "for example," in the second sentence is removed.

(i) In paragraph (j)(1), the parentheses around the address are removed.

PART 1183—CONTROL OF CONSOLIDATION OF MOTOR CARRIERS OR THEIR PROPERTIES

(215) Former Part 1134 is redesignated as Part 1183 as follows:

§ 1134.1 redesignated as §1183.1;
§ 1134.3 redesignated as §1181.2;
§ 1134.4 redesignated as §1181.3;
§ 1134.6 redesignated as §1183.4;
§ 1134.50 redesignated as §1181.5;
§ 1134.51 redesignated as §1181.6;

(216) The authority citation to the newly redesignated Part 1183 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11341, 11343, 11344, and 11345a; 5 U.S.C. 559.

§ 1183.1 [Amended]

(217) In the newly redesignated § 1183.1, "section 5, Interstate

Commerce Act" is revised to read "49 U.S.C. 11343".

(218) In the newly redesignated § 1183.1, "shall be sent" is added to follow the parentheses in the last sentence of paragraph (b).

§ 1183.2 [Amended]

(219) In the newly redesignated § 1183.2, the statutory references are revised as follows:

(a) In the introductory text, "Section 5 of the Interstate Commerce Act" is revised to read "49 U.S.C. 11343".

(b) In the introductory text, "Part II of the Act" is revised to read "Subchapter II of chapter 105 of the act".

(c) In paragraph (a), "Section 220 of the act" is revised to read "49 U.S.C. 11145".

(220) In the newly redesignated § 1183.2, the figure "$300,000" appearing in the introductory text and paragraphs (a), (b) and (c) is revised to read "$2 million".

(221) The authority citation which follows the newly redesignated § 1183.2 is removed.

§1183.3 [Amended]

(222) In the newly redesignated § 1183.3, the statutory references are revised to read as follows:

(a) In paragraph (a), "Section 5, Interstate Commerce Act" is revised to read "49 U.S.C. 11343".

(b) In paragraph (a), "Part II of the Act" is revised to read "Subchapter II of chapter 105 of the act".

(c) In paragraph (c), "part II" is revised to read "Subchapter II of chapter 105 of the act"

(223) The authority citation which follows the newly redesignated § 1183.3 is removed.

§ 1183.4 [Amended]

(224) In the newly redesignated § 1183.4, the statutory references are revised as follows:

(a) In paragraph (a), "section 210a(b), Interstate Commerce Act" is revised to read "49 U.S.C. 11349".

(b) In paragraph (a), "section 5" is revised to read "49 U.S.C. 11343".

§ 1183.5 [Amended]

(225) In the newly redesignated § 1183.5, "section 5, Interstate Commerce Act" in paragraph (a) is revised to read "49 U.S.C. 11343".

§ 1183.6 [Amended]

(226) In the newly redesignated § 1183.6, "section 5 of the Interstate Commerce Act" in paragraph (a) is revised to read "49 U.S.C. 11343".

PART 1184—MOTOR CARRIER POOLING OPERATIONS

(227) Former Part 1139 is redesignated as Part 1184.

(228) The authority citation to the newly redesignated Part 1184 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11342; 5 U.S.C. 559.

§ 1184.2 [Amended]

(229) In the newly redesignated § 1184.2, redesignate paragraphs (1) through (13) as paragraphs (a) through (m).

(230) In the newly redesignated § 1184.2, "his/her" in paragraph (m) is revised to read "applicant's".

PART 1185—INTERLOCKING OFFICERS

(231) Former Part 1112 is redesignated as Part 1185.

(232) The authority citation to the newly redesignated Part 1185 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11322; 5 U.S.C. 559.

§ 1185.1 [Amended]

(233) In the newly redesignated § 1185.1, "section 20(a)(1) of the Interstate Commerce Act" is revised to read "49 U.S.C. 11301(a)(1)".

(234) In the newly redesignated Part 1185, the heading and text of § 1185.3 are revised to read as follows:

§ 1185.3 Authorization.

Authorization will be granted only upon application as provided in this part.

§ 1185.4 [Amended]

(235) In the newly redesignated § 1185.4, "such an order" is revised to read "authorization".

§ 1185.5 [Amended]

(236) In the newly redesignated § 1185.5, "An order", which begins the sentence in parentheses in paragraph (c), is revised to read "A decision".

§ 1185.8 [Amended]

(237) In the newly redesignated § 1185.8, "an order" in the first sentence is revised to read "a decision".

§ 1185.9 [Amended]

(238) In the newly redesignated § 1185.9, "an order of" in the introductory text is removed.

(239) In the newly redesignated § 1185.9, "section 5 of the act" in paragraph (a) is revised to read "49 U.S.C. 11343–11344".

PARTS 1186-1189—[RESERVED]

(240) New parts 1186–1198 are added and reserved.

