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INTERSTATE COMMERCE COMMISSION

[49 CFR Ch. I]

REVISED RULES OF PROCEDURE BEFORE THE COMMISSION

NOTICE OF PROPOSED RULE MAKING

EDITORIAL NOTE: The following is a proposed revision of the rules of practice and procedure now contained in 49 CFR Part 1 and related parts. The proposed revision does not follow the numbering system required for the Code of Federal Regulations. It also contains organizational material. In final form, organizational material will be separately stated, and the procedural material numbered in accordance with the Code of Federal Regulations style.

Ex Parte No. 195—Revised Rules of Procedure Before the Commission

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 2d day of May A. D. 1955.

In the matter of considering suggested revised Rules of Procedure submitted by the Chairman of the Committee on Rules of Practice, Association of Interstate Commerce Commission Practitioners, on January 6, 1955.

By notice entered on August 6, 1952, in *Ex Parte* No. 55, *Proposed Revision of the Rules of Practice*, the Commission invited suggestions from all concerned therewith on revisions of its General Rules of Practice adopted July 1, 1942, as amended. [49 CFR Part 1, § 1.1 to § 1.102, inclusive.] In response, a large number of suggestions were received from individual members of the Commission, members of the Commission's staff, practitioners before the Commission including the Chairman of the Committee on Rules of Practice of the Association of Interstate Commerce Commission Practitioners, and other individuals. The responses dealt with all phases of the present rules.

In the notice referred to above, it was stated that if the changes emerging as a result of the suggested revisions were of such importance as to merit it, they would be made the subject of a proposed report to which exceptions might be filed and argument requested.

All of the proposals, except one, were of such a nature that in our considered judgment they may be disposed of



This issue is divided into two parts, Part II of which contains a notice of proposed rule making of the Interstate Commerce Commission relating to revised rules of procedure before the Commission. Other documents of the Interstate Commerce Commission are published in Part I of this issue.

within the framework of the present General Rules of Practice without the necessity of extensive public proceedings.

The exception referred to in the preceding paragraph is a proposal submitted on January 6, 1955, to the Commission by the Chairman of the Committee on Rules of Practice, Association of Interstate Commerce Commission Practitioners, and embraces not only a complete revision of the Rules of Practice but certain changes in the Commission's organization and assignment of work. The text of the proposal is set forth in appendix A hereto. The changes contemplated in this proposal are of such a nature and magnitude as to warrant a separate proceeding for their consideration.

It is, therefore, ordered, That pursuant to section 4 (a) of the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. 1003) notice is hereby given of the proposed cancellation of the Commission's General Rules of Practice, adopted July 31, 1942, as amended (49 CFR Part 1, § 1.1 to § 1.102, inclusive), and the proposed adoption of revised rules of procedure submitted by the Chairman of the Committee on Rules of Practice, Association of Interstate Commerce Commission Practitioners, on January 6, 1955 [Authority: Secs. 12, 17, 24 Stat. 383, as amended, 385, as amended, 49 Stat. 546, as amended, 548, as amended, sec. 201, 54 Stat. 933, sec. 1, 56 Stat. 285; 49 U. S. C. 12, 17, 304, 305, 904, 1003] including the proposed modifications in the Commission's organization and assignment of work [Authority: 24 Stat. 385, 25 Stat. 861, 40 Stat. 270, 41 Stat. 492, 493, 47 Stat. 1368, 54 Stat. 913; 49 U. S. C. 17].

It is further ordered, That any interested party may file, on or before Sep-

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tember 6, 1955, with this Commission, written statements containing data, views, or arguments concerning the proposed revised rules.

It is further ordered, That no oral hearing be held with respect to the proposed rules, but that, if deemed necessary or advisable, the matter may be

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assigned for informal conference at which those interested may discuss the proposed revised rules with designated officials of this Commission, and if deemed necessary or advisable assigned for oral argument before the Commission.

And it is further ordered, That notice to the general public shall be given by depositing a copy of this order in the Office of the Secretary of the Commission for public inspection and by filing a copy with the Director, Division of the Federal Register. A copy of the proposed rules will be filed in the public docket in this proceeding, and available at the Commission for public inspection.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

Chapter Zero—Administration

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Chapter Zero—Administration

ARTICLE 0—COVERAGE OF THE RULES

RULE 01—SCOPE

These Rules of Procedure contain complete public information with respect to the organization and functioning of *The Agency*, the general course and method by which its functions are handled and determined, the formal and informal procedures by which substantive rules and statements of *Agency* policy are formulated and adopted and the Rules of Practice governing the conduct of *Proceedings* before it. These general rules are grouped into three chapters as follows:

(APA Section 3; ICC Rule 1; CAB 302.2, .200, .500, .600, 300; FPC 03.0, 02.0; MC 201.1)

01.0 Chapter 1—Administration. This chapter deals with the scope, legality, and objectives of the rules; with the methods by which interested persons are afforded the opportunity to participate in rule-making in proceedings for the establishment of interpretative rules, general statements of policy, agency organization, procedures and practices which are not addressed to and served upon named persons in accordance with law; with the definition of words and phrases frequently used in the rules; with the organization and duties of the several bureaus of the *Agency*; the field staff; with the powers, duties and functioning of hearing officers and joint boards and with practitioners authorized to represent others in proceedings before *The Agency*.

01.1 Chapter 1—Procedural Instruments. This chapter deals with the form, allegations, copies, time of *Filing* and *Serving* and supplementation of *Complaints, Applications, Petitions, Answers, Replies, Protests, Replications, Motions, Process, Notice, Appearance* and *Parties*.

01.2 Chapter 2—Hearing. This chapter deals with the processing of *Proceedings* after they have been initiated, the formulation of *Issues*, the sources, burden and production of proof, official notice, stipulations, admissions of record, presumptions; the production, competency, privileges, examination and right of witnesses; the competency and method of introducing testimony and documents; the rules of admission and exclusion of

evidence; the order, method and reception of proof; and written or oral argumentation.

01.3 Chapter 3—Decision. This chapter deals with: *Summary Decisions*; the issuance and correction of *Initial Decisions*; *Final Decisions* and *Reconsideration* thereof; *Relief* from *Final Decisions*; judicial actions to enforce statutory provisions or *Agency Orders*; and judicial review of *Agency Orders*.

RULE 02—INTERPRETATION

Nothing contained in *These Rules* shall be interpreted to authorize or permit the imposition of a *Sanction* or the issuance of a substantive *Rule* or *Order* not within the jurisdiction delegated to *The Agency* or otherwise unauthorized by law; nor to diminish or limit in any way the rights, privileges and immunities of any person except as may be authorized by law. All provisions of *These Rules*, to the maximum degree possible, shall be interpreted as being wholly in consonance with the law and with their objective which is to secure just, speedy, and inexpensive determination of *Proceedings* before *The Agency*. If any Rule or any provision of any Rule hereof be held invalid for any reason whatever, the remainder of the Rule or the remaining Rules shall be unaffected.

(APA 9 (a), 12; ICC Rule 2)

RULE 03—RULE MAKING

Rules authorized to be made and promulgated by *The Agency* will be made as follows:

03.1 Initiation. *Rule Making* may be initiated by *The Agency* by order upon its own motion or upon a *Petition Filed* by any *Person* pursuant to Article 14 hereof.

(APA 4 (d); FTC Rule XXXI; SEC Rule XIX)

03.2 Notice. General notice of proposed *Rule Making* will be published in the *Federal Register* which will state the time, place and nature of the *Rule Making Proceeding*; refer to the authority under which the Rule is proposed; and state either the terms or substance of the proposed Rule or a description of the subject and issues involved, *except* that such notice may not be given when the Rule involves or relates to:

1. Military, naval or foreign affairs or functions of the United States;

2. Agency management or personnel or public property, loans, grants, benefits or contracts; or

3. Interpretative rules, general statements of policy, of *Agency* organization, or internal procedure or practice; or

4. Any situation in which *The Agency* for good cause finds (and incorporates the findings and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest; or

5. To a *Proceeding* wherein all *Persons* subject to the rule are named and either personally served or otherwise have actual notice thereof in accordance with law.

(APA 4 (a); FPC 1.19 (a); SEC XIX (b))

03.3 Procedures. In any *Proceeding* where Notice is required to be given as provided in Rule 03.2, *The Agency* by order will assign the *Proceeding* for hearing and determination pursuant to the Rules of Chapters 1, 2 and 3 hereof, if it be one where hearing is required by law and may do so in any case. Otherwise it will afford interested *Persons* an opportunity to participate in the Rule Making through submission of written data, views or argument, with or without opportunity to present the same orally, in any manner prescribed by the order. After consideration of all relevant matter presented, *The Agency* will incorporate in any Rules adopted, a concise statement of their basis and purpose.

(APA Section 4 (b); FPC 1.19 (a); MC 201.42, .43)

03.4 Informal Hearings. *The Agency* upon *Petition* by any *Person* or upon its own initiative will hold such informal hearings, of which notice will be given in the FEDERAL REGISTER, as it may deem necessary or helpful in the determination of its policies or the carrying out of its duty and may require the attendance of witnesses and the production of evidence as provided in the Rules of Chapter 2 hereof.

(FPC 1.801; MC 201.111)

03.5 Effective Date. The required publication or service of any substantive Rule, other than one authorized under Rule 04 hereof or, one granting or recognizing exemption or relieving restriction or one of interpretation or of statements of policy, shall be made not less than 30 days prior to the effective date thereof, except as otherwise provided by *The Agency* upon good cause found and published with the Rule.

RULE 04—EMERGENCY RULE MAKING

Upon *Petition*, or of its own initiative and without notice, reply, hearing or report, where *The Agency* is of the opinion that shortage of railroad movable equipment or congestion of railroad traffic or lack of adequate railroad facilities or similar emergency requiring immediate action, *The Agency* may:

04.1 Suspension of Car Service Rules. Suspend the operation of railroad Car Service rules;

(ICA 1 (15) (a))

04.2 Substitute Car Service Rules. Make such new Car Service rules without regard to ownership as will best promote service in the interest of the public and of commerce, and upon such terms as it may thereafter, upon hearing, find to be just and reasonable where the carriers are unable to agree upon the same; or

(ICA 1 (15) (b))

04.3 Joint Use of Terminals. Require the joint or common use of railroad terminals in the manner best fitted to meet the emergency and serve the public interest, and, in the event of disagreement thereafter, and after hearing, fix the just and reasonable terms for such joint or common use;

(ICA 1 (15) (c))

No. 95—Part II—2

04.4 Priorities. Establish, police, enforce, modify, suspend or annul preferences or priorities in transportation, embargoes or permits for or restrictions upon, the receipt, movement or delivery of traffic; or

(ICA 1 (15) (d))

04.5 Inadequate Service. Where *The Agency* is of the opinion that any carrier by railroad, for any reason, is unable properly and adequately to transport serviceably traffic offered to such railroad, *The Agency* may make such just and reasonable directions with respect to the handling, routing and movement of the traffic of such carrier and its distribution over other lines of railroad as will best promote service in the interest of the public and commerce of the people, and upon such terms as between the carriers as they may agree upon or, in the event of their disagreement, as *The Agency*, after subsequent hearing, may find to be just and reasonable.

(ICA 1 (16))

RULE 05—ACTION UPON THE AGENCY'S OWN INITIATIVE

Whenever it is provided in any of These Rules that *The Agency* upon *Motion*, *Complaint*, or *Petition* may take or may refrain from taking any action, *The Agency* may or will take, or refrain from taking, such action of its own initiative.

RULE 06—SPECIAL RULES

The Agency, upon *Motion* in any *Proceeding* in which it appears proper or necessary to attain the objections of *These Rules*, will, by *Order Served* upon all *Parties* and published in the FEDERAL REGISTER, suspend or waive the operation of any of *These Rules*, other than rules required by statute and establish special rules of procedure applicable to such *Proceeding* or to any class of *Proceedings*.

(FCC 1.701; MC 201.11)

RULE 07—SUPPLEMENTATION OF RULES

Information as to procedure under *These Rules* or interpretative instructions supplementing them in special instances will be furnished to any interested *Person* upon application to the Secretary of *The Agency* at its office in Washington, D. C.

(ICC 3; FPC 02.02; 02.14; 02.45; 6 (b), (c), (d); FTC XXIX)

RULE 08—AMENDMENT OR REVISION

The Rules of Articles 4, 5, 6, 7 and 20 may be amended or revoked in whole or in part, upon *Petition* or of *The Agency's* own initiative without prior notice thereof. Subsequent notice will be given promptly in the FEDERAL REGISTER of such action. All other rules hereof will be amended, revoked, or revised in whole or in part under the procedures provided in Rules 03.2 and 03.3 hereof.

(MC 201.11, 201.45)

RULE 09—COMMUNICATIONS

All communications and correspondence, including communications transmitting *Procedural Instruments for Filing*, shall be addressed to *The Agency*

at its office in Washington 25, D. C. Such communications must state the sender's address, the *Party* represented and, in the case it is made by or for a *Person* not a *Party*, the interest or status of the sender in the *Proceeding*. If the communication contains an inquiry, it shall state whether the reply thereof shall be made by first class mail prepaid, or by telegram collect. If a reply by air mail is requested, a self-addressed envelope with the necessary postage must be enclosed.

(ICC 4; FPC 1.1; FTC 1; MC 201.2)

09.1 Attention of a Particular Officer. Where a communication is in reply to one received from any *Officer* of *The Agency* or where the *Proceeding* has been referred and is being processed or handled by any *Officer*, it shall be addressed to *The Agency* and marked on the outside cover of the communication for the attention of such *Officer*, naming him.

ARTICLE 2—DEFINITIONS: ADMINISTRATION AND PREHEARING

Defined Terms. When *capitalized* and *italicized*, the words and phrases defined in the Rules of this Article, will be respectively interpreted to have the defined denotation. Where a defined term is not so emphasized, it is used in accordance with its usual connotations, including, if the context permit or require, such defined denotation. In determining the meaning of terms denoting number, gender, mood or tense:

(a) The use of either the singular or plural number denotes either or both the singular and plural.

(b) A term used in one gender, whether masculine, feminine or neuter, denotes also either or both the other genders.

(c) A term used in one mood or tense denotes also either or all the other moods or tenses respectively.

(1 USC 1; ICC 6)

RULE 10—GENERALLY

Government. The legislative, executive, judicial and administrative authorities of the United States, its Possessions or Territories, several States of the United States, the District of Columbia or of any foreign State or Nation.

Act or Interstate Commerce Act. The Preamble (National Transportation Policy) Parts I, II, III, and IV, Sections 1 to 422 inclusive of the Act to Regulate Commerce as amended, or any thereof and all other statutes which grant power or jurisdiction to, or impose duties upon *The Agency*.

Administrative Procedure Act. "The Administrative Procedure Act" of June 11, 1946, as now or hereafter amended. (5 USC 1001)

Agency. Each *Person*, body, department or group of *Persons* (whether or not within or subject to review by another *Agency*) authorized to administer or exercise any power, function, or jurisdiction of the *Government* of the United States (other than Congress or the courts) or the *Governments* of the Possessions, Territories or the District of Columbia.

(APA 5 USC 1001)

Authority (Government Agency). A Person, body, department or group of Persons authorized to exercise any power or function of a Government or of a municipal or other public corporation.

Court. Any tribunal which exercises judicial powers of any Government.

Federal Government. Government of the United States.

Part I. The original Act to Regulate Commerce of February 4, 1887, as now or hereafter amended, consisting of Sections 1 to 26 inclusive.

(49 USC 1 to 27 inclusive)

Part II. The Act of August 8, 1935, as now or hereafter amended, consisting of Sections 201 to 228 inclusive and sometimes called "The Motor Carrier Act."

(49 USC 301 to 327)

Part III. The Act of September 18, 1940, as now or hereafter amended, consisting of Sections 201 to 323 inclusive, and sometimes called "The Water Carrier Act."

Part IV. The Act of May 16, 1942, consisting of Sections 401 to 422 inclusive and sometimes called "The Freight Forwarder Act."

(49 USC 1001 to 1022)

Public Official. An officer, agent or other representative of a Government or Agency acting in the course of duty as such officer, agent or representative.

State. Any of the States or any Government thereof, which now or hereafter constitute the United States.

The Act. Interstate Commerce Act, q. v.

United States. The nation established by the "Constitution of the United States of America" and the Government thereof.

RULE 11—THE AGENCY

The Agency. The Commission created and established by the Act and known as the Interstate Commerce Commission, whether acting either en banc or by or through a Division.

(49 USC 11; Similar definitions—FPC 1.1 (3))

Board of Review. The Board of General Examiners of the Bureau of Hearings to whom is delegated the duty to review and recommend to The Agency with respect to: (a) Initial Decisions and (b) Petitions for Reconsideration.

Chairman. The Commissioner selected and appointed by The Agency as its chief executive officer.

Charge Examiner. A member of the Section of Charges of the Bureau of Hearings.

Chief of Section. A subordinate Officer of The Agency having charge of the administration of a Section or a bureau of The Agency and reporting to the Director of such bureau.

Commission. The Interstate Commerce Commission.

Commission En Banc. The entire Commission acting together in the consideration and determination of Proceedings.

Commissioner. Any duly appointed qualified and acting member of The Agency.

Director. Administrative head of one of the several bureaus of The Agency, its managing Director, Secretary and General Counsel.

Division. One of the divisions of The Agency duly constituted, acting in the consideration and determination of matters within its delegated powers and duties.

Employee. A Person duly authorized and regularly engaged in performing or assisting in performing at a fixed rate of pay work or business incident to the discharge of The Agency's powers, functions or duties.

Employee Board. A Board composed of Officers of The Agency.

(ICC 5 (f))

Examiner. An officer of The Agency duly appointed and qualified as a member of one of the sections of the Bureau of Hearings or as a Regional Hearing Officer.

(CAB 302.22)

Finance Examiner. A member of the Section of Finance of the Bureau of Hearings.

Fourth Section Board. A Board constituted by The Agency to which has been delegated and referred the power, duty and discretion to receive, investigate, hear and initially decide petitions by carriers for authority to charge less for the longer than for shorter distances for the transportation of passengers or property, pursuant to the first proviso of Section 4 (1) of the Act.

General Examiner. A member of the Section of General Examiners of the Bureau of Hearings.

Hearing Officer. A Commissioner, Division, Examiner, or Board to whom any Proceeding has been Referred for Initial or Recommended Initial Decision.

Joint Board. A special Board of State representatives constituted as provided in Section 205 of Part II of The Act.

Officer of The Agency. An Officer appointed by The Agency to whom certain powers and duties are delegated which include the Chairman, a Commissioner, a Director, an Assistant Director, a Chief of Section, an Examiner and a member of an Employee Board.

(ICC 5 (f))

Operations Examiner. A member of the Section of Operations of the Bureau of Hearings.

Rule. The whole or any part of any Agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or to describe the organization, procedure, or practice requirements of The Agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs or accounting or practices bearing upon any of the foregoing.

(APA 2 (c))

Staff Members, Officers and Employees of The Agency.

Suspension Board. A Board constituted by The Agency to which has been delegated and Referred the power, duty

and discretion to receive and consider complaints, Petitions or representations of interested Persons concerning the lawfulness of any schedule or Tariff stating a new Charge for the transportation of passengers or property by any Common Carrier or a Charge for a new service or a Reduced Charge by a Contract Carrier and upon same or upon its own motion to enter an order for Investigation or for Investigation and Suspension of such schedule or Tariff.

These Rules. Rules 01 to 297 inclusive hereof which prescribe the general course and method by which The Agency's functions are channeled and determined, the nature and requirements of all formal or informal procedures for the initiation, processing, hearing, consideration and disposition of all Proceedings before it.

(APA 3 (a))

RULE 12—TRAFFIC

Allowance. The amount payable, pursuant to Tariffs lawfully on file by a carrier, directly or by deduction from freight charges to the owner of property transported under the Act for any service rendered in connection therewith or for furnishing any instrumentality used therein.

(ICA 15 (13))

Article of Commerce. Any movable article which is capable of being bought, sold and which can be transported by a Carrier.

Charge. The act, result or product of establishing or collecting a sum of money to be paid for property or service, together with all rates, fares, prices, classifications, rules, regulations or tariffs incident to or relating to, or affecting the same.

Commodity. Any Article of Commerce included in any freight classification on file with The Agency.

Discriminate, Discrimination. By any means or device whatsoever to charge any Person a greater or less amount for any Service than that charged any other Person for a like or similar Service under substantially similar conditions or to give or cause any undue or unreasonable preference or advantage to any particular Person, locality, port, point, region, or territory, or to any particular Traffic to the undue or unreasonable prejudice or disadvantage of another Person, locality, port, point, region or territory, or Traffic.

Fare Structure. The basis upon which fares for the transportation of Persons from one point to another are interrelated to the fares for such transportation between other points.

Joint Charges. The aggregate Charge made by two or more Carriers for transportation of Persons or property over a connected route embracing the lines of each of such Carriers.

Prefer, Preference. To give an advantage in Charges or Service to one Person, locality, port, point, region, district, territory or particular description of Traffic over another Person, locality, port, point, region, district, territory, or particular description of Traffic under like or similar circumstances or conditions.

Preferential State Charges. A Charge made or imposed by the authority of any State which causes any undue or unreasonable advantage, preference, or prejudice as between Persons or localities in interstate commerce on the one hand, and interstate or foreign commerce on the other hand or against interstate or foreign commerce.

Rate. A charge provided by a Tariff for a stated unit of transportation service.

Ratemaking Agreement. An agreement between or among two or more Carriers relating to Charges or to procedures for the joint consideration, initiation or establishment thereof.

Rate Structure. The basis upon which Rates for transportation of property from one point to another are interrelated to the Rates for such transportation between other points.

Rate Territory. An area within which a common Rate Structure is maintained.

Released Rate. A Rate dependent upon and varying with the value of the shipment declared or agreed upon by the shipper in writing as the released value of the property shipped and limiting the liability of the Carrier of the amount of recovery for any loss, damage or injury to such property to the amount so declared, agreed upon and released.