PARTS 190-1199—REORGANIZATIONS

PART 1190—REORGANIZATION OF RAILROADS

(241) Former Part 1117 is redesignated as Part 1190 as follows:

§§ 1117.1–1117.12. redesignated as §§ 1190.1–1190.12 respectively;

§§ 1117.51–1117.55 redesignated as §§ 1190.20–1190.24 respectively.

(242) The authority citation to the newly redesignated Part 1190 is revised and a note is added to follow the revised citation to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559 and Bankruptcy Act of March 3, 1933, 47 Stat. 1467 at 1474.

Note.—*The regulations in parts 1190, 1191, and 1192 apply only to carriers which are the subject of bankruptcy or reorganization proceedings instituted prior to October 1, 1978 under the then-effective bankruptcy laws. Carriers in bankruptcy or undergoing reorganization pursuant to proceedings filed after October 1, 1978 and subject to the present provisions of Title 11, United States Code, are not subject to these regulations.

(243) A center heading is added to precede the newly redesignated Part 1190 as set forth above.

(244) In the newly redesignated Part 1190, the heading *"Special Rules of Procedures"* is removed, and §§ 1190.1 through 1190.12 are designated as Subpart A, the heading of which is added to read as follows:

Subpart A—Special Procedures

§ 1190.12 [Amended]

(245) In the newly redesignated § 1190.12, the first sentence of paragraph (b) is revised to read as follows:

§ 1190.12 Procedures governing application.

* * * * *

(b) The original application and six copies shall be filed. * * *

(246) In the newly redesignated Part 1190, §§ 1190.20–1190.20 are designated as Subpart B, and the heading "Ratification of Appointment as Trustee" is amended by designating it as the heading for Subpart B as follows:

Subpart B—Ratification of Appointment as Trustee

§ 1190.23 [Amended]

(247) In the newly redesignated § 1190.23, "Rules 15 and 16 of the General Rules of Practice (§§ 1100.15

and 1100.16 of this Chapter)" is revised to read "49 CFR 1104.4 and 1104.5".

PART 1191—CORPORATE REORGANIZATION OF CARRIERS AND CORPORATIONS

(248) Former Part 1118 is redesignated as Part 1191.

(249) The authority citation to the newly redesignated Part 1191 is revised and a note is added to follow the revised citation to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559 and Section 177 of Act of June 22, 1938, 840 Stat. at 891.

Note.—*The regulations in parts 1190, 1191, and 1192 apply only to carriers which are the subject of bankruptcy or reorganization proceedings instituted prior to October 1, 1978 under the then-effective bankruptcy laws. Carriers in bankruptcy or undergoing reorganization pursuant to proceedings filed after October 1, 1978 and subject to the present provisions of Title 11, United States Code, are not subject to these regulations.

§ 1191.1 [Amended]

(250) In the newly redesignated § 1191.1, "Chapter 1, Title 49, of the United States Code" is revised to read "Title 49, subtitle IV, chapter 105".

§ 1191.2 [Amended]

(251) In the newly redesignated § 1191.2, the statutory references are revised as follows:

(a) "Section 5, Chapter 1, Title 49, of the United States Code" is revised to read "49 U.S.C. 11343-11344".

(b) "Chapter 1 of said Title 49" is revised to read "Title 49, subtitle IV, chapter 105".

§ 1191.3 [Amended]

(252) In the newly redesignated § 1191.3, ", 20423" is added to the address at the end of the section.

PART 1192—CORPORATE REORGANIZATION OF MOTOR CARRIERS

(253) Former Part 1135 is redesignated as Part 1192.

(254) The authority citation to the newly redesignated Part 1192 is revised and a note is added to follow the revised citation to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559 and Section 177 of Act of June 22, 1938, 840 Stat. at 891.

Note.—*The regulations in parts 1190, 1191, and 1192 apply only to carriers which are the subject of bankruptcy or reorganization proceedings instituted prior to October 1, 1978 under the then-effective bankruptcy laws. Carriers in bankruptcy or undergoing reorganization pursuant to proceedings filed after October 1, 1978 and subject to the present provisions of Title 11, United States Code, are not subject to these regulations.

(255) In the newly redesignated § 1192.1, "Part II of the Interstate Commerce Act" in paragraph (b)(1) is revised to read "Title 49, subtitle IV, chapter 109".

PARTS 1193-1199—[RESERVED]

(256) New parts 1193–1199 are added and reserved.

Title 49, Chapter X, Subchapters A, C and D are amended by changing the references as follows:

PART 1002—[AMENDED]

(257) Part 1002 is amended by replacing the references in the left-hand column with the references in the right-hand column wherever they appear.

Old Reference	*New Reference*
1100.253(e)	1160.64
1131.1(b)(1)	1162.1(b)(1)
Part 1137	Part 1109
1115.25	1175.10
1136.4	1167.4
1116.1	1177.1

PART 1003—[AMENDED]

(258) Part 1003 is amended by replacing the references in the left-hand column with the references in the right-hand column wherever they appear.