Route. The Carriers and junctions of their lines at which the interchange is made over which a passenger or shipment is transported in the order of respective receipt and delivery thereof, or is to be transported.

Special Permission. An Order of The Agency for good cause shown authorizing a Carrier to depart from the requirements of The Act with respect to the time, notice, manner or method of publishing, posting or filing Tariffs or from any Order, Rule or regulation respecting same or from any Tariff.

Tariffs. A schedule naming the Rates, fares, Charges, and routes between different points on the lines of one or more Carriers.

Through Route. A route embracing and requiring transportation over the lines of two or more Carriers.

Traffic. Persons or property or the volume or amount thereof transported or to be transported by one or more Carriers or the business of providing such transportation.

RULE 13—OPERATIONS

Abandon, Abandonment. Voluntarily, intentionally, and affirmatively give up forever the right or franchise to own, maintain or operate facilities for the transportation of, or to transport, Persons or property over a particular Line.

Authority. The lawful right to do, perform, consummate, carry on, conduct or engage in anything, business, transaction or operation.

Barge. A non-powdered cargo vessel drawn or pushed by a power vessel and used for the transportation of property on inland waterways.

Boat. A self-powered vessel used for the transportation of Persons or property on inland waterways.

Brokerage. The business conducted and the services performed and the compensation received by a Broker.

Car. A wheeled vehicle designed and equipped for movement upon a Railroad for the purpose of transporting Persons or property.

Carriage. The transportation of Persons or property by a Carrier.

Car Service. The use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars and other vehicles used in the transportation of property by Railroad.

(ICA 1 (10))

Depot. A building or platform adjacent to the Line of a Railroad or bus company at which trains or motor coaches regularly stop for the receipt or discharge of passengers, mail, baggage, express or freight.

Equipment. Railway, highway or marine vehicles or vessels used in or for the transportation of Persons, or property.

Exempt, Exemption. To release a Person otherwise subject thereto from a statutory duty, liability, obligation or restriction.

Exemption Proceeding. One initiated by a Petition of a Person subject to the jurisdiction of The Agency for an exemption of Operations or Charges from any provision of The Act.

Facilities. Anything used or useful in the transportation of Persons or property by a Carrier.

Franchise. The Authority granted by a Government to a Carrier to exercise the powers of a corporation and/or to engage in the transportation of Persons or property for hire between the points or within the area specified in such grant.

Highway. A way open to the use of the public, with or without tolls, for the movement of commercial-wheeled Vehicles, automotive or animal drawn, excluding Railroads.

Involved Operations. In an Application for an Exemption, the Operations which are sought to be Exempted; in an Application for the grant or issuance of a certificate, permit or license authorizing the institution, enlargement, extension, supplementation, transfer or abandonment of Operating Authority, the Operation sought to be exempted, instituted, enlarged, extended, supplemented, transferred or abandoned; in an Application for Authority to pool traffic, service or earnings, the Operation over which the pooled traffic is to be transported or the pooled service to be rendered or the pooled earnings to be earned; in an Application for the Unification of two or more Carriers the Operations of all Carriers to be Unified; in Applications for the acquisition of control of all or any part of one or more Carriers by transfer, lease, operating contract or arrangement or to acquire trackage rights, the Operations which are to be so controlled or acquired.

License. Whole or any part of a permit, certificate, approval, registration, charger, membership, statutory, exemption or other form of permission of The Agency.

(APA 2 (e))

Licensing. The Agency's process respecting the grant, renewal, denial, revocation, suspension, annulment, with-

drawal, limitation, amendment, modification, or conditioning of a License.

(APA 2 (e))

Lighter. (Noun) A flat deck water craft, moved by towing used in loading, unloading vessels in a harbor or in moving freight or vehicles between wharves or docks in a harbor; (Verb) Load, unload or transport by a Lighter.

Lighterage. Verbal action or resulting service or the Charge therefor.

Line. A distinct or separate operating unit or route over which a Carrier regularly transports Persons and/or property.

Locomotive. A self-propelled wheeled vehicle used for the hauling or pushing of cars along a railroad track.

Management. The act or result of or the body of Persons having the duty of determining the policies and of controlling and directing their execution and the Operations of a Carrier.

Motor Vehicle. Any wheeled Vehicle, machine, tractor, trailer or semi-trailer propelled or drawn by mechanical power and used upon Highways in the transportation of Persons or property excluding local trolley buses.

(ICA 203 (a) (13))

Office Building. A permanent enclosed structure of wood, masonry or metal or any combination thereof used in whole or in part for the performance of executive, administrative, supervisory or clerical duties or work by officers or employees of a Carrier.

Operating Authority. The lawful right and power, or the official evidence thereof by certificate, license, permit, grant or order, to engage in the transportation of Persons or property or in Brokerage.

Operation. Any act, process, effect, method or way of functioning done, employed or resulting from the Transportation of Persons and/or property by a Carrier or of Brokerage.

Practice. The usual, customary or prescribed manner or method in which any act, power, right, or duty is done, exercised or performed.

Railroad. The Facility consisting of the Right-of-Way, Roadbed and Track used for the movement thereover of Locomotives and Cars.

Right of Way. The land over and upon which a Railroad company owns, constructs, maintains and operates its Railroad or any part thereof.

Roadway. The earthwork or the masonry, wood or metal structure and/or ballast upon which a Railroad Track is laid.

Service (Transportation). Any Operation of a Carrier or Broker which contributes to the advantage of any shipper, receiver or patron.

Station. A building of masonry, wood or metal, or any combination thereof, at which a Carrier holds itself out regularly to receive from shippers or to deliver to consignees shipments of freight of less than vehicle lots for or after transportation thereof by it.

Terminal Facility. A facility for the receipt, pickup, delivery, loading, unloading or transfer of passengers or shipments of freight; or for the assembly, classification, marshalling or breakup of Cars into or from Railroad trains.

Track. The superstructure consisting of two parallel lines of steel rail, spaced at a uniform distance apart, and laid transversely upon cross-ties of wood, metal or masonry.

Trailer. A wheeled non-powered vehicle designed to be pulled by an auto-truck or truck-tractor over *Highways* and used for the transportation of property.

Train. A *Locomotive* connected with one or more *Cars* and moving over the *Railroad*, whether with or without passengers or freight.

Transportation. The act, result or product of conveying a *Person* or a shipment of freight from initial receipt at point of origin to final delivery at point of destination, including the utilization of all facilities and of all services rendered in connection therewith.

Vehicle. The *Facility* on or in which passengers or property is transported on the ground or in the water, such as wheeled vehicles (*Cars, Locomotives, Buses, Motor Coaches, Motor Trucks, Trailers, Tractors, etc.*) and water craft (*Boats, Steamships, Steamboats, Barges, Lighters, Tankers and Vessels*).

Vessel. A structure made to float upon the water, whether self-propelled or not, and used in the *Transportation of Persons* or property.

RULE 14—FINANCE

Affiliate (Verb). To bring or to come into a relation of *Affiliation*.

Affiliation. A relation between two or more *Persons* of such a nature as to make it reasonable to believe that the affairs of any of such *Persons* will be managed or conducted in the interest of or for the benefit to any or all of the others of such *Persons*, including, but not exclusively, relationships established or existing because of common directors, officers, or stockholders or because of the ownership or control of the *Securities* of any such *Persons* or because of contractual obligations.

Agreement. State, act, result, product, or a writing evidencing a common opinion, understanding, proposal, undertaking or operation or, if the context requires, the manifestation of an intentional and voluntary obligation by one competent *Person* to another for a valuable consideration to do or refrain from doing something of a legal subject matter.

Alteration. A change of modification of a particular provision, condition or obligation of any *Security* or of any mortgage, indenture, deed of trust, corporate charter or other instrument pursuant to which any *Security* shall have been issued or by which any class of obligation is secured pursuant to Section 20b of *The Act*.

(ICA 20 b (1))

Control (Verb). To possess, assert or exercise authority or power to cause someone or something to act as one wills him or it to act. (Noun) The right, authority, power or a rule, standard, agency or means to *Control* or to keep someone or something within prescribed or desired limits.

Corporate Reorganization. Reorganization of a *Railroad* engaged in inter-

state commerce pursuant to Section 77 of the Bankruptcy Act or of a public utility corporation pursuant to Chapter 10, Title 11 of the U. S. Code.

(11 USC 205; 11 USC 506, 577, 579 and 624)

Directorate. The Board of Directors of a Corporation or the office of a director of a corporation.

Indenture. An *Instrument* pursuant to which any *Security* shall have been issued or by which any corporate obligation is secured, including but not exclusively, a mortgage, contract, deed of trust, corporate charter, etc.

Issuance. The execution and authentication or the execution, authentication, negotiation and delivery of (a *Security*).

Issue (*of Securities*) (Verb) Execute and authenticate or execute, authenticate, negotiate and deliver (a *Security*). (Noun) The act of *Issuing* of the *Security* which is issued or the entire amount of such *Security*, either in number or in par or principal amount of dollars.

Pooling. The action, arrangement, agreement or transaction pursuant to which two or more *Carriers* (except *Forwarders*) aggregate or combine their individual *Traffic, Service, revenues* or net earnings and divide the same among themselves upon a pre-determined basis, excluding, however, agreements among *Carriers* for the establishment and maintenance of joint through charges and the divisions of the revenues upon an agreed basis between the *Carriers* participating in such transportation.

Reorganization. The reconstruction of the corporate and/or financial structure of a *Carrier* under Section 77 or Chapter 10 of the Bankruptcy Act.

Report (*Carrier*). A periodic or special account, description and statement of a *Carrier's* organization, *Management, assets, liabilities, property, Securities, revenues, expenses, income, Traffic, Service, Operations* or other acts or transactions as and in such form and detail may be prescribed by *The Commission* from time to time.

(ICA 20 (1))

Security. A share of capital stock, a bond or other evidence of interest in or of indebtedness of.

(ICA 20 a (2))

Statistics. Compilation, analysis, classification or collation of facts or data pertaining in any way to *Carriers, Traffic, Charges, Service, Operations, Finances* or accounts.

Transfer. (Verb) to make over or pass a right, title, property (tangible or intangible) possession or control to another. (Noun) The action, result or evidence of the verbal act.

Unify. To acquire control of, or to merge, consolidate, combine or amalgamate two or more *Carriers* or all or any part of their *Franchises, properties* or *Operations* into a single or common ownership, control, interest, management or operation; Unification; Verbal act or result.

(ICA 5 (2) (a))

RULE 15—ACCOUNTS

Account. Account means one of the primary or general accounts prescribed by *The Commission* in a "uniform System of Accounts" applicable respectively to the several classes of *Carriers* subject to its jurisdiction.

Advances. The furnishing of money, property or credit before it is due in aid of an *Affiliate*.

Capital. All the items of property, tangible or intangible, employed in the conduct of any business and constituting the resources of such business for the discharge of its liabilities and for distribution to its owners or stockholders.

Earned Surplus. That part of the surplus (excess of recorded investment in assets over the sum of recorded liabilities and capital stock) represented by the excess of net income after provision for income taxes over the sum of dividends and other charges against surplus over the entire history of the *Business Unit*.

Investment. Recorded expenditure for an item of property which constitutes a part of the *Capital* of a *Business Unit*.

Valuation. The act, proceeding and procedure of investigating, ascertaining and reporting the value of property owned or used by common carriers pursuant to Section 19 (a) of *The Act*.

RULE 16—PERSONS

Association. An unincorporated, or a non-profit incorporated, organization of two or more *Persons* for a business, commercial, professional, charitable, religious, social, educational, fraternal or other common purpose or activity among the members thereof, excluding, however, a partnership or "Massachusetts Trust."

Assumption or Obligation. The undertaking to pay, perform or discharge either primarily or secondarily any obligation imposed upon the maker by any *Security* of another *Person*.

Attorney. An individual who upon a showing of the requisite qualifications therefor (Rule 90) has been admitted to practice and is lawfully engaged in practicing before *The Agency* by pleading, or advocating the cause of a *Party* to a *Proceeding*.

(ICA 17 (3), (12))

Broker. A *Person*, other than a *Motor Carrier* or a bona fide employee of a *Motor Carrier*, who as principal or agent, sells or offers for sale transportation subject to Part II or who negotiates for or holds himself out by solicitation, advertisement or otherwise as one who sells, provides, furnishes, contracts or arranges for such transportation.

(ICA 203 (a) (18))

Business. The conduct, pursuit or operation of any public or private office, profession, industry, occupation or calling or of any commercial, service or utility enterprise or organization, and the performance or discharge of any duty in connection with, pursuant to or in furtherance of any of the same.

Business Unit. An individual, partnership, association, corporation, administrator, executor, receiver, guard-

ian or trustee organized to engage or engaged in any *Business*.

Carrier. Includes *Railroads, Express Companies, Motor Carriers, Water Carriers, and Forwarders.*

Company. Includes Corporation, partnerships, *Associations and Business Units* of every kind.

Express Company. A *Person* other than a *Railroad*, which holds itself out to the general public to transport or provide transportation of property for compensation by utilization in whole or in part of the passenger train service of *Railroads.*

Forwarder or Freight Forwarder. A *Person* other than a *Railroad, Express Company, Motor Carrier or Water Carrier* who holds himself out to the general public as a common carrier to transport or to provide for the transportation of property for compensation in interstate commerce under the provisions of Part IV of *The Act.*

Individual. A man or woman *sui juris.*

Involved Persons. A *Person* who is a *Party* or an *Affiliate* of a *Party* to the transaction.

Licensee. A *Person* who by *Order of The Agency* has been granted a permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission.

(APA 26)

Motor Carrier. A *Person* engaged in the transportation by *Motor Vehicle* in interstate or foreign commerce of passengers or property for hire.

(ICA 203 (a) (14) (15))

Officer. Any *Person* authorized by law to perform the duties of an office, public, corporate or private.

(USC 1)

Person. Includes individuals, partnerships, corporation, *Associations*, or public or private organizations of any character including *Agencies.*

(APA 2 (b); FPC 1.1 (1))

Person Involved. One who is a *Party* or an *Affiliate* of a *Party* to the transaction.

Practitioner. An individual who upon a showing of the requisite qualifications therefor (Rule 90) has been admitted to practice and is lawfully engaged in practicing before *The Agency* by pleading or advocating the cause of a *Party* to a *Proceeding.*

(ICC 5 (e); FPC 1.1 (7))

Railroad (as a Person). A common carrier engaged in the transportation of property and/or passengers by means of a *Railroad.*

Self Insurer. A *Motor Carrier* who pursuant to Section 215 of *The Act* or a *Water Carrier* who pursuant to Section 403 (c), (d), has filed qualifications and agreements to pay within specified limits any final judgment recovered against him for bodily injury to or death of any *Person* resulting from the negligent operation, maintenance, or use of *Motor Vehicles*, or for loss or damage to the property of others; and to make compensation to shippers and/or consignees for any loss, damage or default for which

such *Carrier* or a connecting *Common Carrier* is legally responsible, which qualifications and agreements have been approved by *The Commission.*

Water Carrier. A *Person*, except an *Express Company*, engaged in the transportation by water in interstate or foreign commerce of passengers or property for hire.

RULE 17—PARTIES

Affiliate (Noun). A *Person* who is related by *Affiliation* to a *Party* or to an *Involved Person.*

Alignment of Parties. The action of a Hearing Officer under Rule 215 hereof in assigning *Parties* to different *Sides* in accordance with their respective positions.

Appear. Formally become a *Party* to a *Proceeding* by *Filing* an *Initial* or *Defensive Pleading* or an *Intervention* therein.

Appearance. Verbal action or result.

Applicant. One who in a *Procedural Instrument* prays that a *License* be granted to him or that an act, status, relation or transaction be approved and authorized which otherwise may not be lawfully done, assumed or consummated.

(FPC 1.1 (8))

Capacity. The possession of the right and competency to act or refrain from acting in a given situation; or the status, relation or position of a person with respect to his duties or the qualifications necessary to perform same, or with respect to the *Proceeding.*

(CR 9 (a))

Complainant. One who files a complaint of anything done or omitted to be done by a carrier in contravention of *The Act* and praying the *Relief* therefor provided in *The Act.*

(FPC 1.1 (10))

Counsel. An attorney-at-law who has been admitted to practice before *The Agency* either generally or in a particular *Proceeding.*

Defendant. A *Person* against whom the Complaint has been filed.

(FPC 1.1 (12))

Discipline (Verb). To enforce compliance with *These Rules* and especially with the Canons of Professional Ethics herein prescribed by all *Practitioners* and other persons who *Appear* in *Proceedings* before *The Agency*, through admonition, censure, removal from a hearing room, suspension or termination of the right to practice or to represent others in *Proceedings* before *The Agency.*

Interest (in a Proceeding). A personal, representative, community, business or economic right, title, duty or liability which may be affected directly or indirectly by the *Decision.*

Intervener. A *Person* who pursuant to *These Rules* has become a *Party* to a *Proceeding.*

(FPC 1.1 (13)); (MC 201.31)

Opponent. A *Party* who prays, advocates or contends that *The Agency* by *Decision* should refuse to make, amend, supplement, modify or revoke a *Rule* or refuse to impose a *Sanction* (other than a *Sanction* withholding *Relief*).

Party. Any *Person* or *Agency* named or admitted as a *Party*, or properly seeking and entitled as of right to be admitted as a party in any *Proceeding*, or whose Interests are subject of *Decision* therein.

(APA 2 (b); (ALI 1 (2), (2)); (CAB 302.9); (FPC 1.1 (2)); (MC 201.31))

Party in Interest. A *Person* having a personal, representative, business or economic right, title, duty or liability which is affected directly or indirectly by a transaction, actual or proposed.

Petitioner. A *Person* who, by *Filing* and *Serving* a formal *Pleading* other than a *Complaint* or *Application* seeks *Relief.*

(FPC 1.1 (11); (MC 201.31))

Privy. A *Person* who by blood, marriage, mutual or successive interest, ownership or title in estate or property, or by contract, agency, or employment is so connected with a *Party* or a *Party in Interest* as to be identified with him in Interest, including (but not exclusively) agents, employees, servants, or attorneys.

Proponent. A *Party* who prays, advocates or contends that *The Agency* by *Decision* should make, amend, supplement, modify or revoke a *Rule* or should impose a *Sanction* (other than a *Sanction* withholding *Relief*).

Protestant. A *Party* who prays, advocates or contends that an *Application* should be denied or that a Tentative Valuation should not be made Final.

Respondent. A *Person* concerning the lawfulness of whose acts, omissions, Accounts, management, control, direction, Licenses, Franchises, Insurance, Operations, Service, Business, facilities, Securities, Organization, Charges, rules, regulations, practices or Transportation, *The Agency*, upon *Petition* or its own initiative has instituted an *Investigation.*

Side. One or more *Parties* whose interest in the *Proceeding* are not adverse to each other.

Status. The condition which causes a *Person* to be subject to or to be entitled to rights or relief under *The Act* as a *Railroad, Common Carrier by Motor Vehicle* or *Water, Contract Carrier by Motor Vehicle* or *Water, Broker, Person* in control of two or more *Carriers, Shipper, Receiver*, community, port, civic or commercial organization, etc.

RULE 18—PROCEEDINGS

Adjudicatory Jurisdiction. The statutory power of *The Agency* to hear and determine *Proceedings* which involve the imposition of a *Sanction* or the grant, denial or withholding of any *Relief.*

Adjudicatory Proceeding. Is one other than a *Rulemaking Proceeding.*

(APA 2 (d))

Adversary or Adverse. Characterizing *Proceedings, Parties, Witnesses, Attorneys, Rights, Interests, Claims*, contentions, positions, or *Evidence* of a *Proponent* upon one side and an *Opponent* upon the other.

Application Proceeding. Is one by a *Person* for the grant, approval or authorization of an act, franchise or operation or of the exercise of some privilege or power which *The Agency's* approval or authorization is required by law.

Complaint Proceeding. Is one initiated by a *Complaint*.

Emergency Proceeding. Is one initiated under Rule 144.

Ex Parte Proceeding. Is one initiated by *The Agency* for the formulation, amendment or repeal of a *Rule*, or *Rule-making*, in which no *Persons* are named as *Respondents*.

Franchise Proceeding. Is one initiated by the *Application* of a *Person* for issuance of a certificate, permit or license for a new *Franchise* or the extension or modification of an existing *Franchise*.

Hear. Give a hearing to.

Hearing. *The Agency* process for the offer, introduction, reception of *Proof*, the submission of *Briefs*, *Memorandums* and arguments, oral or written, and the consideration of all *Issues* in the *Proceeding* of whatever kind; it implies the right to cross examine an *Adversary* witness orally either at a public session before the *Hearing Officer* or by *Deposition* but otherwise does not necessarily require a public session before the *Hearing Officer*.

Informal Proceeding. A *Proceeding* Referred to the *Charges Board* under Rule 202 hereof.

Investigation. Is a *Proceeding* initiated by *The Agency* upon *Petition* or upon its own initiative which may result in a *Sanction* against or with respect to *Persons* subject to the jurisdiction of *The Agency* and who are made *Respondents* to such *Proceeding*.

Investigation and Suspension. Is a *Proceeding* initiated by *The Agency* upon *Petition* or upon its own motion for the purpose of investigating the lawfulness of a *Tariff*, accompanied by an order requiring that the effective date of such *Tariff* be postponed to a date therein specified or as provided by *The Act*.

Non-Adversary Proceeding. Is one in which there is no *Opponent*.

Petitionary Proceeding. Is one initiated under Article 13 of *These Rules*.

Pooling Proceeding. Is one initiated by an *Application* for approval and authorization of the *Pooling* of *Traffic*, *Service* or gross or net earnings.

Rulemaking. Is a *Proceeding* for the formulation, amendment or repeal in whole or in part any statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy without the imposition of any *Sanction* or to describe the organization, *Procedure* or practice requirements of *The Agency*. It does not include *Adversary Proceedings* for *Licensing* or the prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, *Facilities*, appliances, *Services* or *Allowances* or of *Valuations*.

Special Docket Proceeding. One initiated by a *Carrier*, or against a *Carrier* and confessed by it, for payment of damages or waiver of *Charges* suffered or incurred by reason of a violation of *The Act* by the *Carrier*.

Unification Proceeding. Is one initiated by the *Application* of a *Person* for approval and authorization of a transaction resulting in the ownership, control, *Management*, or *Operation* of two or more *Carriers* of any of the *Franchises* or property of either in a common

interest by consolidation, combination, merger, amalgamation, acquisition, lease, purchase, contract or ownership of capital stock.

RULE 19—PREHEARING PROCEDURE

Affirmative Defense. A defense which expressly or by necessary implication admits the truth of an essential allegation of the *Initial Pleading* and sets up new matter which the *Proponent* is not bound to prove in the first instance which is relied upon to defeat the *Sanction* or *Relief* sought or contemplated by such *Initial Pleading*.

Allege. State the *Material Facts* which are offered in support of a claim or defense.

Allegation. The *Material Facts* which are *Alleged*.

Amended Pleading. A new *Pleading* Filed in substitution of a former *Pleading* which changes, revises, modifies, adds to or eliminates allegations or prayers in such former *Pleading*.

Amendment. A *Pleading* which adds to, revises, modifies, or eliminates allegations or prayers of a former *Pleading*.

Answer. A *Pleading* Filed by a *Defendant* which states the *Material Facts* offered in reply to the allegations of the *Complaint*.

Application. A *Pleading* by a *Person* for the grant, approval or authorization of an act, *Franchise* or operation or of the exercise of some power or privilege for which *The Agency* approval or authorization is required by law.

Attest. To certify impliedly by signature of a *Practitioner* in the case of a *Procedural Instrument* or to prove or authenticate by oath or in the manner and form required by law or *These Rules* to the genuineness, truth and validity of a document or the truth, accuracy and correctness of its contents.

Attestation. The writing, signature or verification resulting from the verbal action.

Claim (Verb). To declare to be true or to call for as one's right, property or due.

Claim (Noun). The act or subject matter of the verbal action.

(143 F. 2d 377)

Close of Pleading. The end of the period within which, under *These Rules*, an *Answer*, *Reply*, *Intervention*, *Protest*, or *Replication* may be Filed.

Complaint. Is a *Pleading* which, consonant with *These Rules*, states all of the *Material Facts* necessary to show the jurisdiction of *The Commission*, the *Complainant's* right, the violation of such right by the *Defendant*, the *Complainant's* injury and the *Relief* prayed.

(104 F. 2d 960)

Conference. A meeting of the *Attorneys* for the *Parties* called by the *Hearing Officer* or *The Agency* at any stage of the *Proceeding* for the purpose of considering ways and means whereby the *Issues* may be simplified, taking unnecessary evidence avoided, the *Record* shortened and the *Hearing* and disposition of the *Proceeding* expedited.

Cross Complaint. A *Pleading* by a *Defendant* against any *Party* to the *Proceeding*, which is consonant with *These*

Rules, states all of the *Material Facts* necessary to show the jurisdiction of *The Commission*, the *Defendant's* right, the violation of such right by such other *Party*, the *Defendant's* injury and the *Relief* prayed.

Cross Reference. A statement in a *Procedural Instrument* which incorporates as part of the content of such *Instrument* an *Allegation*, statement or *Prayer* made in another part of the same *Instrument* or in any other *Instrument* or *Document*.

Cross Relief. *Affirmative Relief* prayed in a *Defensive Pleading*.

Damages. Reparation in money for an injury sustained which *The Agency* is authorized to award by *The Act*.

(ICA Section 16 (1))

Defensive Pleading. An *Answer*, *Protest*, *Reply* or *Response*.

Definition of Issues. The *Direction* of the *Hearing Officer* stating the *Issues* to be tried in the *Proceeding* and the respective positions of the parties with respect thereto.

Discovery. The duty of a *Party* to disclose to an *Adversary Party* upon demand information, *Documents* and objects, not privileged, which are relevant to the subject matter involved in the *Proceeding*, which relate to the claim or defense of any *Party* to the *Proceeding*, which either constitute *Admissible Evidence* or appears reasonably calculated to lead to the discovery of *Admissible Evidence*, including, but not exclusively, the existence description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, which duty may be enforced by depositions pending the proceeding; interrogatories to *Parties*; production of *Documents* or *Objects* for inspection, copying or photographing; or request for admission of *Facts* and of genuineness of *Documents*.

File, Filing. The deposit in the office of *The Agency* in Washington, D. C., and in the appropriate regional office of *The Agency* of a *Procedural Instrument* in the manner and in the form and in the time required by *These Rules*.

File and Serve. To *File* a *Procedural Instrument* following personal delivery to, or deposit in the United States first class mail or in the office of a telegraph company of a confirmed copy thereof, with postage or telegraph tolls pre-paid and properly addressed to each *Person* who is required by *These Rules* to be furnished with such copy within the time required thereby.

Initial Disposition. Initial Disposition of a motion is the *Ruling* thereon made by the *Hearing Officer*.

Initial Pleading. A *Complaint*, *Petition*, *Application* or an *Order of Investigation* or to *Show Cause*, calling upon the *Persons* named therein to respond thereto.

Intervene. To become a *Party* to a *Proceeding* in the manner and form and within the time provided by *These Rules*, in which *Proceeding* the verbal actor was not originally a *Complainant*, *Defendant*, *Petitioner*, *Applicant* or *Respondent*.

Intervention. A *Petition to Intervene* which has been granted under Rule 141 hereof or a *Pleading Filed* by a *Person* entitled as of right to *Intervene* in a *Proceeding* under Rule 162.1 and 162.2 hereof which sets forth the matter required by such Rules.

Issue (Procedural). A *Material Fact*, the existence or non-existence of which is affirmed by the *Parties Aligned* on one *Side* and denied by those *Aligned* on the other *Side*.

Joinder. The statement of two or more causes of action, *Claims* or defenses in a single *Pleading* or the joining of two or more *Persons* as *Complainants*, *Petitioners*, *Applicants*, *Defendants*, *Protestants* or *Intervenors* in a single *Pleading*.

Motion. A *Pleading Filed* by a *Party* and requesting an order, rule, ruling, or *Direction* for the purpose of expediting the progress, consideration or disposition of the *Proceeding*.

Notice. Information as to the existence or non-existence of a *Fact*, action, *Document*, *Claim*, or defense communicated to, received by, or imputed to, a *Person* who is shown to be conscious of the means whereby such information can be obtained or a conformed copy of a *Writing* containing such information which is shown to have been *Served* upon such *Person*.

Oath. A solemn declaration before God, or a solemn affirmation made under the penalties of perjury by a person who conscientiously refrains from swearing before God, to the truth of a statement.

Opponent Pleading. *Pleading Filed* by an *Opponent*.

Petition. A *Pleading* seeking *Relief* other than the imposition of a *Sanction* or the grant of a *License*.

Pleading. A written instrument *Filed* by a *Party* alleging or denying the existence of *Facts* relied upon to establish or refute a *Claim* for *Relief* under *The Act*.

Prehearing Conference. A Conference called by the *Hearing Officer* before the taking of *Proof*.

Procedural Instrument. A *Pleading*, *Notice*, *Process*, *Brief*, *Memorandum*, *Reply Brief* or *Reply Memorandum* permitted or required to be *Filed* by *These Rules*.

Proceeding; or Agency Proceeding. The connected and sequential process or series of acts and events, which follow the *Filing* of an *Initial Pleading*, for the determination by *The Agency*, in the exercise of its statutory powers and jurisdiction, of the rights, privileges, authority, exemption or *Relief* to which a *Party* is entitled or the liability or *Sanction* to which a *Party* should be subjected or the *Rule* which should be made or prescribed.

(APA 2 (g))

Process. A statement and notice by *The Commission Served* upon a *Defendant* or *Respondent* notifying him of the *Complaint* which has been *Filed* or the order of investigation or to show cause which had been entered and calling upon him to satisfy or to *Answer* the *Complaint* in writing, or to respond to the order, as the case may be.

Protest. A *Pleading Filed* by a *Person* in the manner, form, and within the time provided by *These Rules*, setting forth

Material Facts relied upon to show that an *Application* should be denied in whole or in part or that the *License* prayed for should be limited, conditioned or restricted.

Reference, Refer, Referred. The act of assigning a *Proceeding* to a *Hearing Officer* for formulation of the *Issues*, *Alignment of Parties*, disposition of *Petitions to Intervene* and *Motions*, *Reception of Proof* and argumentation, pursuant to a general or special *Order* or *Direction of The Agency*.

Replication. A *Pleading Filed* by *Proponent* setting forth *Material Facts* relied upon to refute, avoid or explain *Material Facts*, the existence or non-existence of which was first raised as an *Issue* in the *Proceeding* in the *Opponent Pleading* to which the *Replication* is in reply.

Reply (to a Petition). A *Pleading Filed* by an interested *Person*, in the manner, form, and within the time provided by *These Rules*, setting forth *Material Facts* relied upon to show that the prayer of a *Petition* should be denied in whole or in part or that the *Relief* prayed for should be limited, conditioned or otherwise restricted.

Reply (to a Motion). A *Pleading Filed* by a *Party*, orally or in writing, stating the *Material Facts* relied upon to show that a *Motion* should be overruled.

Response, Respond. A *Pleading Filed*, in the manner, form, and within the time provided by *These Rules* by a *Party* or *Person* called upon or permitted by an order of investigation or to show cause, setting forth the *Material Facts* respecting the subject matter of such *Investigation*.

Return. Proof of personal *Service* of an *Order*, *Notice*, *Process* or *Subpoena* by the certificate or verified statement of the person *Serving* the same.

Serve, Served. Deliver a conformed copy of a *Procedural Instrument*, *Notice*, *Order* or *Subpoena* to the individual, partner, officer or agent of the individual, partnership, corporation or association designated to receive same, either in person or to an adult person in his place of business or usual abode; or deposit such a copy in the office of a telegraph company or the United States first class mail, with all telegraph tolls and postage prepaid, properly addressed to *Person* designated to receive same at his office or usual place of abode.

Service (Process). The action of *Serving* a *Procedural Instrument*, *Notice*, *Order* or *Subpoena*.

Signature. The action of a *Person* in affixing his name in his own handwriting or in causing his name to be affixed by a duly authorized agent to a writing.

Supplemental Pleading. A *Pleading Filed* by a *Party* after leave therefor be first obtained, which sets forth transactions, occurrences or events which have happened since the date of the *Pleading* which is sought to be supplemented.

Uniform Exhibit. One of the Exhibits described in Rule 120.7 hereof.

Verify, Verification. To make *Oath* before an officer authorized to administer oaths at the place where the same is made that the statements in a writing

are true to the best of the affiant's knowledge, information and belief.

Voluntary Petition. A *Petition Filed* by a *Person* of his own free will, without consideration, legal obligation, constraint or duress.

ARTICLE 2—DEFINITIONS: HEARING AND DECISION

RULE 20—PROOF

Burden of Producing Evidence, or of Going Forward. The burden of producing evidence, which together with any legally applicable Assumptions, is sufficient to support a *Finding* that a *Material Fact* does or does not exist.

(ALI Code of Evidence)

Burden of Proof. The duty to establish with reasonable and logical certainty the existence or non-existence of the fact or set of facts, which, under the law, must or must not exist as a predicate for the exercise of *The Agency's* power or discretion in the premises.

(266 I. 283)

Proof. Depending upon the context, (1) the act of establishing with reasonable and logical certainty, the existence or non-existence of a *Material Fact*, or (2) the mental persuasion or conviction which results from such act; or (3) the means by which such act is accomplished or sought to be accomplished, by tending reasonably and logically to persuade or convince the mind of the existence or non-existence of a *Material Fact*.

(39 R. I. 69; 97 A 484, 487; and 101 Ga. 9, 21, 29 S. E. 309)

Prove. Establish with reasonable and logical certainty the existence or non-existence of a *Material Fact*.

Record. Consists of all *Procedural Instruments*, statements of *Assumptions*, *Evidence*, *Rulings*, *Argument* and *Decisions*.

RULE 21—NON-EVIDENTIAL PROOF

Admission of Record. Either (1) a formal statement by a party or his attorney made in the course of a *Proceeding*, in a *Pleading* filed therein or at an *Oral Hearing* or *Conference* therein, expressly and unequivocally, that a *Material Fact* does or does not exist; or (2) the failure of a *Party*, by a *Defensive Pleading* filed or which could have been filed under *These Rules*, specifically and unequivocally to deny an express, clear and unequivocal allegation of a *Material Fact* in a prior *Pleading* of an *Adversary Party*.

(In open Court, 161 U. S. 361; Express statement in a pleading 237 Fed. 731; Failure to deny as conclusive, 50 Colo. 262, 116, P336; Present Rules: ICC Rule 19; FTC VIII (c))

Assumption or Non-Evidential Proof. The proof of a *Material Fact* by an *Admission of Record*, a *Stipulation*, *Official Notice* or a *Presumption*.

Official Notice. The cognizance by the Agency, for the purposes of the proceeding, of the matters set out in Rules 212 and 213.

(ICC Rule 81 (b); FPC Rule 1.26 (d); 71 Kan. 811 81 P 450)

Presumption. An inference as to the existence or non-existence of a *Material*

Fact drawn from other Material Facts in evidence unless or until the truth or validity of such inference is disproved.

(169 Cal. 658; 147 Pac. 972)

Stipulation. A formal agreement between the Parties to a Proceeding formally received and approved by The Agency or the Hearing Officer, that a Material Fact does or does not exist, either made in a Writing filed with The Agency and served upon all Parties or made orally and recorded at a Hearing or Conference in the Proceeding.

(100 Ga. 236, 28 S. E. 46; 269 Ill. 239, 109 N. E. 1035; Present Rules: ICC Rule 69; FPC Rule 1.24, 1.25)

RULE 22—WITNESSES

Adverse or Hostile Witness. An Adversary Party, his Privies or affiliates, or a person not a Party who has an interest which may be adversely affected by his answer to a question, or a Witness who by his manner and demeanor indicates that he bears such hostility to the Party calling him as to indicate that he will not reasonably and fairly respond to questions which do not require or permit of a categorical answer.

Cross Examination. Questions put to a witness by Counsel Adverse to the Party who offered the witness together with his answers thereto.

Leading Question. A question which suggests the answer which the interrogator wishes, or expects or apparently wishes or expects to receive, or suggesting disputed facts as to which the witness is to testify.

Official Information. Information not open or theretofore officially disclosed to the public relating to military or naval organization, plans or armament, international relations or internal affairs of the United States or any state thereof, or of information or documents obtained by any authority in the course of any examination or investigation which is not a public record and which such authority has held to be confidential.

(ALI Rules 227 and 228)

Personal Privilege. The right of a Party or Witness to be protected from unfair or unjust interrogations or from annoyance, embarrassment or oppression.

(CR 29 (b))

Privilege. Right to refuse to disclose information under Rule 224.

Subpoena. A writ of The Agency commanding the person designated in it to appear and give testimony either by Deposition or at an Oral Hearing as the writ shall specify.

Subpoena Duces Tecum. A subpoena which in addition to requiring the person to attend and testify requires him to bring with him and produce at the Oral Hearing books, papers, documents and objects in his hands which contain Material Facts.

Witness. A natural person competent under Rule 220 who appears voluntarily or under subpoena and under Oath asserts the existence or nonexistence of a Material Fact in the manner and subject to the provisions of These Rules.

RULE 23—TESTIMONY

Answers to Cross Interrogatories. Answers by a witness to written cross interrogatories pursuant to Rule 233 or 234.

Deponent. One who testifies as a witness upon deposition or interrogatories or who verifies a Verified Statement or any Procedural Instrument.

Deposition. Testimony of a witness given pursuant to Rule 233 or 234.

Direct Testimony or Examination. The Verified Statement of or the questions asked and answered by a witness before the Cross Examination upon examination by the counsel of the Party who called him or by counsel of Parties who are not Adversary to the Party who called him.

Oral Hearing. A Hearing presided over by the Hearing Officer held and conducted as provided in Rule 235.

Parole Evidence. Evidence which under Sub Rule 230.4 is not Competent.

Testimony. Statements under Oath of Witnesses offered in Proof of the existence or non-existence of Material Facts either in a Verified Statement, Deposition, or in an Oral Hearing.

Verified Statement. The written Direct Testimony of a witness given Filed and Served as provided in Rule 232.

RULE 24—DOCUMENTARY EVIDENCE

Autoptic Evidence. Proof by introduction of an object which can be perceived by the exercise of the human sense of sight, hearing, touch, taste or smell.

Best Evidence of a Document, its contents or its execution or of an object is the Document or the object except, if, when or as Secondary Evidence thereof is Admissible under Rule 240.

Document. Any matter expressed, described or depicted upon any substance by letters, figures or marks by any means whatsoever and intended to be used for recording that matter.

Documentary Evidence. Proof by introduction of Documents Competent to be proved under These Rules.

Exhibit. Documents, Writings, and Objects Competent under Rule 269 hereof.

Instrument. A writing which evidences a legal act, agreement, or obligation, including, but not exclusively, bills, notes, bonds, conveyances, sales agreements, deeds, powers, leases, licenses, mortgages, wills, indentures, etc.

Literary Publication. Any book, periodical, pamphlet, magazine or newspaper distributed, circulated or offered for sale to the public general.

Primary Evidence. (1) Of an Object, the Object itself; (2) Of a Document, an executed original or duplicate original thereof.

Unavailable As a Witness. Means the inability to testify because of a privilege, disqualification, death, physical or mental illness, permanent or temporary, or temporary or permanent absence where the Hearing Officer finds both: (1) that such inability was not caused by the procurement, wrong doing or lack of due diligence upon the part of the Party who requests the finding of unavailability; and (2) the importance of the issue or the added reliability of the

Witness' Testimony over available Proof does not justify the expense and inconvenience of procuring his presence or taking his deposition.

(ALI Rule 1 (15))

Voluminous Evidence. A number of connected Material Facts contained in many Documents the results thereof, or the examination thereof, which are Competent under Rules 246 and 247.

Working Papers. Forms, instructions, questions, questionnaires, responses to questionnaires, procedures, formulas, compilations, summaries, tabulations, computations or calculations, whether manual or machine, used in the preparation of testimony or exhibits to be offered in Evidence in the Proceeding.

RULE 25—ADMISSIBILITY OF EVIDENCE

Admissible. Permitted to be received in Evidence under These Rules.

Admissibility. Quality of being Admissible.

Admission. A voluntary, unequivocal, certain and non-conjectural statement, oral or written, or conduct intended as or amounting to such a statement by a Party or his Privy, which tends or is claimed to tend to sustain a claim, contention or position of an Adversary Party with respect to the existence or non-existence of a Fact.

(Stephens Art. 15)

Amount. The result obtained by putting or aggregating together all of a given group or mass including (but not exclusively) number, quantity, volume, extent, distance, area, size, dimensions, range or scope.

Collateral Fact. A Fact incapable of affording a reasonable inference as to the existence or non-existence of a Fact in Issue.

(78A880)

Competency. Being of the kind and character of Proof which under the provisions of Articles 22, 23, and 24 are required to establish the existence or non-existence of a Material Fact.

Competent. Characterized by or having the quality of Competency.

(248 F 21, 23)

Conclusion. An opinion as to the existence or non-existence of a Fact in Issue or as to legal right, duty, liability, condition or status inferred from other Facts.

Conduct. Anything done or omitted which conveys or manifests, such as (but not exclusively) acts, omissions, words, or silence.

(27 A 529; 85 N. W. 595)

Cumulative Evidence. Evidence tending to prove substantially the same Material Fact as previously received Evidence tends to prove.

Declaration. A statement or conduct intended as or amounting to a statement relating to a transaction which is a Material Fact in the Proceeding by a Person who is a participant or interested in the transaction but who is not a Party or a Privy to a Party.

Direct Evidence. A statement of (1) a Fact personally Perceived by the Witness, or (2) an Opinion and the grounds

therefor held by the *Witness* on those grounds.

Evidence. Testimony, Documents, or Objects which tend to establish the existence or non-existence of a *Fact*.

Fact. An Act, deed, transaction, event, occurrence, statement, condition or state (physical, tangible, or mental) the existence or non-existence of which is capable of being perceived by the exercise of any human sense.

Fact in Issue. A *Fact* the *Proof* of whose existence or non-existence is a lawful standard for the exercise of *The Agency's* power or discretion.

Hearsay Evidence. Is either a statement of (a) a *Fact* not personally *Perceived* by the witness, or (b) an *Opinion* or the grounds therefor not held by the witness on those grounds.

Indirect or Hearsay Evidence. Is either a statement of (a) a *Fact* not personally perceived by the *Witness*; or (b) of an *Opinion* or the grounds therefor not held by the *Witness* on those grounds.

Material. Characterizing a *Fact* which is both relevant and of such substantial import and significance as to be likely to influence the determination of a *Fact in Issue*.

(219 F 619; 59 N. H. 332, 338)

Material Fact. A *Fact in Issue* or a *Fact Competent Proof* of whose existence or non-existence is *Admissible* under the provisions of *These Rules*.

Materiality. Having the quality of being *Material*.

Material to Issue. Having quality of a *Material Fact*.

Object. Any animate or inanimate thing having actual and distinct body, substance, form or shape.

Official Publication. Any book, periodical, pamphlet, magazine or printed report issued and published by or for under an *Authority* pursuant to or in discharge or furtherance of any duty imposed upon it by law, copies of which are available to any citizen free or upon payment of such price therefor as shall be fixed or approved by such *Authority*.

Opinion. An inference or deduction as to the existence or non-existence of a *Fact* which was not *Perceived* by the *Witness*.

Perceive. Acquire knowledge of a *Fact* by the exercise of one's own senses.

Perception. Action or result of the action of the verb *Perceive*.

Rebuttal. Competent Evidence by any *Party* of a *Material Fact* to explain, repel, counteract or disprove an *Adversary's Proof*.