Old Reference	*New Reference*
Part 1115	Part 1175
Part 1131	Part 1162, Subpart A
Part 1132	Part 1181, Subpart A
Part 1133	Part 1181, Subpart D
Part 1134	Part 1183
Part 1140	Part 1166

PART 1011—[AMENDED]

(259) Part 1011 is amended by replacing the references in the left-hand column with the references in the right-hand column wherever they appear.

Old Reference	*New Reference*
1100.66(a)	1113.3(a)
1100.95	1133.2
1100.98(e)	1115.5
Part 1102	Part 1135
Part 1104	Part 1139

PART 1012—[AMENDED]

(260) Part 1012 is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
49 CFE 1100.98	Part 1115

PART 1043—[AMENDED]

(261) Part 1043 is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
1132.3	1181.3

PART 1045B—[AMENDED]

(262) Part 1045B is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
49 CFR 1100, Appendix B No. 6	§ 1112.9

PART 1067—[AMENDED]

(263) Part 1067 is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
1132.3	1181.13

PART 1201—[AMENDED]

(264) Part 1201 is amended by replacing the references in the left-hand column with the references in the right-hand column wherever it appears.

Old Reference	*New Reference*
Part 1121	Part 1152
1121.20	1152.10
1121.21	1152.11
Part 1121, Subpart D	Part 1152, Subpart D
Part 1125	Part 1155

PART 1300—[AMENDED]

(265) Part 1300 is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
Part 1102	Part 1135

PARTS 1300, 1301, AND 1302—[AMENDED]

(266) Parts 1300, 1301, and 1302 are amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
1100.22	1130.1

PARTS 1307 AND 1310—[AMENDED]

Parts 1307 and 1310 are amended by replacing the references in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
1100.40	1132.1
1100.200	1132.2

PART 1331—[AMENDED]

(268) Part 1331 is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
1100.15	1104.4

Subchapters A, C, and D are further amended as follows:

PART 1011—[AMENDED]

(269) In § 1011.5, the words "Rule 95 of the General Rules of Practice" and the parentheses that surround "49 CFR 1133.2" in paragraph (a)(1) are removed.

(270) In § 1011.7, the words "Rule 98(e) of the general rules of practice," in paragraph (c)(1) are removed.

(271) In § 1011.7, the words "Rule 66a(a) of the general rules of practice," in paragraph (a) are removed.

(272) In § 1011.7, the words "Rule 95 of the general rules of practice" and the parentheses that surround "49 CFR 1113.3(a)," in paragraph (c) are removed.

PART 1012—[AMENDED]

(273) In § 1012.4, the words "Commission's General Rules of Practice," in paragraph (b) are removed.

PART 1301—[AMENDED]

(274) In § 1301.81 paragraph (a)(8) and § 1301.85 the words "Rule 22 of the General Rules of Practice" and the parentheses that surround "§ 1130.1 of ths chapter" are removed.

PART 1304—[AMENDED]

(275) In § 1304.9 the words "Rule 20 of the General Rules of Practice" and the parentheses that surround § 1130.1 of this chapter", in the cross reference to paragraph (k) are removed.

PART 1310—[AMENDED]

(276) In § 1310.8, the words "Commission's Rules of Practice" and the parentheses that surround "49 CFR 1132.1" in paragraph (b) are removed.

PART 1331—[AMENDED]

(277) In § 1331.1, the words "Rule 15 of the general rules of practice" and the parentheses that surround "§ 1104.4 of this chapter" in the introductory text are removed.

SUBCHAPTER B—[AMENDED]

(278) In Subchapter B of Title 49 former Part 1100 is further amended by removing center headings and subpart headings, that read as follows:

(a) Subpart A—Rules of General Applicability

(b) Practitioners

(c) Special Rules Respecting Joint Boards

(d) Pleadings Specifications Generally

(e) Commencement of Proceedings

(f) Petitions Seeking Institution of Rulemaking Proceedings

(g) Hearings

(h) Briefs, Reports, Oral Arguments

(i) Order Compliance, Damage Statements

(j) Special Rail Requirements

(k) Subpart B—Special Rules of Practice

(279) Subchapter B of Title 49 former Part 1100 is further amended by removing the section numbers and section headings of the following sections:

§§ 1100.4, 1100.44, 1100.47, 1100.53, 1100.82, 1100.97, 1100.225, 1100.245, 1100.250.

(280) Subchapter B of Title 49 is further amended by removing the Introductory Note which follows the center heading for former Parts 1140–1149.

(281) Subchapter B of Title 49 is further amended by removing center headings that read as follows:

(a) Parts 1110–1119–Rail Carriers Consolidation, Finance, and Reorganization

(b) Parts 1120–1129—Special Procedures—Rail Carriers Certificate of Public Convenience and Necessity

(c) Parts 1130–1139—Special Procedures—Motor Carriers and Brokers Certificates, Permits, Licenses

(d) Parts 1140–1149—Special Procedures—Water Carriers

(e) Parts 1150–1159—Special Procedures—Freight Forwarders

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