(13 F. 2d 820)

Relevant. Characterizing a *Fact* so related to a *Fact in Issue* that logically and according to the common course of events its existence or non-existence renders probable the existence or non-existence of the *Fact in Issue*.

(73 A 231; 83 A 626; 247 F. 795)

Relevancy. Having the Quality of being *Relevant*.

Secondary Proof of an *Object* means a photograph or similar reproduction of the exact image of the *Object* or a writ-

ten oral description thereof by one who has perceived it.

Secondary Proof of a Document means an examined or certified copy, an exemplification, a photographic, or photostatic, carbon or other reproduction of exact image, any other kind of copy or an oral account of the contents of the *Document* given by a witness who has seen it and is familiar with substantially all of its contents.

Verbal. Consisting of words, whether oral or written.

(ALI Rule 1 (16))

Writing. Handwriting, typewriting, printing, photostating, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols, or combinations thereof.

RULE 26—RECEPTION OF EVIDENCE

Close of Proof or of Production of Proof. The end of the reception of *Evidence*.

Direct, Direction. An order or *Ruling* made by a *Hearing Officer* concerning any step in the *Hearing*.

Findings and Conclusions. A statement that a *Material Fact* exists or does not exist (*Finding*) and (a conclusion) that a *Fact in Issue* exists or does not exist.

Objection. A request for a *Ruling* that a particular (a) question to or answer of a witness or (b) document or object offered in evidence, or (c) *Assumption* requested to be made not *admissible* under *These Rules* with a succinct statement of the grounds for such request.

Offer of Proof. An offer of *Evidence* which has been excluded or rejected by a *Ruling* of the *Hearing Officer* pursuant to Rule 263.

Production of Proof. Either, depending upon the context: (1) the submission of *Proof* by *Assumption* or *Evidence* in the manner, under the conditions and within the time provided under *These Rules*; or (2) the period of time under *These Rules* within which such *Proof* may or must be submitted.

Ruling. Any determination or direction by the *Hearing Examiner* in the exercise of any discretion delegated to him; of any matter arising during the course of a *Proceeding* after reference to him and before and not including his *Initial Decision*, but including (not exclusively) determinations or directions during or with respect to the formulation or definitions of issues, the disposition of *Motions, Requests* or objections, the alignment of *Parties*, the making of *Assumptions* or the *Production* of *Proof*.

RULE 27—ARGUMENTATION

Abstract. The topical condensation of the *Record* described in Rule 274.

Brief. A document filed for or by a *Party* within the manner, form and time and having the content required by *These Rules*.

Memorandum. A short concise and documented statement of the reasons why a motion or *Petition* should or should not be sustained or granted.

Opening Brief. Initial Brief filed by a *Party* after the *Close of Proof* and prior to *Initial Decision*.

Oral Argument. A formal statement made by or for a *Party* before a *Hearing Officer* or *The Agency* in support of his position in the *Proceeding*.

Reargument. Any *argument* in a *proceeding* following the first argument therein.

Reply Brief. A *Brief* filed by or for a *Party* in answer to an *Adversary's Opening Brief*.

Reply Memorandum. A *Memorandum* filed by or for a *Party* in reply to an *Adversary's Memorandum*.

Statement of Facts. A concise, fair and complete statement of the *evidence* with respect to the *Material Facts*.

Supporting Memorandum. A *Memorandum* filed by or for a *Party* in support of a *Motion* or *Petition*.

RULE 28—ADMINISTRATIVE DECISION

Adjudication. Agency process for the formulation of an order.

Administrative Review. Reexamination by *The Agency* of a *Decision* either upon *Appeal* or upon a *Petition for Reconsideration* or upon *Reconsideration*.

Agency Action. Includes whole or any part of every *Agency, Direction, Rule, Ruling, Order, License, Sanction, Relief* or the equivalent or denial thereof or failure to act.

(APA (2) (9))

Appeal. A *Procedural Instrument* filed by or for a *Party* in the manner and form and within the time required by *These Rules* seeking the reversal or modification of an *Initial Decision*.

Appellant. A *Party* who takes an *Appeal*.

Assignment of Error. A precise statement of a particular *Direction, Ruling, Statement of Fact, Finding* or *Conclusion* of a *Decision* claimed to be erroneous in fact or unlawful with the grounds upon which such claim is made.

Cross Appeal. An *Appeal* taken by an *Adversary* of the *Appellant* in connection with his *Reply* to the *Exceptions* of the *Appellant*.

Cross Exceptions. *Exceptions* filed by the *Adversary* of an *Appellant* in support of his *Cross Appeal*.

Decision. Exercise by *The Agency* in a *Proceeding* of a power or discretion vested in it by either making a *Rule* or by an *Adjudication*.

Exception. A Pleading setting forth succinctly each *Ruling* of the *Hearing Officer*, other than his *Initial Decision* alleged by a *Party* to be erroneous and prejudicial to him accompanied by a concise non-argumentative statement of the grounds upon which error is alleged.

Final Decision. *Decision* by *The Agency* upon the *Appeal* from the *Initial Decision* where *Reconsideration* is not granted otherwise upon such *Reconsideration*.

Finding. Determination based upon the *Record* of the existence or non-existence of a *Material Fact*.

Initial Decision. A *Decision* of a *Proceeding* by the *Hearing Officer* to whom referred.

(APA 8 (a))

Initially Decide. Make an *Initial Decision*.

Initially Hear. Conduct the *Hearing* which precedes the *Initial Decision*.

Order means the whole or any part of the final disposition (whether affirmative, negative, injunctive or declaratory inform) of any *Agency*, in any matter other than *Rule Making*, but including *Licensing*.

Reconsideration. Review by the *Commission en banc* of a prior *Decision* to determine whether, and if so, what change should be made therein.

Rehearing. The reopening of the *Record* in a *Proceeding* after a *Decision* therein for the purpose of permitting the production of additional *Proof*, the submission of additional argument and the *Reconsideration* of the prior decision in the light of the new and complete *Record*.

Relief. The whole or any part of any agency: (1) Grant of money assistance, *License*, *Authority*, *Exemption*, exception, privilege or remedy; (2) Recognition of any claim, right, immunity, privilege, exemption or exception; or (3) taking of any other action upon the application or petition or complaint of and beneficial to any *Person*.

Reopening. An *Order of The Agency* reopening the *Record* for the production of further *Proof*.

Report (Administrative). A formal written Opinion by *The Agency* or a *Hearing Officer* which precedes or accompanies and explains its *Decision*, by the *Issues* involved, its Findings and conclusions with respect thereto, and the basis thereof.

Review. Consideration by the *Board of Review* of an *Initial Decision* in the light of the *Record* upon the *Exceptions*, *Replies* and *Cross Exceptions* thereto with its recommendation respecting same to the appropriate *Appellate Division* or of a *Decision* upon *Appeal* or upon *Reconsideration* in the light of the *Petition for Reconsideration*, *Reply* thereto and the *Record* with its recommendation respecting same to the *Commission en banc*.

Sanction includes the whole or part of any *Agency* (1) prohibition, requirement, limitation, or other condition affecting the freedom of any *Person*; (2) withholding of *Relief*; (3) *Imposition* of any form of penalty or fine; (4) destruction, taking, seizure or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges or fees; (6) requirement, revocation, or suspension of a *License*; or (7) taking of other compulsory or restrictive action.

Summary Decision. A *Decision*, made with or without motion upon the undisputed *Material Facts*.

RULE 29—JUDICIAL REMEDIES

Court. Any tribunal which exercises the judicial powers of any *Government*.

Enforcement. Prosecution of a judicial proceeding, civil or criminal to compel obedience or enjoin violations of a *Decision of The Agency* or to recover penalties recoverable or damages suffered on account thereof.

Judicial Enforcement. Judgment or decree of a *Court* requiring obedience to

a statutory provision or an *Order* or imposing fines, penalties or punishment for the violation thereof.

Judicial Review. A proceeding in a *Court* of competent jurisdiction (1) to enjoin, suspend, or set aside a *Decision of The Agency*, or (2) to compel *Agency Action* alleged to be unlawfully withheld or unreasonably delayed.

ARTICLE 3—THE AGENCY

RULE 30—ORGANIZATION

The Interstate Commerce Commission is an independent administrative agency composed of 11 Commissioners appointed by the President by and with the advice of the Senate, each for a term of seven years. The duties imposed upon *The Agency* by law are discharged by the *Commission en banc* as provided in Rule 35 hereof or by one or more of four *Divisions* of the Commission consisting of not less than three members whose assignment of work and functions are set forth in Rules 31 to 34, inclusive, hereof or by the *Chairman* whose duties are set forth in Rule 36 or by *Boards of Employees* whose duties are set forth in Rule 37 or by *Bureaus* of the Commission described in Article 4 hereof.

(Organization Minutes of February 15, 1954; FPC 2, 3; FTC 1)

30.1 Authority of Divisions. Each *Division* has authority to hear and determine, order, certify, or report or otherwise act as to any work, business or functions assigned or referred to it and with respect thereto has all of the jurisdiction and powers conferred by law upon *The Agency* and is subject to the same duties and obligations.

(ICA Section 17; O. M. 2-15-54 2.2)

30.2 Reassignment. Each *Division* with regard to any case or matter assigned to it or any question brought to it under its delegated duties and authority may call upon the *Commission en banc* for advice and counsel or for consideration of the same jointly with other *Commissioners*. *The Agency en banc* may recall and bring it any proceeding, matter or question theretofore assigned to any *Division*, *Board* or *Officer* and may either dispose of same or reassign or re-refer the same to the same *Division* or to another *Division* or *Officer*.

(O. M. 2-15-54 2.3)

30.3 Transfers. When a *Commissioner* is transferred from a *Division* he shall continue to serve thereon in lieu of his successor for the purpose of participating in the disposition of causes submitted on oral argument prior thereto or in which drafts of *Final Decisions* or *Orders* have been circulated and of other matters requiring official action which are under active consideration at the time of the transfer.

(O. M. 2-15-54 2.6)

30.4 Legislative and Rules Committee. There shall be a committee on legislation and rules consisting of the *Chairman* and two members appointed by the Commission. Duties of the Committee shall be to consider and recommend to the *Commission en banc* with respect to (a) proposed legislation by the Congress

or Executive action by the President; and (b) proposals to amend, revise, interpret or supplement *These Rules* generally or specially.

(O. M. 2-15-54 5.1)

30.5 Initial Action. Except with respect to the initiation of *Rule Making* or of *Investigations* pertaining to the jurisdiction herein delegated to the several *Divisions* and except as may be otherwise specially or generally ordered by the *Division* or the *Commission en banc*, all *Initial Decisions* and actions of *The Agency* will be made or taken by a *Hearing Officer* or *Joint Board* as provided in *These Rules*, from which *Decisions Appeals* may be taken as provided herein to the appropriate *Division*.

RULE 31—DIVISION ONE—ADMINISTRATIVE

To this *Division* is delegated all of the jurisdiction and power of *The Agency* with respect to the following matters:

31.1 Enforcement. The *Investigation* or *Enforcement* of the following provisions of the Interstate Commerce Act, sections 1 (21); 5 (3); 6 (10); 10; 15 (11), (12); 16 (8) to (12), inclusive, 20a (11), (12); 25 (h); 204 (c); 222; 304 (e); 316 (b); 317; 403 (f); 417 (b); 421; and of the Elkins Act, as amended, and the Clayton Antitrust Act, as amended.

(O. M. 2-15-54 4.2 (e), (h), (k))

31.2 Carrier Management. Inquiries into and reports upon the management of carriers and brokers, et al. under sections 12 (1), 204 (a) (7), 304 (b) and 403 (e).

(O. M. 2-15-54 4.2 (1); 4.7 (e))

31.3 Torts. Claims arising under Federal Torts Claims Act, 28 USC 2671 et sec., except section 2672.

(O. M. 2-15-54 4.2 (k))

31.4 Administration. Matters coming from the Managing Director to the *Chairman* on which the *Chairman* seeks consultation before submission to the Commission.

(O. M. 2-15-54 4.2 (1))

31.5 Practitioners. The qualifications, admission to practice, professional conduct, professional ethics, discipline, suspension, and disbarment of persons authorized to practice before *The Agency*.

(O. M. 2-15-54 4.2 (m))

RULE 32—DIVISION TWO—CHARGES

To this *Division* is delegated all of the jurisdiction and power of *The Agency*, except the *Enforcement of The Act* as delegated in Rule 31.4, with respect to the following matters:

32.1 Tariffs. Schedules or *Tariffs*, classification of rates, fares and *Charges* of all common and contract *Carriers* under Sections 6, 217, 218, 306, 405, 220 (a).

(O. M. 2-15-54 4.3 (c) and (k))

32.2 Investigations. All *Investigations* authorized to be instituted by *The Agency* involving *Charges* under Sections 13; 15; 216; 307; 406 or 411, except initial orders of suspension and investiga-

tion of schedules and *Tariffs* made by the Suspension Board pursuant to Rule 38.8 hereof.

(O. M. 2-15-54 4.3 (e), (f))

32.3 *Fourth Section.* All matters arising under section 4 not delegated to the Fourth Section Board under Rule 38 hereof.

(O. M. 2-15-54 4.3 (a))

32.4 *Rate Making Agreements.* Agreements among Carriers under Section 5a.

(O. M. 2-15-54 4.3 (b))

32.5 *Released Rates.* Authorization of Released Rates and ratings under sections 20 (11), 219 and 413.

(O. M. 2-15-54 4.3 (h))

32.6 *Collection of Charges.* Delivery of freight and the collection of charges under sections 3 (2), 223, 318 and 414.

(O. M. 2-15-54 4.3 (i))

32.7 *Calamity Rates.* Reduction in charges on account of calamitous visitation or disaster.

(O. M. 2-15-54 4.3 (j))

32.8 *State Rates.* Charges of rail carriers and freight forwarders imposed by State authorities and alleged to discriminate against interstate Charges under sections 13 (3), (4) and 406 (f).

(O. M. 2-15-54 4.2 (f))

32.9 *Rate Cases.* All Charge Proceedings involving the interpretation or application of *Tariffs* or the lawfulness of Charges.

(O. M. 2-15-54 4.3 (o); 4.5 (a))

RULE 33—DIVISION THREE—OPERATIONS

To this *Division* is delegated all of the jurisdiction and power of *The Agency*, except the *Enforcement* of *The Act* as delegated in Rule 31.4, with respect to the following matters.

33.1 *Classification of Carriers.* The classification and reasonable rules and regulations and requirements in respect thereto of brokers, motor and water carriers under sections 204 (b) and 304 (c) together with identification of motor vehicles under Section 215.

(O. M. 2-15-54 4.6 (c); 4.7 (f), (n))

33.2 *Operating Authority.* The grant, enlargement, modification, transfer, surrender or revocation of *Operating Authority* to operate as a *Carrier* or *Broker* or to abandon or discontinue an operation or service previously exercised under sections 1 (18)-(20), inclusive, 206-210, 210 (a), 211, 212, 303 (1), 309-312, inclusive, 410, or *Exemptions* under sections 203, 204a (4a), 302 (e), 303 (b) to (h) inclusive, 304 (d).

(O. M. 2-15-54 4.3 (1), 4.5 (d), 4.6 (a), 4.7 (a), (g), (h), (i), (j), (k), (l), (m))

33.3 *Service.* All provisions of *The Act* relating to Adequacy of *Carrier Facilities* and *Transportation*:

33.31 *Facilities.* Compulsory construction or acquisition of additional facilities, switch connections, common use of terminals and physical connections between rail and water carriers, under

section 1 (9); 3 (5); 6 (11) (a); Panama Canal Act, Section 11 (d), 49 USC 51; Transportation Act of 1920, 201 (c), 49 USC 141 (c); Section 1 (21).

(O. M. 2-15-54 4.4 (d), (f), (g), (k))

33.32 *Car Service.* *Railway Car Service* and emergency directions with respect thereto under Section 1 (10) to (14) (a) and Section 1 (15) to (17).

(O. M. 2-15-54 4.4 (d))

33.33 *Transportation.* Establishment of reasonable requirements with respect to continuous and adequate service by motor carriers and freight forwarders under sections 204 (a) and 404 (e).

(O. M. 2-15-54 4.4 (m) and 4.7 (b))

33.34 *Protective Service.* Contracts of railroads and express companies for the furnishing of protective service against heat and cold under Section 1 (14) (b).

(O. M. 2-15-54 4.4 (c))

33.4 *Joint Loading.* Agreements between freight forwarders for the joint loading of traffic under Section 404 (d).

(O. M. 2-15-54 4.4 (m))

33.5 *Allowances.* Fixation of reasonable allowances to the owner of property transported for transportation services rendered under sections 15 (13); 225; 314; 415.

(O. M. 2-15-54 4.4 (1))

33.6 *Routing.* The direction of the routing of unrouted traffic under Section 15 (10).

(O. M. 4.4 (h))

33.7 *Safety.* The installation, maintenance and enforcement of safety devices of carriers by railroad; the qualifications and maximum hours of service of employees and safety of operation and equipment for common, contract and private carriers; the establishment of reasonable requirements for the safe transportation of explosives and other dangerous articles; matters arising under the Accident Reports Act, the Safety Appliance Act, Hours of Service Act, Locomotive Inspection Act, Medals of Honor Act, Ash Pan Act, Railroad Retirement Act, Railroad Unemployment Insurance Act, the Railway Labor Act and the Block Signal Resolution or under Section 25 (a) to (g), and Section 204 (a).

(O. M. 2-15-54 4.4 (j), (l), (r) and 4.7 (b))

RULE 34—DIVISION FOUR—FINANCE

To this *Division* is delegated all of the jurisdiction and power of *The Agency*, except the *Enforcement* of *The Act* as delegated in Rule 31.4, with respect to the following matters:

34.0 *Accounts and Statistics.* The reports, records and accounts of *Persons* subject to Section 20 (1) to (10), inclusive, 204 (a) (1), (2), and (4); Section 220 (a) to (f), inclusive; Section 222 (b), (d) and (g); Sections 313 and 412.

(O. M. 2-15-54 4.2 (a)-(d))

34.1 *Unifications.* Pooling, consolidation, merger, purchase, lease, operat-

ing contracts, acquisition of control, including matters of public convenience and necessity and consistency with the public interest directly related thereto; common control of railroads and common carriers by water and the unlawful control by or of forwarders under sections 5 (1) to (16), inclusive, and 411.

(O. M. 2-15-54 4.6 (b), (c) and (g))

34.2 *Securities.* All Provisions of *The Act* providing for *Issuance*, approval or voluntary *Alteration* or modification of *securities* or obligations (sections 20a, 20b and 214).

(O. M. 2-15-54 4.6 (j))

34.3 *Interlocking Officers.* Holding position as officer or director of more than one carrier under Section 20a (12).

(O. M. 2-15-54 4.6 (e))

34.4 *Insurance.* Security for the protection of the public and rules governing the filing of surety bonds, policies of insurance and self-insurance by motor carriers and freight forwarders under sections 215 and 403 (c), (d).

(O. M. 2-15-54 4.7 (m), (p))

34.5 *Bankruptcy and Reorganization.* Reorganization of railroads and motor carrier corporations under the Uniform Bankruptcy Act.

(O. M. 2-15-54 4.6 (1))

34.6 *Antitrust Acts.* Matters arising under the Clayton Antitrust Act.

(O. M. 2-15-54 4.6 (1))

34.7 *Miscellaneous Acts.* Matters arising under the Reconstruction Finance Corporation Act; under Section 20 of Title II of the Emergency Relief and Construction Act of 1932; under Section 22 (b) (9) of the Internal Revenue Code, and under Section 204 of the Transportation Act of 1920, as amended.

(O. M. 2-15-54 4.6 (k), (m), (n))

34.8 *Recordation.* The recordation of agreements and other documents relating to the sale, mortgage or lease of railroad equipment under Section 20c.

(O. M. 2-15-54 4.2 (g))

34.9 *Valuation.* Valuation of property of carriers under Section 19a.

(O. M. 2-15-54 4.3 (g))

RULE 35—COMMISSION EN BANC

The following jurisdiction and powers, except as they may be delegated by specific *Order*, are reserved for exercise by the entire Commission sitting en banc.

(O. M. 2-15-54 2.4)

35.1 *Residual Jurisdiction.* All jurisdiction and powers not expressly delegated to the several divisions, Rules 31 to 34, inclusive.

(O. M. 2-15-54 2.4)

35.2 *Reconsideration.* All *Petitions for Reconsideration, Rehearing, Reargument* or *Reopening of a Decision* by a *Division* or by the *Commission en banc*.

(O. M. 2-15-54 2.4)

RULE 36—THE CHAIRMAN

Annually on or before June 30th *The Agency* will elect one of its members as *Chairman* who shall serve for one year beginning the July 1st following and thereafter until his successor is appointed. The *Chairman* shall be the Executive Head of the Commission; preside at all of its sessions and see that every vote and official act of the Commission is accurately and promptly recorded by the Secretary or the person designated by the Commission for such purpose; in addition to his statutory duties, the following duties and responsibilities are delegated to the *Chairman* (or in his absence to the Acting *Chairman*, who shall be the available senior *Commissioner* in point of service).

(O. M. 2-15-54 3.1, 3.2, 3.3)

36.1 *Sessions*. Regular executive sessions of the Commission will be held, unless otherwise ordered by it, on the first and third Monday and Tuesday (or the next available business day) of each month except August and September. Special sessions will be called by the *Chairman* whenever in his opinion any matter or business of *The Agency* so requires or whenever requested so to do by a majority of the members of *The Agency*. Public sessions of *The Agency* for the hearing of causes or for oral argument or presentations will be held upon the call of the *Chairman*, who shall exercise general control over the Commission's argument calendar and conference agenda.

(O. M. 2-15-54 3.4, 3.5)

36.2 *Supervision*. The *Chairman* shall (a) bring to the attention of any *Commissioner*, *Division*, or *Board* any delay or failure in the work under his or its supervision, (b) report periodically, not less than once every six months, to the Commission on the state of the Commission's work, and (c) recommend to the Commission ways and means of correcting or preventing avoidable delays in the performance of any work or the disposition of any official matter which he is unable otherwise to have remedied.

(O. M. 2-15-54 3.7)

36.3 *Official Spokesman*. Except in instances where the duty is otherwise expressly delegated by the Commission or the *Chairman*, the *Chairman* shall act as correspondent and spokesman for the Commission in all matters where an official expression of the Commission is required.

(O. M. 2-15-54 3.6)

36.4 *Assignments*. He shall be ex officio *Chairman* of the Committee on Legislation and Rules and a member of *Division One*, and during his term shall be relieved of regular assignments as a member of any other *Division*.

(O. M. 2-15-54, 3.8, 3.9)

36.5 *Transfers*. Whenever it appears desirable the *Chairman* may designate an additional *Commissioner* or *Commissioners* to sit with a *Division* or a *Commissioner* to fill a vacancy on any com-

mittee until the Commission otherwise orders.

(O. M. 2-15-54 3.10, 3.11)

36.6 *Management*. Pursuant to the general objectives and broad policies, or to specific instructions of the Commission, the *Chairman* shall represent the Commission in supervising, guiding and directing the Managing Director, Secretary and General Counsel in the performance of their duties and shall serve as the channel through which they submit recommendations to the Commission.

(O. M. 2-15-54 3.12)

RULE 37—EMPLOYEE BOARDS

To Board of Employees are delegated *The Agency* functions, power and jurisdiction shown in sub-rules 37.1 to 37.2, respectively, hereof. Such delegation does not include *Proceedings* required to be *Initially Decided* by a *Joint Board*. Any Director of a Bureau, the General Counsel and any interested *Person* may *Appeal* from the *Decision* of a Board pursuant to the provisions of Rule 293 hereof to the *Division* as herein provided.

37.1 *Board of Inquiry*, which will recommend to *Division One* with respect to enforcement proceedings under sections 1 (21); 5 (3); 6 (10); 10; 15 (11), (12); 16 (8)-(12), inclusive; 20a (11), (12); (25) (h); 204 (c); 222; 304 (e); 316 (d); 317; 403 (f); 417 (b); 421 and of the Elkins and Clayton Antitrust Acts as respectively amended. *Appeals* from its decisions are to *Division One*.

37.2 *Charges Board* shall (a) consider and decide *Appeals* from any action of an Assistant Director with respect to *Applications* for *Voluntary Reparation* or for the publication of *Released Rates*; and (b) *Hear* and *Initially Decide Complaint Proceedings* referred to it. *Appeals* from its decisions are to *Division Two*.

37.3 *Operations Board* shall (a) consider and decide *Appeals* from any action of an Officer of the Bureau of Operations, except a recommendation to the Commission or the *Reference* of a *Proceeding*; and (b) shall *Hear* and *Initially Decide* any *Proceeding Referred* to it. *Appeals* from its decisions are to *Division Three*.

37.4 *Finance Board* shall (a) consider and decide *Appeals* from any action of an Officer of the Bureau of Finance, except a recommendation to the Commission or the *Reference* of a *Proceeding*; and (b) shall *Hear* and *Initially Decide* any *Proceeding* referred to it. *Appeals* from its decisions are to *Division Four*.

37.5 *Tariff Board* shall (a) consider and decide *Appeals* from the action of any Officer of the Bureau of Traffic under Rules 42.1 to 42.26, inclusive; and (b) *Hear* and *Initially Decide* any *Proceeding* involving tariff rules, the form, manner or content of tariffs or tariff publications or applications to publish tariffs upon less than statutory notice or for a temporary period. *Appeals* from its decision are to *Division Two*.

37.6 *Board of Reference* upon request of the Secretary or of the Director of any Bureau shall decide (a) to what *Hearing Officer* any proceeding shall be assigned or *Referred* and (b) whether in any matter or proceeding there is involved a substantial issue of *Material Fact*. *Appeals* from its decisions are to *Division One*.

37.7 *Fourth Section Board* shall initially decide matters arising under Section 4 relating to long-and-short-haul and to the aggregate of intermediate rates and relief therefrom, except when such matters arise as an incident to a *Charges Proceeding*. *Appeals* from its decisions are to *Division Two*.

37.8 *Suspension Board* shall initially dispose of *Petitions* or requests for suspension of schedules or *Tariffs* or parts thereof and for *Investigations* ancillary thereto arising under Section 15 (7), 216 (g), 218 (c), 307 (g), (i), and 406 (e). *Appeals* from its decisions are to *Division Two*.

37.9 *Accounting and Valuation Board* shall (a) consider and decide *Appeals* from any action of an Officer of the Bureau of Accounts and Valuation, except a recommendation to the Commission or the *Reference* of a *Proceeding*; and (b) shall make all tentative valuations required under Section 19a; and (c) *Hear* and *Initially Decide Investigation Proceedings* referred to it. *Appeals* from its decisions are to *Division Four*.

RULE 38—OFFICES

The principal office of the Commission is located in the Interstate Commerce Commission Building at the northwest corner of 12th Street and Constitution Avenue, N. W., Washington 25, D. C. Regional and field offices of the Commission are located as provided in Article 5 hereof. The offices are open on each day except Saturdays, Sundays, and holidays, from 8:30 a. m. to 5:00 p. m. Standard Time or Daylight Saving Time, whichever is currently in effect in the city in which such office is located. All final opinions and orders in all proceedings are available to public inspection in the Office of the Secretary during business hours.

(APA 3 (b); FPC 6 (a); FTC 1; SEC 1; MC 201.7)

RULE 39—PUBLIC RECORDS

Except as otherwise required by law or by general or special order of *The Agency* for good cause, all written or telegraphic communications, *Procedural Instruments*, depositions, transcripts of oral testimony or argument, exhibits of documents or objects offered or received in evidence, as well as all notices, directions or orders given or made in every *Proceeding*, and all *Tariffs* and schedules, and all regular, special, annual or periodic reports or *Documents* relating to the Sale, Mortgage or lease of Equipment, filed with *The Agency* pursuant to law, order or regulation are public records which may be inspected during business hours at the office of *The Agency* or the National Archives at the corner

of Pennsylvania Avenue and 8th Street, N. W., in Washington, D. C.

(APA 3 (c); FPC 1.36; FTC XXIX; M. C. 201.7; S. E. C. XIII (1)-(J))

ARTICLE 4—CENTRAL STAFF

RULE 40—THE SECRETARY

The Secretary is an officer of *The Agency* appointed under authority of Section 18 (1). He is the keeper of its minutes, the custodian of its seal and of all records, reports and documents, public and private, of or filed with *The Agency* pursuant to the provisions of The Act. He is the official by and through whom all *Decisions*, opinions, notices, process, Orders or rules issued by *The Agency* or under its authority are signed, sealed, released, made public or *Served*. He reports to the Commission through the Chairman.

(ICA 18 (1); 16 (13); 204 (d); 316 (d); 417 (d); 17 (3), (4); 221 (a); 315 (a); 416 (a); FPC 1.2 (a), (b); 1.7 (a); FTC 1; M. C. 201.6; S. E. C. XVI)

40.1 *Dockets*. The Secretary shall maintain a docket for each *Proceeding* initiated before *The Agency* to which there shall be assigned appropriate designation. The docket shall be available for inspection and copying by the public during the office hours of *The Agency*. Insofar as consistent with the proper discharge of *The Agency's* duties, all *Procedural Instruments*, depositions, transcripts of testimony, documentary exhibits, requests for subpoenas, notices, *Decisions*, *Orders* or rules shall be maintained in chronological order in the official docket. The entries of appearance shall be maintained separately in an Appearance Docket which shall have the same designation as the official docket. All communications to the Commission or any *Officer* thereof from any *Person* outside of *The Agency* and all replies thereto by any *Officer* or employee of *The Agency* will be maintained in a separate correspondence docket having the same docket number. All dockets shall be available for inspection and copying by the public during the office hours of *The Agency* insofar as consistent with the proper discharge of *The Agency's* duties.

(FPC 1.14 (b), (c))

40.2 *Indices and Annotations*. The Chief of the Section of Indices and Annotations will supervise the current preparation of indexes to all *Dockets*, *Orders*, *Decisions* and *Reports*, the digest of all points decided therein, and the annotation of such points to the appropriate sections of *The Act* and laws supplementary thereto.

40.3 *Librarian*. The Librarian shall have charge of the Library of *The Agency* consisting of published reports and decisions of *The Agency*, Federal and State courts, Federal and State statutes, economic reports, statistics and analyses and works and treaties relating to the field of economics, business and law within which *The Agency's* jurisdiction operates.

40.4 *Mails and Files*. Section headed by a Chief.

RULE 41—MANAGING DIRECTOR

The Managing Director is the chief operating official of *The Agency* charged with the performance of all of its duties of an administrative nature not otherwise reserved by law. He is appointed by *The Agency* and reports through the Chairman to *The Agency en banc*. He is charged with the duty of planning for greater efficiency and economy in the administrative functions of *The Agency* (which do not cover its quasi-judicial or quasi-legislative work) and with supervising the operations of *The Agency's* Staff to assure the carrying out of those plans. He counsels with and makes recommendations to *The Agency* with respect to quasi-judicial and quasi-legislative decisions, orders, policies, rules or practices which may affect administrative policies. He supervises the work of the heads of *The Agency's* bureaus, offices, and field offices. He is responsible for formulating plans for improved work techniques and standards by which the work output is to be measured, as well as the form in which reports on the progress of the administrative work are to be made. *The Agency* has delegated to him the task of public relations with other *Agencies*, with carriers which it regulates, and with the public, except as to such duties as may be delegated to the Chairman or the Secretary. He is charged with the responsibility for reviewing addresses or speeches by any employee of *The Agency* before they are made public insofar as they touch on administrative matters or cover *Agency* operations and to clear with the Chairman any portion thereof which has to do with the policies, objectives or purposes of *The Agency*. He is charged with determining the advisability of additions to the staff and with planning and putting into effect organizational changes after they have been approved. He selects, appoints, relieves of duty or changes the duties of, the head of any bureau, office or field office of *The Agency*, except the General Counsel, Secretary or other employee whose appointment is otherwise provided by law, with the advice and consent of *The Agency* in accordance with civil service regulations. He supervises preparation of budget estimates, submits them to *The Agency* and, with the approval of *The Agency*, recommends them to the Bureau of the Budget and to the Congress. He is responsible for providing necessary working quarters, equipment and facilities and will approve plans for physical consolidation of administrative bureaus and field offices to promote efficiency and economy. He will name the personnel of boards of employees to which *The Agency* assigns work, and supervises the work of such boards without influencing quasi-judicial or quasi-legislative portions thereof. He prepares for *The Agency* or the Committee on Legislation and Rules special studies or replies or special requests and the annual report of *The Agency* to Congress or any committee thereof. He supervises and directs the following sections:

41.1 *Budget and Fiscal Affairs Section* headed by the Budget Officer.

41.2 *Personnel Section* headed by the Personnel Director.

41.3 *Stenography Section* headed by a Chief.

41.4 *Supplies and Publications Section* headed by the Purchasing Agent.

RULE 42—BUREAU OF TRAFFIC

The Bureau of Traffic receives, inspects and files or rejects all tariffs and schedules of *Charges* filed by all carriers. It receives, analyzes and recommends with respect to *Applications* for special permission to depart from the provisions of sections 6 (3), 20 (11), 217 (c), 218 (a), 306 (d), (e), 405 (d) and of *The Agency's* applicable tariff rule. It compiles, revises, amends and polices tariff rules governing the form and content of all tariffs and schedules of all carriers. It analyzes, reports and recommends with respect to *Petitions* for investigation of charges, *Complaints* respecting the lawfulness of charges, and *Applications* under Section 5a of *The Act* for approval of carrier rate making agreements.

42.0 *Office of Director* recommends to Division Two with respect to *Rule Making*, *Investigations* or *Petitions* or proposals therefor, which involve *Tariffs* or *Charges*; reviews and *Refers Orders of Investigations*, *Applications for Rate Making Agreements* and *Complaints* involving *Charges* with or without his recommendations with respect thereto.

42.1 *Rail, Water and Pipe Line Tariffs Section* administered by an Assistant Director, who grants or denies *Applications for Special Permission* and supervises functions of the following branches, each headed by a Chief of Branch: 42.11 *Concurrences*; 42.12 *Passenger Tariffs*; 42.13 *Express Tariffs*; 42.14 *Freight Tariffs*; 42.15 *Freight Waybills*; 42.16 *Freight Rates*.

42.2 *Motor and Forwarder Tariffs Section* administered by an Assistant Director, who grants or denies *Applications for Special Permission* and supervises functions of the following branches, each headed by a Chief of Branch: 42.21 *Concurrences*; 42.22 *Passenger Tariffs*; 42.23 *Freight Tariffs*; 42.24 *Freight Rates*; 42.25 *Temporary Authority*.

42.3 *Rate Cases Section* administered by an Assistant Director, who approves, grants or denies *Applications for Released Rate Orders* or to make voluntary reparations of unlawful *Charges on Special Docket*.

RULE 43—BUREAU OF OPERATIONS

This bureau investigates and recommends with respect to the classification of all types of carriers; the grant enlargement, *Unification*, surrender, revocation, *Abandonment* or discontinuance of their authority to operate; the adequacy of *Carrier Facilities*, equipment and *Service*, the *Allowances* to the owner of property transported for transportation services rendered by him; and safety and inspection of equipment; safety appliances, rules, methods and regulations of all types of carriers; and

the safe transportation of explosives and other dangerous articles.

43.0 *Office of Director* recommends to Division Three with respect to *Rule Making, Investigations, or Petitions* or proposals therefor which involve *Carrier Operations, Operating Authority, Service or Safety*; reviews and *Refers Orders of Investigations, Petitions, and Complaints* involving the same, with or without his recommendations with respect thereto.

43.1 *Operating Authority, Part II Section* headed by a Chief, receives, analyzes, and *Refers*, with or without recommendation, all *Applications* for certificates, permits and licenses of *Motor Carriers and Brokers*.

(O. M. 9.11 (c))

43.2 *Operating Authority, Parts I, III, IV Section* headed by a Chief, receives, analyzes, and *Refers*, with or without recommendation, all *Applications* for certificates, permits and licenses of *Railroads, Water Carriers and Forwarders*.

(O. M. 9.5 (a))

43.3 *Field Organization* headed by an Assistant Director supervises the field operations of *The Agency's Regional Bureaus*.

(O. M. 9.11 (a))

43.4 *Insurance Section*, headed by a Chief, enforces provisions of Parts II and IV requiring security for protection of the public and disposes initially of *Applications* to act as *Self-Insurer*.

(O. M. 9.11 (g), 9.16)

43.5 *Service Section*, headed by an Assistant Director, which investigates and recommends with respect to the adequacy of *Carrier Facilities*, and transportation service and *Allowances* to owners of property transported for transportation services rendered by them.

43.51 *Car Service*. The Assistant Director initially handles all duties under Part I relating to freight car Service.

43.6 *Locomotive Inspection Section*, headed by an Assistant Director who is also the Director of Locomotive Inspection, who directs the performance of the Commission's duties under the Locomotive Inspection Act and the Ash Pan Act.

43.7 *Railroad Safety Section*, headed by an Assistant Director, who directs the discharge of the following statutory duties of the Commission through the following branches, each headed by a Section Chief: 43.41 Signals and Train Control; 43.42 Safety Appliances; 43.43 Accident Investigations; 43.44 Hours of Service.

43.8 *Motor Carrier Safety Section*, headed by an Assistant Director, who directs the discharge of the following statutory duties through the following branches, each headed by a Section Chief: 43.51 Accident Investigations; 43.52 Hours of Service; 43.53 Other Motor Carrier Safety.

43.9 *Explosives and Dangerous Articles Section*, headed by a Chief, who supervises the discharge of the duties of the Commission under the "Explo-

sives and Combustibles Act", 18 USC 835 and the Federal Explosives Act, 50 USC 123.

RULE 44—BUREAU OF FINANCE

The Bureau of Finance, headed by a Director, administers provisions of *The Act* relating to *Unification, Securities, interlocking officers, annual, periodic and special Carrier reports and matters arising under the Bankruptcy, Reorganization, and Antitrust Acts*. It analyzes and from time to time reports to the Commission through Division 4 with respect to *Carrier finances, financing, financial condition, earnings, operations, traffic, accidents, and the cost of providing service for different kinds of traffic by different carriers in the several territories or by individual carriers*.

(Compare similar "Division of Finance and Statistics of the Federal Power Commission", FPC 1.7 (b) (2); 02.24; 02.25; 1.7 (3) (4); 02.35)

44.0 *Office of Director* recommends to Division Four with respect to *Rule Making, Investigations or Petitions* or proposals therefor which involve *Carrier reports, statistics, cost finding, Unifications, Securities or Reorganizations* and reviews and *Refers Orders for Investigations, Petitions and Complaints* involving any of the same, with or without, his recommendations with respect thereto; disposes of *Applications* to hold interlocking offices or directorships in two or more carriers.

44.1 *Research Section*, headed by an Assistant Director, analyzes, studies, and reports to Division Four with respect to the finances, financing, financial condition, earnings, operations, traffic, accidents, and costs of *Carriers* subject to the Act.

(O. M. 9.15 (a))

44.2 *Annual Reports Section*, headed by a Chief, receives, edits, summarizes, compiles and abstracts annual reports of *Carriers* required to be filed with the Commission.

(O. M. 9.15 (c))

44.3 *Other Carrier Reports Section*, headed by a Chief, receives, edits, summarizes and compiles abstracts of other periodic and special *Carrier reports* required to be filed with the Commission.

(O. M. 9.15 (d))

44.4 *Waybill Statistics Section*, headed by a Chief, receives, edits, tabulates, summarizes, analyzes, and reports with respect to the traffic movement of commodities by railroad as revealed by a continuous one percent waybill sample.

44.5 *Accident Statistics Section*, headed by a Chief, collects, analyzes, summarizes and reports statistics of accidents upon *Carriers* subject to *The Act*.

(O. M. 9.15 (e))

44.6 *Cost Finding Section*, headed by a Chief, collects, studies, analyzes, compiles the costs of transporting passengers, baggage, mail, express and freight by carriers subject to *The Act*.

(O. M. 9.4 (c))

44.7 *Carrier Unification Section*, headed by a Chief, receives, analyzes and

Refers, with or without recommendation all *Applications for Pooling or Unification*, subject to Section 5 of *The Act*.

(O. M. 9.5 (a))

44.8 *Securities and Reorganizations Section*, headed by a Chief, receives, analyzes, *Refers*, with or without recommendation, all *Applications* for issuance of *Securities* under Section 20a or *Alteration* or modification of *Securities* under Section 20b or for reorganization of *Carriers* under the Bankruptcy Act.

(O. M. 9.5 (b))

44.9 *Mechanical Tabulations Section*, headed by a Chief, receives, edits, card punches, verifies, sorts, classifies, tabulates and reports statistical data.

(O. M. 9.15 (f))

RULE 45—ACCOUNTS AND VALUATION

The Bureau of Accounts, headed by a Director, initially performs the work and recommends to the Commission through Division Four the Prescription, amendment and supplementation of uniform system of *Accounts* applicable to the several classes of *Carriers* and the prescription, modification or amendment of depreciable classes of property and the rates of depreciation applicable thereto, interprets the uniform systems of *Accounts* and audits, supervises and inspects the records, books and *Accounts* and memoranda required to be kept by *Carriers* and also recommends to the Commission Orders respecting the keeping and destruction of records as provided in Section 20 (3)-(6); 204 (a); 220; 313; 412. The Bureau also discharges the duties of *The Agency* except final *Orders or Decisions* thereunder respecting the valuation of property of *Carriers* subject to Part I under Section 19a.

(O. M. 9.4; FPC 1.7 (f), (1); 02.32, .33, .61, .62; 03.2)

45.0 *Office of Director*, recommends to Division Four with respect to *Rule Making, Investigations or Petitions* or proposals therefor which involve *Carrier Accounts, accounting, depreciation and Valuation*.

45.1 *Administrative Section*, headed by an Assistant Director, supervises the entire work of the Bureau.

(O. M. 9.4 (a))

45.2 *Accounting Section*, headed by the Chief Accountant interprets the Uniform System of Accounts and prescribes rates of depreciation.

(O. M. 9.4 (b))

45.3 *Valuation Section*, headed by an Assistant Director, initially discharges the duties of the Commission under Section 19a through the following branches:

45.31 *Engineering*, headed by a Head Valuation Engineer.

(O. M. 9.4 (d))

45.32 *Field Service*, headed by a Chief of Field Service.

(O. M. 9.4 (e))

45.33 *Land Valuations*, headed by Head Land Appraiser.

(O. M. 9.4 (f))

45.34 *Property Changes*, (Valuation Order 3), headed by Head Auditor of Property Changes.

RULE 46—BUREAU OF HEARINGS

This bureau, headed by a Director, conducts the *Hearings* in all *Adjudicatory Proceedings* and in all *Rule Making Proceedings* assigned for *Hearing* and determination pursuant to chapters 1, 2 and 3 hereof as provided in Rule 03.3, except *Proceedings Referred* hereunder to an *Employee* or *Joint Board*.

46.0 *Board of Review* consists of nine or more members, the chairman of which, designated by the Managing Director, shall be an Assistant Director of the Bureau.

46.01 *Qualifications*. All members of Board shall be attorneys at law who have had at least 5 years experience as a *General Examiner of The Agency* and who by examination have demonstrated complete familiarity with: (a) the statutory provisions, (b) judicial and administrative precedents covering every field of *The Agency's* jurisdiction and regulatory powers, (c) *These Rules*, (d) economic principles relating to the commerce and business of *Persons* subject to *The Act*; (e) the financial, executive, operating, traffic, accounting and statistical methods, practices, *Facilities* and equipment employed in providing transportation which is subject to *The Act*.

46.02 *Unappealed Initial Decisions by Hearing Officers* will be reviewed by one member of the Board of Review, from time to time assigned by the Chairman of such Board, who within 20 days after the *Filing* of such *Initial Decision* may recommend to the Division having jurisdiction of the *Proceeding* that the *Order* be stayed and the *Initial Decision* reviewed for reasons set out in such recommendation.

46.03 *Appealed Initial Decisions* will be reviewed by at least three members of the Board of Review, as from time to time assigned by the Chairman of the Board, who by a majority, within 30 days after the time for *Filing Replies to Exceptions* or *Replications* to such *Replies*, if any, or oral argument, if any, whichever is the later, shall submit a recommendation to the Division having jurisdiction of the *Proceeding* with respect to the *Appeal*, and if the recommendation be other than for unqualified affirmance, at the same time submit to said Division a complete draft of the *Final Decision* recommended by the Board.

46.04 *Petitions for Reconsideration* shall be referred to the Board for its recommendation to the Commission en banc.

46.05 *Upon Reconsideration* the Chairman of the Board shall designate five members thereof having no previous connection with the *Proceeding* to review the *Decision*, the *Petition for Reconsideration*, the *Reply* thereto, any further *Proof* introduced and any oral argument thereon and within 30 days after *Filing* of such *Reply* or additional *Briefs* or oral argument, whichever is the later, recommend and submit to the Commission en

banc a revised Report and Order upon Reconsideration.

46.1 *General Examiners Section* headed by an Assistant Director and consisting of Examiners who have been certified by the Director of the Bureau with the approval of the Managing Director as qualified to *Hear* and *Initially Decide* any *Proceeding* arising under *The Act*. Any *Investigation* instituted by Division One will be *Referred* to a member of this Section for *Hearing* and *Initial Decision*, and the Director of the Bureau will from time to time assign members of this Section temporarily to other Sections of the Bureau where their services are required.

46.11 *Qualifications*. To be qualified as a *General Examiner* a person shall have been an *Examiner of The Agency* for at least 5 years and shall possess all *Qualifications* which are required for Examiners under Sub-Rules 46.2 to 46.5 hereof inclusive.

46.2 *Charges Examiners Section*. Headed by an Assistant Director and certified by the Director of the Bureau as qualified to hear and initially decide any *Proceeding* within the jurisdiction of Division Two. *Proceedings* within the jurisdiction of Division Two not otherwise *Referred* will be *Referred* to a member of this Section.

46.21 *Qualifications*. To be qualified as a *Charges Examiner* a person shall possess the general qualifications for all Examiners under Rule 46.5 and in addition shall be familiar with the administrative precedents covering the field of the jurisdiction delegated to Division Two, and with the economic principles governing *Charges*, with *Rate Making*, *Tariffs*, *Tariff Rules*, and have a general knowledge of the *Fare* and *Rate Structures* of all *Carriers*.

46.3 *Operations Examiners Section*. Headed by an Assistant Director and certified by the Director of the Bureau as competent to *Hear* and *Initially Decide* any *Proceeding* within the jurisdiction of Division Three. *Proceedings* within the jurisdiction of Division Three not otherwise *Referred* will be *Referred* to a member of this Section.

46.31 *Qualifications*. To be qualified as an *Operations Examiner*, a person shall possess the general qualifications for all Examiners under Rule 46.5 and in addition shall be familiar with the administrative precedents covering the field of the jurisdiction delegated to Division Three, (b) classification of each type of *Carrier*; (c) economic principles respecting the location of *Carrier* routes, the institution, extension or cessation of *Carrier Operations*; (e) the service requirements exacted of each type of *Carrier*; and (e) safe, efficient and serviceable *Facilities*, equipment, and transport operation and maintenance.

46.4 *Finance Examiners Section*. Headed by an Assistant Director and certified by the Director of the Bureau as competent to *Hear* and *Initially Decide* any *Proceeding* within the jurisdiction of Division Four. *Proceedings* within the jurisdiction of Division Four not other-

wise *Referred* will be *Referred* to a member of this Section.

46.41 *Qualifications*. To be qualified as a *Finance Examiner* a person shall possess the general qualifications for all Examiners under Rule 46.5 and in addition shall be familiar with (a) the administrative precedents covering the field of the jurisdiction delegated to Division Four; (b) the legal, economic and business principles and practices relating to *Pooling*, merger, consolidation; corporate control and affiliation; and the issue, form, terms, conditions and obligation of *Securities*; (c) *The Agency's* system of uniform accounts and the methods and practices of *Carriers* in keeping *Accounts* thereunder and the form, content and significance of *Carrier* financial, traffic and operating reports and statistics; (e) the general principles and methods of cost finding and cost analysis of *Carrier Operations*.

46.5 *General Qualifications*. Except as otherwise prescribed by special order of the Commission en banc, a person shall not be deemed to be competent to be appointed an Examiner of any section of the Bureau of Hearings unless he shall show to the satisfaction of the Director of the Bureau and the Managing Director that he is of good moral character and reputation and a member in good standing of the Bar of the Supreme Court of the United States, and shall have demonstrated by examination oral and written that he can conduct *Hearings* in a dignified, orderly and impartial manner, determine credibility of witnesses; sift and analyze evidence and prepare with ease and celerity, in clear, concise and grammatical English, a sound and convincing report of facts determined after such analyses and the conclusions to be drawn therefrom, both legal and factual, and, in addition, that he has comprehensive knowledge and familiarity with the statutory provisions and judicial precedents covering every field of *The Agency's* jurisdiction and with administrative precedents covering the field of such jurisdiction embraced within the particular section of the Bureau of Hearings to which he is to be appointed or assigned; and with *These Rules* and with the practice and procedure in the trial of civil actions and the conduct of Judges and Attorneys therein.

RULE 47—DISCIPLINE OF EXAMINERS

Members of any section of the Bureau of Hearings will be promoted to a higher grade or office upon the certificate of the Director of the Bureau, approved by the Managing Director. They will be disciplined under the following Rules:

47.1 *Censure*. The Director of the said Bureau may at any time *Serve* upon the Examiner a written censure for any intentional deviation from any of the *Canons of Ethics* set forth in Rules 73 to 76 inclusive; for insubordination; failure promptly, expeditiously, and properly to discharge all of the duties of his office; contemptuous or contumacious conduct at any *Hearing* or *Conference* or with respect to any officer or employee of *The Agency*; or any other act unbecoming a *Hearing Officer*. Such

Hearing Officer, within 10 days thereafter, may *File* a verified *Response* to such censure and request a *Hearing*. The Secretary will *Refer* this request to Division One which will hold a *Hearing* with respect thereto promptly. After *Hearing* the Division may affirm or reverse the censure or, if it deems the facts warrant the same, direct the General Counsel to prefer charges as provided in Rule 47.2 hereof.

47.2 *Preferment of Charges*. Upon request of the Director of the Bureau of Hearings, with the approval of the Managing Director, the General Counsel will prefer charges before the Civil Service Commission seeking the demotion, suspension or removal of an Examiner whenever it shall appear that such Examiner has (a) shown a lack of the requisite qualifications to hold the office to which he has been appointed; (b) practice fraud, misrepresentation or chicanery in his dealings with the Commission, its officers or employees, *Practitioners* or other persons or *Parties* having business with the Commission; (c) intentionally made a false statement or representation in any report or in any Decision or at any *Hearing* or *Conference*; (d) has intentionally and persistently deviated from any of the Canons of Ethics set forth in Rules 73 to 76 after the same has been called to his attention; (e) has been guilty of any offense involving moral turpitude; (f) has been contemptuously or contumaciously insubordinate, disrespectful or insulting to any member or officer of *The Agency* or any other Examiner.

47.3 *Order*. If in the *Proceeding* before the Civil Service Commission, described in Rule 47.2, that Commission, after opportunity for *Hearing* and upon the *Record* thereof, shall determine that good cause has been established for the demotion, suspension or removal, as the case may be, of the Examiner, Division One will enter an *Order* to such effect.

RULE 48—OFFICE OF LAW

The Office of Law is directed by a General Counsel who is administrative head for all legal functions of *The Agency*. It serves as legal counsel to *The Agency*, the Managing Director and to the entire *Agency* organization. It is charged with the inquiry and enforcement of the provisions of *The Act* and of the Orders of *The Agency* and will represent *The Agency* in all judicial proceedings for the enforcement or review of *The Agency's Orders*. It is also authorized to intervene in its own behalf or upon behalf of any Bureau in any *Proceeding* which involves compliance with or enforcement of provisions of *The Act*. It will exercise functional authority over field investigators and attorneys.

(Compare Wolf Report, page 19, "Office of Law" O. M. 9.9)

48.0 *General Counsel*, furnishes legal opinion and advice to the Commission and its staff, and recommends to Division One with respect to the censure, discipline or disbarment of *Practitioners*.

(O. M. 9.9 (a))

48.1 *Court Proceedings Section*, composed of Associate General Counsel, who try all *Proceedings* for *Judicial Enforcement* or *Review*.

(O. M. 9.9 (a))

48.2 *Inquiry Section*, headed by Director of Inquiry, which receives, investigates and recommends with respect to violations of *The Act* or any *Order* of the Commission.

(O. M. 9.8 (a))

48.3 *Safety Enforcement Section*, headed by an Assistant Director, prosecutes all *Proceedings* before the Commission for enforcement of railroad and motor carrier safety.

48.4 *Motor Carrier Enforcement Section*, headed by an Assistant Director, prosecutes all *Proceedings* before the Commission involving enforcement of Part II other than safety.

(O. M. 9.8 (a))

48.5 *All Other Enforcement*, headed by an Assistant Director, prosecutes all *Proceedings* before the Commission involving enforcement of Parts I, III and IV other than safety.

(O. M. 9.8 (b))

ARTICLE 5—REGIONAL STAFF

RULE 50—ORGANIZATION

The field operations of *The Agency* are grouped into nine geographic regions corresponding closely to the rate-making regions of the country which are conducted by nine regional bureaus. The offices and the respective jurisdictions of each of the regional bureaus are as set out in sub rules 50.0 to 50.7 inclusive hereof.

50.0 *Regional Director*, is appointed by and for purposes of administration reports to the Managing Director, although he may be also one of the Associate Regional Directors described in Rules 50.1 to 50.7, inclusive. He acts as the supervisory executive of the regional office and is charged with its internal administration, office arrangement, hearing rooms, clerical aids, supplies and department of the field staff.

50.1 *Associate Law Director*, who shall act as the Regional Counsel and who discharges under the direction of the General Counsel duties of the Office of Law within the region and supervises under the direction of the Director of Inquiry investigations of reported violations of *The Act* or of *Orders of The Agency* within the region. He will be assisted by such additional attorneys and agents as the General Counsel, with the approval of the Managing Director, shall appoint.

50.2 *Associate Traffic Director*, who under the direction of the Director of the Bureau of Traffic performs the duties and exercises the jurisdiction of the Bureau over matters confined to the region, except matters delegated to the Fourth Section or Suspension Boards. He will be assisted by such additional traffic officers or personnel as the Director of the Bureau of Traffic, with the approval of the Managing Director, shall appoint.

50.3 *Associate Operations Director*, who under the direction of the Director of the Bureau of Operations performs the duties and exercises the jurisdiction of that Bureau over matters confined to the region. Also under the direction respectively of the Director of Locomotive Inspection and the Assistant Directors of Railroad and Motor Carrier Safety and of Service, supervises the work of Locomotive Inspectors, railroad and motor carrier Safety Inspectors and Service Agents located within the region. He will be assisted by such additional Service & Safety officers or personnel as the Director of the Bureau of Service and Safety, with the approval of the Managing Director, shall appoint.

50.4 *Associate Finance Director*, who under the direction of the Director of the Bureau of Finance performs the duties and exercises the jurisdiction of that Bureau with respect to the Annual and Periodic Reports of Carriers whose operations are confined to the region, a *Unification* of two or more *Carriers* the operations of which lie wholly within the region and cost finding with respect to operations wholly within the region. He will be assisted by such additional Finance Officers or personnel as the Director of the Bureau of Finance, with the approval of the Managing Director, shall appoint.

50.5 *Associate Accounting and Valuation Director*, who under the direction of the Director of the Bureau of Accounts and Valuation performs the duties and exercises the jurisdiction of that Bureau over matters lying entirely within the region, and supervises the work of the Accounting and Valuation field personnel within the region. He will be assisted by such additional Accounting and Valuation officers and personnel as the Director of the Bureau of Accounts and Valuation, with the approval of the Managing Director, shall appoint.

50.6 *Associate Hearings Director*, who has the qualifications of a General Examiner under Rule 46.1 and who will *Initially Hear* and *Decide* all *Proceedings* other than those relating to the *Issuance* or *Alteration* of *Securities* or *Instruments*; or corporate *Reorganizations* or *Proceedings* referred to an *Employee Board* (Rule 37) or to a *Joint Board* (Article 6) hereof, which *Proceedings* relate exclusively to matters within the region, and such other *Proceedings* as shall be referred to him by the Director of the Bureau of Hearing. He also will advise with and assist Joint Boards in *Proceedings* involving matters entirely within the region and upon direction of the Director of the Bureau of Hearings in *Proceedings* which involve matters partly within the region. He will be assisted temporarily or permanently by such additional Examiners as the Director of the Bureau of Hearings, with the approval of the Managing Director, shall appoint.

50.7 *Documents Required To Be Filed*. A conformed copy of every communication, *Tariff*, schedule, *Procedural Instrument* or other document required or permitted to be *Filed* at the office of

The Agency in Washington, D. C., which involves or relates to any matter within the jurisdiction of a regional bureau shall be Filed in the office of such regional bureau on or before the day upon which the same is Filed in the Washington office of The Agency.

50.8 *Public Records.* All papers Filed with the Regional Bureau under Rule 50.8 hereof will be currently Filed in appropriate Tariff and Report files and in Dockets of the Proceedings to which they relate and with copies of all Agency Decisions, Reports and Orders will be open to public inspection during regular business hours.

RULE 51—NEW ENGLAND REGIONAL BUREAU

The New England Region embraces the States of Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island. The office of the Bureau is located in Boston, Massachusetts. A branch field office is located at Portland, Maine.

RULE 52—EASTERN REGIONAL BUREAU

The Eastern Region embraces the States of Maryland, New Jersey, New York, Pennsylvania, West Virginia, and the District of Columbia. The office of the Bureau is located in Philadelphia, Pennsylvania. Branch field offices are located at New York City, Albany, and Buffalo, New York, and Pittsburgh, Pennsylvania.

RULE 53—CENTRAL REGIONAL BUREAU

The Central Region embraces the States of Ohio, Michigan, Indiana, Illinois, Ohio River points in Kentucky, Mississippi River points in Iowa and Missouri, that part of Wisconsin on and South of U. S. Highway 151. The office of the Bureau is located in Chicago, Illinois, and branch field offices at Cleveland, Columbus, Detroit, Indianapolis, Toledo and Louisville.

RULE 54—SOUTHERN REGIONAL BUREAU

The Southern Region embraces the States of Virginia, North and South Carolina, Tennessee, Mississippi, Alabama, Georgia, and Florida, points in Kentucky not on the Ohio River, and points in Louisiana and Arkansas on or east of the Mississippi River. The office of the Bureau is at Atlanta, Georgia, and branch field offices are maintained at Charlotte, North Carolina, Chattanooga, Memphis, and Nashville, Tennessee, Mobile, Alabama, Jacksonville, Florida and New Orleans, Louisiana.

RULE 55—NORTHWESTERN REGIONAL BUREAU

The Northwestern Region embraces the States of Minnesota, North and South Dakota, points in Wisconsin north or west of U. S. Highway 151. The office of the Bureau is at Minneapolis, Minnesota, and a branch field office is maintained at Fargo, North Dakota.

RULE 56—MIDWEST REGIONAL BUREAU

The Midwest Region embraces the States of Nebraska and Kansas, points in the States of Iowa and Missouri west of the Mississippi River, points in Colorado east of the Continental Divide. The office of the Bureau is at Kansas City, Missouri, and branch field offices are

maintained at St. Louis, Missouri, and Denver, Colorado.

RULE 57—SOUTHWESTERN REGIONAL BUREAU

The Southwestern Region embraces the States of Oklahoma, Texas, and New Mexico and points in Arkansas and Louisiana west of the Mississippi River. The office of the Bureau is at Fort Worth, Texas, and branch field offices are maintained at Shreveport, Louisiana, Houston and San Antonio, Texas, and Albuquerque, New Mexico.

RULE 58—ROCKY MOUNTAIN REGIONAL BUREAU

The Rocky Mountain Region embraces the States of Montana, Idaho, Wyoming, Utah, and Colorado west of the Continental Divide. The office of the Bureau is located at Salt Lake City, Utah, and a branch field office is located at Great Falls, Montana.

RULE 59—PACIFIC REGIONAL BUREAU

The Pacific Region embraces the States of Washington, Oregon, California, Nevada and Arizona. The office of the Bureau is located at San Francisco, and branch field offices at Portland, Oregon, and Los Angeles, California.

ARTICLE 6—JOINT BOARDS

RULE 60—ORGANIZATION

The Agency has constituted a number of Joint Boards as provided in Section 205 (b) and, whenever occasion therefor arises will create additional such Boards, consisting of a member from each State of not more than three States for the purpose of *Initially Hearing and Deciding Proceedings* in which the operations of *Motor Carriers or Brokers*, conducted or proposed to be conducted, involve not more than three States, and which *Proceedings* involve *Applications* respecting *Operating Authority or Unifications or Complaints* as to violations of Section 294 (a) or as to the rates, fares and *Charges of Motor Carriers or Brokers*.

(Sec. 205)

RULE 61—CHAIRMAN

After a Joint Board has been created it shall select one of its members to act as Chairman for all purposes concerning matters which may be *Referred* to it. In the event the member so selected is absent from any meeting of the Joint Board, the members attending shall select one of such members temporarily to act as Chairman.

(ICC Rule 14 (a))

RULE 62—FAILURE TO PARTICIPATE

The failure of a duly appointed member of a Joint Board to participate in any *Proceeding*, after notice thereof, on a matter *Referred* to such Joint Board constitutes a waiver by the State from which such member was appointed further to participate in the *Proceeding*.

(ICC Rule 14 (b))

RULE 63—RULINGS

If the members of a Joint Board or a majority thereof in actual attendance at a *Hearing* shall be unable to agree upon the disposition of a procedural question

arising therein, the Chairman (or Acting Chairman) of the Board shall decide the question and rule direct or order accordingly.

(ICC Rule 14 (c))

RULE 64—INITIAL DECISION

The *Initial Decision* of the Joint Board shall be made as provided in Rule 281 and shall be of the form and have the content provided in Rule 282.1. It will be *Served by The Agency*.

(ICC Rule 14 (d))

RULE 65—REVIEW

Such *Decision* shall be subject to *Appeals and Exceptions* as provided in Rule 283 and to *Review* and recommendation by the Review Board as provided in Rule 46.0.

RULE 66—TERMINATION OF JURISDICTION

The jurisdiction of a Joint Board over a *Proceeding Referred* to it will be terminated as follows:

66.1 *By Initial Decision* in which case further *Proceedings* will be had as provided in Article 28;

66.2 *By Waiver of Participation* either by express or telegraphic writing from the appropriate authority of each State from which a member thereof is entitled to be appointed or by the failure of all members of the Board to appear at an oral hearing, in either of which events the *Proceeding* will be *Heard and Initially Decided* by the Hearing Examiner designated to sit with the Joint Board;

66.3 *By Failure of a Majority of the Board to Agree* in which event the *Proceeding* will be *Initially Decided* by the Examiner assigned to assist the Joint Board;

66.4 *By Failure to Submit Decision Conforming to Rule 282.1* in which event the *Initial Decision* will be made by the Examiner appointed to assist the Joint Board;

66.5 *By Vacation of Reference* in which case further *Proceedings* shall be as ordered or directed by *The Agency*.

(ICC Rule 14 (e))

ARTICLE 7—HEARINGS

RULE 70—BY WHOM CONDUCTED

Hearings under *These Rules*, except as otherwise provided in Rule 03 will be conducted by (1) the Commission en banc; (2) a Division; (3) one or more individual Commissioners; (4) an Employee Board; (5) a Joint Board; (6) or by an Examiner qualified as provided by law.

(APA 7 (a), 11; ICA 17, 205)

70.1 *Disqualification.* No member, officer or employee of the Commission shall participate in the *Hearing* of any *Proceeding* in which:

(a) he has any personal interest or is related by blood or marriage or pecuniary relationship to any *Party* or any *Privy*, or *Practitioner of a Party*;

(b) he has such a personal bias, animus or prejudice for or against any *Party* or with respect to any contention lawfully made by a *Party* as will prevent

him from *Hearing and Deciding the Proceeding*, in a fair, just and impartial manner.

(FTC XIV)

70.2 Withdrawal. Any Hearing Officer at any time shall withdraw from participation in the *Hearing* if he feels that he is disqualified under the foregoing Rule 70.1.

(APA 7 (a); CAB 302.22; FPC 1.20 (d); FTC XV (d); MC 201.120; SEC V (d))

70.3 Removal. Any Party or Practitioner in good faith may File a timely and sufficient affidavit alleging personal bias, interest or other disqualification of any *Hearing Officer* who thereupon may (a) voluntarily withdraw from participation in the *Proceeding*; (b) *Reply* to the statement of facts in the affidavit and submit the affidavit and *Reply* affidavit for immediate disposition by the Division having jurisdiction of the *Proceeding* or (c) state his *Reply* upon the *Record* and proceed with the *Hearing* in which latter case the question will be determined by *The Agency* as a part of the *Record* and *Decision* in the *Proceeding*.

(APA 7 (a); CAB 302.22; FPC 1.20 (d); FTC XV; MC 201.120; SEC V (d))

RULE 71—REFERENCES

Proceedings arising under *The Act* shall be assigned for *Hearing* and *Initial Decision* to *Hearing Officers* as provided in the sub-rules of this Rule. If for any reason a *Reference* to a particular *Officer* is vacated and the matter *Referred* to a different *Officer* any *Proof* already produced in the *Proceeding* shall be a part of the *Record* to be considered with any *Proof* thereafter introduced.

(ICC Rule 85)

71.1 Enforcement Proceedings. Inquiries into alleged violations of *The Act*, of *Orders* of the Commission arising under Rules 48.2 to 48.5, inclusive, will be *Referred* by the Office of Law with or without recommendation to the Board of Inquiry for *Initial Hearing* and *Decision*.

71.2 Practitioners. *Proceedings* involving the *Discipline* of *Practitioners* shall be *Referred* by the General Counsel to Division One.

71.3 Traffic Proceedings. *Proceedings* arising under *The Act* which involve or relate to *Charges* or *Tariffs* shall be *Referred* as follows:

71.31 Investigations of Charges and Rate Making Agreements shall be *Referred* by the Director of the Bureau of Traffic to the appropriate Associate Hearings Director, if regional in scope, otherwise to the Section of Charges of the Bureau of Hearings.

71.32 Complaints involving Charges will be *Referred* by the Director of the Bureau of Traffic to the Charges Board, the Regional Associate Hearing Director, the Joint Board or to the Section of Charges Hearings as shall be appropriate under *These Rules*.

71.4 Operations Proceedings. *Proceedings* involving *Applications* for *Op-*

erating Authority or *Insurance, Operations, Service* or *Safety* will be *Referred* by the Director of the Bureau of Operations to the Operations Board, regional associate director, Joint Board or Section of Operations of Hearings of the Bureau of Hearings as shall be appropriate under *These Rules*.

71.5 Finance Proceedings. *Proceedings* arising out of matters of which the Bureau of Finance has jurisdiction will be *Referred* as follows:

71.51 Investigations and Unification Proceedings will be *Referred* by the Director of the Bureau of Finance to the Finance Board, the Associate Hearings Director of the appropriate region, the Joint Board or the Section of Finance Hearings of the Bureau of Hearings as may be appropriate under *These Rules*.

71.52 Securities and Reorganizations. *Proceedings* involving the *Issuance* or *Alteration* of *Securities* or corporate *Reorganizations* will be *Referred* by the Director of the Bureau of Finance to the Finance Board or to the Section of Finance Hearings of the Bureau of Hearings.

71.6 Accounting and Valuation Proceedings. *Orders* of *Investigations* of *Accounts* and *Accounting* will be *Referred* by the Director of the Bureau of Accounts either to the Accounting and Valuation Board or to the Section of Finance Hearings of the Bureau of Hearings. *Valuations* will be *Referred* for *Initial Decisions* (tentative valuations) to the Accounting and Valuation Board.

71.8 Assignment of Examiners. So far as practicable the Examiners within each of the several sections of the Bureau of Hearings, other than the Board of Review, will be assigned to *Proceedings Referred* to such section in rotation, due consideration being given to the nature of the *Proceeding* to be *Heard*, the specialized experience of the Hearing Examiner and the extent of the Hearing Examiner's work load.

(FCC 1.48 (b))

71.9 Duration of Reference. A *Hearing Officer* shall be deemed to have charge of a *Proceeding Referred* to him under *These Rules* from the date of *Reference* of the *Proceeding* to the time when the *Initial Decision* is *Filed* or the *Reference* revoked by the Division within whose jurisdiction the *Proceeding* rests.

(CAB 302.22; MC 201.116)

RULE 72—POWERS OF HEARING OFFICERS

A *Hearing Officer*, and in the case of a Board or a Division, a majority thereof, during the term of a *Reference*, as provided in Rule 71.9, shall have and possess the power and jurisdiction of *The Agency* with respect to the initial:

72.1 Procedural Instruments. The rejection, correction, striking, amendment or supplementation of all or any part of a *Procedural Instrument*.

72.2 Intervention. Disposition of *Petitions* to *Intervene*.

72.3 Appearance. Determination of who has the right to *Appear*, joinder, substitution, severance of Parties, representation of a class or of a principal and default in an *Appearance* or *Pleading*.

72.4 Motions. Reception, *Hearing* and disposition of all *Motions*.

72.5 Issues. Formulation, definition of and simplification of *Issues* by amendment of *Pleadings, Pre-Hearing* or other *Conferences, interrogatories, Stipulations* and any other fair and reasonable means.

72.6 Proof. Determination of the method, means and burden of *Proof* and of going forward, approval of *Stipulations, taking of Official Notice* and making of *Presumptions*.

72.7 Witnesses. Issuance of subpoenas, ad testificandum and duces tecum, examination and determination of the rights and privileges of witnesses, and of the use of *Verified Statements* and protection of witnesses and *Parties* at Oral Hearings or in the taking of depositions.

72.8 Evidence. Determination of the *Competency, Materiality, Relevancy* and *Admissibility* of *Documentary* and testimonial evidence and control and determination of the offer of evidence or of *Proof, Ruling* upon objections thereto, and closing or reopening the *Record*.

72.9 Decision. Determination of whether the *Proceeding* is one for *Summary Decision* and the making and *Filing* of the *Initial Decision*.

(APA Section 7 (b); CAB 302.22; FCC 1.743, 1.8444; FPC 1.27 (b), (d); ICC 70; MC 201.118; SEC V (e), (f))

RULE 73—TIME OF ORAL HEARING

The *Hearing Officer*, with the approval of the Director of the Bureau of Hearings in cases where the *Hearing Officer* is an *Examiner*, shall assign the time and place for *Oral Hearing* and all adjournments or continuations thereof, causing at least 10 days' *Notice* thereof to be *Served*.

(ICC 55 (b); 89; MC 201.119)

RULE 74—BASIC OBLIGATIONS OF HEARING OFFICERS

All *Hearing Officers* who are members, officers or employees of *The Agency* must conform, as nearly as may be, to the standards of ethical conduct required of the judges of the courts of the United States, and particularly to the Canons of Administrative Ethics set out in *This Rule* and Rules 75, 76 and 77, which are based upon the Canons of Judicial Ethics of the American Bar Association, modified insofar as the nature of the Hearing Office requires. *This Rule* deals with Canons of Administrative Ethics relating to the essential nature of such office.

74.1 Relations of Hearing Officers. The assumption of the Hearing Office casts upon the incumbent duties in respect of his personal conduct which concern his relations to the Nation and its inhabitants, the *Parties* before him, *Practitioners*, and witnesses.

(Canon 1 of the Canons of Judicial Ethics)

74.2 The Public Interest. *The Agency* exists to administer and enforce *The Act* and to promote justly the national transportation policy in the public interest. Its administration should be speedy and careful. The *Hearing Officer* should at all times be alert in his *Rulings* in the conduct of *Proceedings* so far as he can to promote such administration and to obtain the objectives of *These Rules*. He should ever bear in mind that *The Agency* exists for the benefit of the public and the *Parties* entitled to bring matters before it and not for the promotion of the interests of either the *Hearing Officer* of *The Agency*.

(Canon 2 of the Canons of Judicial Ethics)

74.3 Constitutional Obligation. *The Agency* is the creature of *The Act* and of the Congress which gave it life and it may not question the validity of any provision of *The Act*. However, it is the duty of a *Hearing Officer* to support the Federal Constitution and to that end obey and follow the decisions of the Supreme Court and *The Agency* with respect to the validity and interpretation of *The Act*. In the absence of such decisions he should interpret the provisions of *The Act* to the fullest extent possible to observe and apply the fundamental limitations and guarantees of the Constitution.

(Canon 3 of the Canons of Judicial Ethics)

74.4 Independence. A *Hearing Officer* should not act in any *Proceeding* where his own interests or those of a near relative is involved or where there are any other circumstances which would justify the impression that he would not act conscientiously, justly, impartially or fearlessly. He should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor or that he is affected by the kinship, rank, position or influence of any other person. Members of a Division should follow the controlling precedents of the Commission en banc until the same are reversed or modified. All other *Hearing Officers* should follow the controlling precedents of the Divisions of the Commission as well as of the Commission en banc. Otherwise a *Hearing Officer* should not be swayed by the demands of any person whatsoever regardless of rank in *The Agency* or in the Government or by public clamor or considerations of personal popularity or notoriety or by apprehension of unjust criticism or personal consequences to himself.

(Canons 13, 14 and 29 of the Canons of Judicial Ethics)

74.5 Idiosyncrasies. Administration of *The Act* should not be moulded by the individual idiosyncrasies of the *Hearing Officer*. He should adopt the usual and expected method and not seek to be extreme or peculiar in his judgment or spectacular or sensational in the conduct of *Hearings*.

(Canon 21 of the Canons of Judicial Ethics)

RULE 75—PERSONAL CONDUCT OF HEARING OFFICER

All *Hearing Officers* should conform to the following Canons of Administrative

Ethics relating to their personal conduct:

75.1 Avoidance of Impropriety. A *Hearing Officer's* official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior not only in the performance of his official duties, but also in his everyday life should be beyond reproach.

(Canon 4 of the Canons of Judicial Ethics)

75.2 Essential Conduct. A *Hearing Officer* should be temperate, attentive, patient, impartial, and since he is to administer *The Act* and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

(Canon 5 of the Canons of Judicial Ethics)

75.3 Inconsistent Obligations, Investments or Relations. A *Hearing Officer* should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with the expeditious and proper discharge of his official functions and duties. He should abstain from making or maintaining personal investments in enterprises which are apt to be involved or affected by *Proceedings* before *The Agency*. So far as reasonably possible, he should refrain from all relations which would normally tend to arouse the suspicion that such relations would warp or bias his judgment or prevent his impartial attitude of mind in the discharge of his duties. He should not utilize information coming to him in an official capacity or from *Parties* or *Practitioners* for purposes of speculation.

(Canons 24 and 26 of the Canons of Judicial Ethics)

75.4 Business Promotions. A *Hearing Officer* should avoid giving ground to any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute to private business ventures or to charitable enterprises. He should not enter any private business, pursue any course of conduct or engage in any activity or business relationship which in the normal course of events reasonably to be expected might bring his personal interest into conflict with the impartial performance of his official duties.

(Canon 25 of the Canons of Judicial Ethics)

75.5 Candidacy for Office. A candidate for appointment to or promotion in a *Hearing Officer* position should not make or suffer others to make for him promises of conduct in office which appeal to cupidity or prejudice of persons who might influence the appointing or promoting powers. He should not announce in advance of *Hearing* his opinion with respect to disputed issues of law or fact while a candidate nor do anything else which would create the impression that if chosen or promoted he will administer his office with bias, partiality, partisanship or improper discrimination nor should he call upon or ask *Parties* or *Practitioners* to support his candidacy

or to recommend his appointment or promotion.

(Canon 30 of the Canons of Judicial Ethics)

75.6 Private Practice. A *Hearing Officer* will not be permitted to practice before *The Agency* or any other *Hearing Officer* thereof with or without compensation and should refrain from accepting any professional employment while in office except that he may properly act as arbitrator or lecture or instruct in law or in matters arising under *The Act* or write upon such subjects and accept compensation therefor, if such course does not interfere with the due performance of his official duties.

(Canon 31 of the Canons of Judicial Ethics)

75.7 Gifts and Favors. A *Hearing Officer* should not accept presents or favors from *Parties*, *Practitioners* or others whose interests are likely to be submitted to him for judgment.

(Canon 34 of the Canons of Judicial Ethics)

75.8 Social Relations. It is not necessary to the proper performance of his official duties that a *Hearing Officer* should live in retirement or seclusion or continue to mingle in social intercourse. He should, however, in pending or prospective *Proceedings* before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his official conduct.

(Canon 33 of the Canons of Judicial Ethics)

RULE 76—CONDUCT IN DISCHARGE OF OFFICIAL DUTIES

In discharging their official duties, the *Hearing Officers* should conform to the following Canons of Administrative Ethics.

76.1 Industry and Promptness. A *Hearing Officer* must apply himself assiduously to the prompt and expeditious discharge of his official duties, recognizing that the time of *Parties*, witnesses and *Practitioners* is of value and that the lack of such qualities on his part will hinder and impede the discharge of the duties of *The Agency*.

(Canons 6 and 7 of the Canons of Judicial Ethics)

76.2 Consideration, Courtesy and Civility. A *Hearing Officer* must be considerate of and courteous to *Parties*, witnesses and *Practitioners* and other members, officers or employees of *The Agency*.

(Canons 9 and 10 of the Canons of Judicial Ethics)

76.3 Unprofessional Conduct of Practitioners. The *Hearing Officer* should courteously but firmly correct unprofessional conduct of *Practitioners* brought to his attention and where such conduct so justifies should send the matter at once to the General Counsel for the latter's investigation and recommendation, if any, to Division One. Where a *Practitioner* during a *Hearing* or *Pre-Hearing* or other *Conference* shall refuse to obey the proper directions of the *Hearing Officer* or refrain; after courteous warning, from disorderly

contemptuous or contumacious conduct at such *Hearing or Conference*, the *Hearing Officer*, if he deems the cause sufficient, shall exclude such *Practitioner* from further participation in such *Proceeding* as provided in Rule 97.5. In exercising this authority, the *Hearing Officer* shall avoid engaging in a personal controversy with the *Practitioner* so far as it is reasonably possible for him so to do.

(Canon 11 of the Canons of Judicial Ethics)

76.4 *Interference with Hearing.* The *Agency* is more than a tribunal for the settlement of controversies between private parties. Its primary obligation is to administer *The Act* in the public interest. If in any *Proceeding* the pertinent facts are not fully presented by the *Parties* it is the duty of the *Hearing Officer* to see that they are so developed. He should also intervene to promote expedition and prevent unnecessary waste of time or to bring out facts affecting the interests of the public or of others than the *Parties*. On the other hand, the *Hearing Officer* should not undertake the role of a *Practitioner* nor prevent a *Practitioner* from reasonably presenting his case in his own way. He should be studious to avoid controversies with *Practitioners*, *Parties* or witnesses, and should not be tempted to the unnecessary display of learning or a premature decision.

(Canon 15 of the Canons of Judicial Ethics)

76.5 *Ex Parte Communications.* A *Hearing Officer* should not permit private interviews, arguments or communications where all interests to be affected thereby are not present, and should refuse to accept any written communication from a *Practitioner* or *Party* intended or calculated to influence his actions unless he finds that such communication has been made known fully to the *Practitioners* of the *Adversary Parties*. In passing upon requests for postponement, adjournment or for extension of time within which to *File Procedural Instruments* the *Hearing Officer*, without being arbitrary, should endeavor to hold *Practitioners* to a proper appreciation of their public duties, always having in mind that a principal objective of *These Rules* is to obtain expeditious disposition of *Proceedings*.

(Canons 16, 17 and 18 of the Canons of Judicial Ethics)

76.6 *Reports and Decisions.* *Decisions* and reports of a *Hearing Officer* should be written in clear, concise, and idiomatic English and shall have the content and be in the form required by Rule 282.1. In making his *Decision* the *Hearing Officer* should bear in mind his obligations under Rule 74.3 and that ours is a Government of law and not of men and that he violates his duty as a minister of justice if he seeks to do what he may personally consider substantial justice in a particular *Proceeding* disregarding the law as he knows it to be binding upon him. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depository

of arbitrary power but an administrator of well defined duties. He has exceptional opportunity to observe provisions of the statute and of *These Rules* to ascertain whether they tend to impede the just disposition of controversies and he should from time to time advise the Legislative and Rules Committee of defects in procedure arising from his observation and experience.

(Canons 19, 20 and 23 of the Canons of Judicial Ethics)

76.7 *Review.* The *Hearing Officer* should scrupulously see to it that the *Record* clearly and fairly presents all of the *Proof* and contentions of all *Parties* with respect not only to the ultimate *Decision* but also with respect to all *Directions* and *Rulings* given or made by him so that every *Party* may secure the full benefit of the right of *Review* accorded by law and *These Rules*.

(Canon 22 of the Canons of Judicial Ethics)

76.8 *Conduct of Hearings and Conferences.* *Hearings* and *Conferences* should be conducted with fitting dignity and decorum so as to reflect the seriousness and importance of the *Proceedings*.

(Canons 35 and 36 of the Canons of Judicial Ethics)

76.9 *Improper Publicity.* A *Hearing Officer* should not directly or indirectly volunteer a statement to the press with respect to any pending or anticipated *Proceeding*. Upon an unsolicited inquiry by a representative of the press a *Hearing Officer*, but not anonymously, may make a statement with respect to the nature of the *Proceeding*, the issues involved and the procedure which will be followed in its determination. Such statement should be fair, unbiased, and, if circumstances permit, should be submitted to the *Practitioners* in the *Proceeding* prior to the time it is given to the press.

(Canon 35 of the Canons of Judicial Ethics)

RULE 79—CONSULTATION

In *Adversary Proceedings*, no *Hearing Officer* (except members of the Commission) shall consult or discuss with any *person*, *Counsel*, *Witness* or *Party* any issue of law or fact in such *Proceeding*, except:

(1) At a *Conference* called upon full notice and opportunity for all *Parties* to participate, or

(2) Upon the *Record* at an *Oral Hearing*, or

(3) With other members of the *Board of Employees* or *Joint Board* and with *Examiners* and officers of the Bureau of *Hearings*.

(APA Section 5 (c); FCC Act 409 (c) (2); FCC 1.858; FTC XXII; MC 201.94)

ARTICLE 8—INVESTIGATIONS

RULE 80—SUBJECTS OF INVESTIGATION

The jurisdiction of the Commission to investigate any matter arising under *The Act* is delegated to, and will be exercised by, the *Divisions* as follows:

80.1 *Enforcement.* *Investigation of Carrier and Broker compliance*, non-compliance or violation of statutory duties and into the management of *Car-*

riers and Brokers and into the professional conduct of *Practitioners* by Division One.

(O. M. 2-15-54, 4.2 (e), (h), (l), (k) and (m); 4.7 (e))

80.2 *Charges.* *Investigation of Carrier Charges*, through and Joint Routes intrastate rates, and *Carrier agreements* and procedures for joint rate making, by Division Two.

(O. M. 2-15-54 4.3 (e), (f), (b); 4.2 (f))

80.3 *Operations.* *Investigations* involving the classification of *Carriers*, *Exemptions*, *Operating Authority*, *Insurance*, adequacy of *Carrier Facilities*, *Car and Transport Service*, *Allowances*, routing of *Traffic* and *Safety of Carrier Facilities*, appliances, operating methods and practices by Division Three.

(O. M. 2-15-54; 4.3 (l); 4.4 (c)-(l), (r); 4.5 (d); 4.7 (a), (b), (f)-(n), (p); 4.6 (a), (c))

80.4 *Finances and Accounts.* *Investigation* respecting the reports, records and *Accounts* subject to the jurisdiction of the Commission, of *Unification of Carriers*, *Issuance or Alteration of Securities*, interlocking officers, or bankruptcy or *Reorganization*, or in connection with the *Valuation of Carriers* by Division Four.

(O. M. 2-15-54 4.2 (a)-(d); 4.6 (b), (c), (g), (e), (j), (i); 4.3 (g))

RULE 81—INSTITUTION

Investigations will be instituted by *Order of the Division* having jurisdiction of the subject matter, either of its own motion, upon recommendation of the General Counsel or the Director of any Bureau or by *Petition* of any interested person; such *Petitions* being governed by the Rules of Article 14 hereof.

(CAB 302.504; FCC 1.729; FTC III (a), (b))

RULE 82—ORDER TO SHOW CAUSE

Whenever it tentatively appears to a *Division* that facts or conditions exist which warrant the taking of any action which affect the right or liability of a person subject to the jurisdiction of such *Division*, the *Division* may enter an *Order* directing such person to show cause why it should not adopt the provisional findings and conclusion set forth in said *Order* and take the action therein specified. Such person may respond to such *Order* within the time and manner provided therein and in Rules 174 and 179 hereof and thereafter such *Proceeding* will be handled as other *Investigations*.

(CAB 302.304-309; FCC 1.591; FPC 1.6 (d); MC 201.60; CR 8 (b))

ARTICLE 9—PRACTITIONERS

RULE 90—QUALIFICATIONS

An individual seeking to be licensed to practice before *The Agency* shall be a citizen of the United States of good moral character and shall possess the additional qualifications set out below for the three classes of practice:

(ICC 8; CAB 302.11; FCC 1.713; FPC 1.4 (4); FTC VII; SEC II (b), (c), (e))

90.1 *Casual Appearance.* A member of the Bar of the highest court of the State of his residence who does not in-

tend to engage actively in general practice before *The Agency* may appear as *Counsel* with an associate general *Practitioner* without limitation and may appear without such an associate in not more than any one *Proceeding* in any one year. An individual who is not an attorney but who is a responsible officer of a corporation or association may appear therefor in not more than three *Proceedings* in any one year. Persons appearing under this Rule will not be registered but a record of their Appearances shall be kept by the Secretary of the Commission.

90.2 General Practice. An attorney-at-law who is a member in good standing of the bar of the highest court of the State of his residence and who in addition possesses knowledge and familiarity with *These Rules* and the Code of Ethics therein contained will be admitted to general practice in all classes of *Proceedings* before the Commission upon the certificate of three general *Practitioners* that they are personally acquainted with the applicant and he has the foregoing qualifications.

90.3 Specialized Technical Practice. To obtain for the Commission the assistance of expert and technical knowledge and skill in the economic, commercial and industrial fields within the jurisdiction of the Commission, a person who is not an attorney-at-law may be admitted to practice upon:

90.31 Education. Showing that he has completed satisfactorily at least two years of a course leading to a Bachelors degree in Arts, Science, Engineering or other under graduate schools in a recognized institution of higher learning plus technical education, training or experience which is regarded by the Commission as the equivalent of two additional years of college education in equipping the applicant for practice before the Commission; and

90.32 Examination. Demonstrating by successfully passing a comprehensive written examination that he is experienced in the field of transportation and learned in and familiar with the principles of regulation, the laws governing it, the economic principles underlying it, *These Rules* and the Canons of Ethics of the Association of Interstate Commerce Commission Practitioners.

90.4 Effectiveness. The provisions of Rules 90.2 and 90.3 are not retroactive and do not apply to any person who is a licensed *Practitioner* upon the date *These Rules* become effective.

90.5 Agency Personnel. Members, officers and employees of *The Agency* possessing the qualifications required under Subrules 90.2 or 90.3 may be admitted to practice before the Commission under the provisions of such rules. Such persons except *Hearing Officers* may appear before *The Agency* in behalf of any Bureau with the approval, general or special, of the Chairman of the Commission.

90.6 Former Agency Personnel. No person who has been associated with *The Agency* as a member, officer or em-

ployee shall be permitted at any time to appear before *The Agency* in behalf of or to represent in any manner any *Party* in connection with any *Proceeding* or matter which such person has handled, investigated, advised or in any way participated in the consideration thereof while associated in any capacity with *The Agency*. No *Practitioner* appearing before *The Agency* in any matter or *Proceeding* shall in relation thereto knowingly accept assistance from or share fees with any person who would be precluded by this rule from appearing before *The Agency* in such matter or *Proceeding*.

(CAB 11 (b); FPC 1.4 (c); FTC VII; FCC 1.715)

RULE 91—ADMISSION TO PRACTICE

Procedures for the admission to practice before *The Agency* other than casual practice (Rule 90.1) shall be as follows:

91.1 Application. An application under oath for admission to practice shall be *Filed*, which shall state the following facts: (1) The name, residence, address and business address of the applicant; (2) The name of each court, if any, in which the applicant has been admitted to practice and the date of such admission; (3) Whether applicant's right to practice has ever been revoked by any court or Administrative Agency in any jurisdiction and, if so, the full facts with respect to such revocation and applicant's reinstatement if any; (4) A complete statement of the education, training and experience of the applicant relied upon by an applicant seeking to engage in Specialized Technical Practice under Rule 90.3; (5) A statement that the applicant has read the Interstate Commerce Act and *These Rules of Practice* in their entirety.

Such application shall be accompanied by a certificate of the clerk of the court in which applicant is admitted to practice to the effect that he has been so admitted and is in good standing, if by an applicant under Rule 90.2, or by certificates of the educational institutions, if any, in which applicant acquired in whole or in part the technical and expert skills claimed to qualify him under Rule 90.3. Each application shall be accompanied by a certificate signed by three or more *Practitioners* in good standing, reciting that they know the applicant, that he is a citizen of the United States of good moral character, that they have read the application and believe the facts therein stated to be true and that in their opinion applicant possesses the requisite qualifications to engage in general practice or in specialized technical practice, as the case may be, and that they recommend and move that applicant be admitted to practice pursuant to *These Rules*. The *Practitioners* making such certificate may be called upon for a full and complete statement of the nature and extent of their knowledge of the qualifications of the applicant.

(ICC 9, 10, 12)

91.11 Oath. Such application shall be accompanied by an oath or affirmation, separately subscribed to by appli-

cant before a person authorized to administer oaths at the place where the same is made, that all of the facts stated in the application are true and that if the application be granted and he is admitted to practice that he will conduct himself as a *Practitioner* before *The Agency* uprightly and according to law and that he will support the Constitution and laws of the United States and conform to the rules and regulations of *The Agency* and the Ethics of *Practitioners* prescribed in *These Rules*.

91.2 Application Fees. An application for admission to practice under Rule 90.2 must be accompanied by a fee of \$10 and an application for admission to practice under Rule 90.3 by a fee of \$25. Payment must be made either in cash or by New York draft, certified check, or express or postal money order, payable to the order of the Treasurer of the United States. If an applicant for admission to practice under Rule 90.3 is denied permission to take the examination provided for in 91.3, the above fee will be returned to him.

(ICC 11)

91.3 Examination. If an application for admission to practice under Rule 90.3 shows that the applicant has the qualifications which permit him to take the written examination required for applicants under *This Rule* he will be so advised. Otherwise, he will be notified that his application is denied for that reason. The written examination which applicant under said Rule 90.3 is required to take is designed to test his knowledge of *These Rules of Practice*, of the Interstate Commerce Act, and the judicial and administrative precedents interpreting the same and also with respect to the specialized, expert technical knowledge and skill which the applicant claims to possess. These examinations will be held not oftener than twice in each year in the office of *The Agency* in Washington and at the regional offices of *The Agency* in those regions where persons desiring to take the examination reside. Information with respect to the time and place of these examinations may be obtained from the Secretary of *The Agency*.

91.4 Admission. If upon consideration of the papers *Filed* by the applicant, the statements submitted by his sponsors or by others, and upon his answers upon the examination, the Commission (Division One) is satisfied that the applicant possesses the qualifications required for admission to practice in the class for which the application is *Filed* it will enter an order of admission. Otherwise, it will deny the application and so notify the applicant by registered mail with the reasons therefor. Within 20 days after *Service* of such notice but not thereafter an applicant whose application has been rejected may controvert any of the reasons assigned therefor, except failure to pass the required examination satisfactorily, and submit in support of such controversion verified statements of himself and of others and authenticated documentary evidence. Upon receipt of such controversion Division One will reconsider

the application and affirm or reverse its former action. No *Appeal* from the action of Division One will be entertained.

(ICC Rule 10)

91.5 *Renewal of Application.* An applicant whose application for admission to practice has been denied may not earlier than one year after the date of such denial *File* a renewal of such application, setting forth any steps which applicant has taken to remove or cure the causes assigned in the notice denying the former application. Such renewal application will be handled and processed in the same manner as the original application and if the application be one to practice under Rule 90.3 and it appears that applicant has taken appropriate steps to acquire the knowledge in which he was formerly deficient, he will be permitted to take a new examination. Not more than two such renewal applications will be entertained.

**RULE 92—PROFESSIONAL CONDUCT—
RELATIONS WITH AGENCY**

All *Practitioners* must conform to the standards of conduct required by the Canons of the Code of Ethics of the Association of Interstate Commerce Commission Practitioners. The following of those Canons deal with the conduct to which *Practitioners* must conform in their relations with *The Agency*.

(I. C. C. 71 (b))

92.1 *Canon 2—Attitude Toward the Commission.* It is the duty of the *Practitioner* to maintain toward the Commission a respectful attitude, not for the sake of the temporary incumbent of the office, but for the maintenance of the importance of the functions he administers. In many respects the Commission functions as a court, and *Practitioners* should regard themselves as officers of that court and strive to uphold its honor and dignity. The Commission, not being wholly free to defend itself, is peculiarly entitled to receive the support of the *Practitioners* against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a member or employee of the Commission it is the right and duty of the *Practitioner* to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

92.2 *Canon 3—Punctuality and Expedition.* It is the duty of the *Practitioner* not only to his client, but also to the Commission and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

92.3 *Canon 4—Attempts to Exert Political Influence.* It is unethical for a *Practitioner* to attempt to sway the judgment of the Commission by propaganda, or by enlisting the influence or intercession of members of the Congress or other public officers, or by threats of political or personal reprisal.

92.4 *Canon 5—Attempts to Exert Personal Influence.* Marked attention and

unusual hospitality on the part of a *Practitioner* to a Commissioner, examiner, or other representative of the Commission, uncalled for and unwarranted by the personal relations of the parties, subject both to misconstruction of motive and should be avoided. A self-respecting independence in the discharge of duty, without denial or diminution of the courtesy and respect due the official station is the only proper foundation for cordial personal and official relations between Commission and *Practitioners*.

92.5 *Canon 6—Selection of Commissioners.* The nomination of Commissioners is a duty of the President, and confirmation, of the Senate. It is the duty of the *Practitioners* in so far as they attempt to advise the appointing or confirming officers, to endeavor to prevent any consideration from out-weighting fitness in the selection.

92.6 *Canon 7—Practitioner's Duty in its Last Analysis.* No client, corporate or individual, however powerful, no cause, civil or political however important, is entitled to receive, and no *Practitioner* should render, any service or advice involving disloyalty to the law or disrespect of its official ministers, or corruption of any person or persons exercising a public office or employment or private trust, or deception or betrayal of the public. In rendering any such improper service or advice the *Practitioner* invites and merits stern and just condemnation. Correspondingly, he advances the honor of his calling and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, although until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all he will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

92.7 *Canon 8—Private Communications.* In the disposition of contested proceedings brought under the Interstate Commerce Act the Commission exercises quasi-legislative powers, but it is nevertheless acting in a quasi-judicial capacity. It is required to administer the Act and to consider at all times the public interest beyond the mere interest of the particular litigants before it. To the extent that it acts in a quasi-judicial capacity, it is grossly improper for litigants, directly or through any counsel or representative, to communicate privately with a commissioner, examiner or other representative of the Commission about a pending cause, or to argue privately the merits thereof in the absence of their adversaries or without notice to them. *Practitioners* at all times should scrupulously refrain in their communications to and discussions with the Commission and its staff from going beyond

ex parte representations that are clearly proper in view of the administrative work of the Commission.

92.8 *Canon 37—Discovery of Imposition and Deception.* When a *Practitioner* discovers that some fraud or deception has been practiced, which has unjustly imposed upon the Commission or a party, he should endeavor to rectify it; first by advising his client to forego any advantage thus unjustly gained and, if his client refuses, by promptly informing the injured person or his *Practitioner*, so that appropriate steps may be taken.

92.9 *Canon 38—Upholding the Honor of the Calling.* *Practitioners* should expose without fear or favor before the proper tribunals corrupt or dishonest conduct and should accept without hesitation employment against a *Practitioner* who has wronged his client. The *Practitioner* upon the trial of a cause 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. The *Practitioner* should aid in guarding the bar of the Commission against admission thereto of candidates unfit or unqualified because deficient in either moral character or education. A *Practitioner* should propose no person for admission to practice before the Commission unless from personal knowledge or upon reasonable inquiry he sincerely believes and is able to vouch that such person possesses the qualifications prescribed in the Commission's rules of practice. He should strive at all times to uphold the honor and maintain the dignity of his calling and to improve not only the law but the administration of justice.

RULE 93—RELATIONS WITH CLIENT

The standards of conduct to which a *Practitioner* must conform in his relationship with his client are prescribed in the following Canons of Ethics of the Association of Interstate Commerce Commission Practitioners.

93.0 *Canon 40—Retirement from Public Employment.* A *Practitioner*, having once held public office or having been in the public employ, should not after his retirement, accept employment as an advocate or adviser in the same proceeding or as to the same, or substantially the same facts, as were involved in any specific question which he investigated or passed upon in a judicial or quasi-judicial capacity while in such office or employ, whether the same or different parties are concerned.

93.1 *Canon 9—Adverse Influence and Conflicting Interests.* It is the duty of a *Practitioner* at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of the person to represent or assist him.

It is unethical to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon a *Practitioner* represents

conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences 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.

93.2 Canon 10—Joint Association of Practitioners and Conflicts of Opinion. A client's proffer of the assistance of additional *Practitioner* should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A *Practitioner* should 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.

When *Practitioners* jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His 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 this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another *Practitioner* are unworthy of those who should be brethren, but, nevertheless, it is the right of any *Practitioner*, without fear or favor, to give proper advice to those seeking relief against an unfaithful or neglectful *Practitioner*, generally after communication with the *Practitioner* of whom the complaint is made.

93.3 Canon 11—Withdrawal from Employment. The right of a *Practitioner* to withdraw from employment, once assumed, arises only from good cause. Even the desire or consent of the client is not always sufficient. The *Practitioner* representing him should not throw up the unfinished task to the detriment of his client except for reasons of honor or self-respect. If the client insists upon an unjust or immoral course in the conduct of his case, or if he persists over the *Practitioner's* remonstrance in presenting frivolous defenses, or if he deliberately disregards an agreement or obligation as to fees or expenses, the *Practitioner* may be warranted in withdrawing on due notice to the client, allowing him time to employ another. So also when a *Practitioner* discovers that his client has no case and the client is determined to continue it; or even if he finds himself incapable of conducting the case effectively. Sundry other instances may arise in which withdrawal is to be justified. Upon withdrawing from a case after a retainer has been paid, he should refund such part of the retainer as has not been clearly earned.

93.4 Canon 12—Advising Upon Merits of Client's Cause. A *Practitioner* should endeavor to obtain full knowledge of

his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. He should beware of bold and confident assurance to clients, especially where employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

93.5 Canon 13—Negotiations with Opposing Party. A *Practitioner* should 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; much less should he undertake to negotiate or compromise the matter with him, but should deal only with the *Practitioner* who represents the other party. It is incumbent upon the *Practitioner* most particularly to avoid everything that may tend to mislead a party not represented by a *Practitioner*, and he should not undertake to advise him as to the law.

93.6 Canon 22—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 used by him.

93.7 Canon 23—How Far a Practitioner May Go in Supporting a Client's Cause. Nothing will operate more certainly to create or foster popular prejudice against *Practitioners* as a class, and deprive them of that full measure of public esteem and confidence which belongs to the proper discharge of their duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the *Practitioner* to do whatever may enable him to succeed in winning his client's cause.

The *Practitioner* owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of the disfavor of the Commission or public unpopularity should restrain him from full discharge of his duty. The client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his counsel to assert every such remedy or defense. But it is to be steadfastly borne in mind that this great trust is to be performed within and not without the bounds of the law. Admission to the privilege of appearing before the Commission as representing another does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client.

93.8 Canon 24—Restraining Clients from Improperities. A *Practitioner* should use his best efforts to restrain

and to prevent his clients from doing those things which he himself ought not to do, particularly with reference to their conduct towards the Commission, other *Practitioners*, witnesses and suitors. If a client persists in such wrong-doing the *Practitioner* should terminate their relations.

93.9 Canon 41—Confidences of a Client. The duty to preserve his client's confidences in the course of his employment outlasts the *Practitioner's* employment, and extends as well to his employees. None of them should accept employment which involves the disclosure or use of these confidences, either for the private advantage of the *Practitioner* or his employees or to the disadvantage of the client, without knowledge and consent of the client even though there are other available sources of such information. A *Practitioner* should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client.

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 within the confidences which a *Practitioner* is bound to respect. He may properly make such disclosures as to prevent the act or protect those against whom it is threatened.

RULE 94—PRACTITIONERS' FEES

The standards of professional conduct to which the *Practitioner* must conform in receiving compensation for services rendered as a *Practitioner* are set out in the following Canons of Ethics of the Association of Interstate Commerce Commission Practitioners.

94.1 Canon 14—Fixing the Amount of the Fee. In fixing fees, *Practitioners* should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, although his poverty may require a less charge, or even none at all.

94.2 Canon 15—Compensation, Commission and Rebates. A *Practitioner* should accept no compensation, commissions, rebates, or other advantages from parties to the proceeding other than his client without the knowledge and consent of his client after full disclosure.

94.3 Canon 16—Contingent Fees. Contingent fees should be such only as are sanctioned by law. In no case, except a charity case, should they be entirely contingent upon success.

94.4 Canon 17—Division of Fees. No division of fees for services is proper, except with a member of the bar or with another *Practitioner*, 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 reward them by a division of fees, and such a practice cannot be too severely condemned.

94.5 *Canon 18—Suing Clients for Fees.* Controversies with clients concerning compensation are to be avoided in so far as compatible with self-respect and with the right to receive reasonable recompense for services; and lawsuits against clients should be resorted to only to prevent injustice, imposition or fraud.

94.6 *Canon 19—Acquiring Interest in Litigation.* The *Practitioner* shall not purchase or otherwise acquire any pecuniary interest in the subject matter of the litigation which he is conducting.

94.7 *Canon 20—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 subject to reimbursement by the client.

RULE 95—CONDUCT OF LITIGATION

The standards of professional conduct to which the *Practitioner* must conform in his conduct of litigation is governed by the following Canons of Ethics of the Association of Interstate Commerce Commission *Practitioners*:

95.1 *Canon 21—Witnesses.* A *Practitioner* shall not undertake that the compensation of a witness shall be contingent upon the success of the cause in which he is called. If the ascertainment of truth requires that a *Practitioner* should seek information from one connected with or reputed to be biased in favor of an adverse party, he is not thereby deterred from seeking to ascertain the truth from such person in the interest of his client.

95.2 *Canon 25—Ill-Feeling and Personalities Between Advocates.* Clients, not their representatives, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence *Practitioners* in their conduct and demeanor toward each other or towards suitors in the case. All personalities between *Practitioners* should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncracies of *Practitioners* on the other side. Personal colloquies between *Practitioners* which cause delay and promote unseemly wrangling should also be carefully avoided. Their statements should be addressed to the Commission.

95.3 *Canon 26—Treatment of Witnesses and Litigants.* A *Practitioner* should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudice of a client in the trial or conduct of a cause. The client cannot be made the keeper of the *Practitioner's* conscience in such matters. He has no right to demand that the *Practitioner* representing him shall abuse the opposing party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

95.4 *Canon 28—Discussion of Pending Litigation in Public Press.* Attempts

to influence the action and attitude of the members and examiners of the Commission through propaganda, or through colored or distorted articles, in the public press, are more apt to react against than in favor of the parties resorting to such measures. On the other hand, it is not against the public interest or unfair to the Commission that the facts of pending litigation shall be made known to the public through the press in a fair and unbiased manner and in dispassionate terms. *Practitioners* should themselves avoid, and should counsel their clients against, giving to the public press any press notices or statements of a nature intended to inflame the public mind, to stir up possible hostility toward the Commission, or to influence the Commission's course and judgment as to pending or anticipated litigation. 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.

95.5 *Canon 29—Candor and Fairness.* The conduct of *Practitioners* before the Commission and with other *Practitioners* should be characterized by candor and fairness. The non-technical character and liberality of the Commission's practice call for scrupulous observance of the principles of fair dealing and just consideration for the rights of others.

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.

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 causes.

A *Practitioner* should 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 should not introduce into an argument remarks or statements intended to influence the by-standers.

These and all kindred practices are unethical and unworthy of a *Practitioner*.

95.6 *Canon 30—Right of Practitioner to Control the Incidents of the Trial.* As to incidental matters pending the trial, not affecting the merits of the cause or working substantial prejudice to the rights of the client, such as forcing the opposing *Practitioner* to trial when he is under affliction or bereavement, forcing the trial on a particular day to the injury of the opposing *Practitioner* when no harm will result from trial at a different time, agreeing to extensions of time and the like, the *Practitioner* and not the

client, must be allowed to judge. In such matters no client has a right to demand that his *Practitioner* shall be illiberal or do anything therein repugnant to the *Practitioner's* sense of honor and propriety.

95.7 *Canon 31—Taking Technical Advantage of Opposing Practitioner; Agreements with Him.* A *Practitioner* should not ignore known customs or practice of the Commission, even when the law permits, without giving timely notice to the opposing *Practitioner*. In so far as possible, important agreements affecting the rights of clients should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing.

95.8 *Canon 35—Justifiable and Unjustifiable Litigation.* The *Practitioner* must decline to conduct a cause 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. But otherwise it is his right, and having accepted retainer, it becomes his duty, to insist upon the judgment of the Commission as to the merits of his client's claim. His appearance should be deemed equivalent to an assertion upon his honor that in his opinion his client's case is one proper for determination.

95.9 *Canon 36—Responsibility for Litigation.* No *Practitioner* is obliged to act either as adviser or advocate for every person who may seek to become his client. He has the right to decline employment. Every *Practitioner* upon his own responsibility must decide what employment he will accept, what causes he will bring before the Commission for complaints, or contest for defendants or respondents. The responsibility for advising as to questionable transactions, for bringing questionable proceedings, for urging questionable defenses, is his alone. He cannot escape it by urging as excuses that he is only following his client's instructions, or that he is under a stated retainer or in the regular employment of his client.

RULE 96—PROMOTION OF LITIGATION OR EMPLOYMENT

The *Practitioner* must conform in his professional conduct to the following Canons of Ethics of the Association of Interstate Commerce Commission *Practitioners* which are designed to eliminate the promotion of litigation or of professional employment directly or indirectly by *Practitioners*.

96.1 *Canon 32—Advertising, Direct or Indirect.* The most worthy and effective advertisement possible is the establishment of a well-merited reputation for capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not improper. But solicitation of employment by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is un-

ethical. It is equally unethical to procure business by indirection through touters of any kind. Indirect advertisement for employment by furnishing or inspiring newspaper comments concerning causes in which the *Practitioner* has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the *Practitioner's* positions, and all other like self-laudation, lower the tone of the calling and are intolerable.

96.2 Canon 33—Professional Card. The simple professional card mentioned in Canon 32 may with propriety contain only a statement of the *Practitioner's* name (and those of his associates), occupation, address, telephone number, and special branch or branches of practice. Such cards may be inserted in reputable lists and may give authorized references, or name clients with their permission.

96.3 Canon 34—Stirring Up Litigation, Directly or Through Agents. It is unethical for a *Practitioner* to volunteer advice that a proceeding be brought before the Commission, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unethical but it is indictable at common law. It is disreputable for a *Practitioner* to hunt up defects or other causes of action and disclose them in order to be employed to bring complaint, or to breed litigation by seeking out those having claims for damages or any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office to seek his services. No complaint should be brought before the Commission by a *Practitioner* except with the distinct knowledge and specific consent of the client in the particular case. A duty to the public and to the Commission devolves upon every *Practitioner* having knowledge of such practices upon the part of any *Practitioner*, immediately to inform thereof to the end that the offender may be disciplined or disbarred.

96.4 Canon 39—Intermediaries. The services of a *Practitioner* should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and *Practitioner*. His responsibility and qualifications are individual. He should avoid all relations which direct the performance of his duties in the interest of such intermediaries. His relation to the client should be personal, and the responsibility should be direct to the client.

He 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 their individual affairs as

are consistent with the free and untrammelled performance of his duties to the Commission.

Nothing in this canon shall be construed as conflicting with canon 17 (Rule 94.4).

96.5 Canon 42—Partnerships—Names. Partnerships among *Practitioners* for the practice of their calling are very common and are not to be condemned. The rules of the Commission provide that corporations or firms will not be recognized. *Practitioners* before the Commission should therefore appear individually and not as members of partnerships. In the formation of partnerships care should be taken not to violate any law locally applicable; care should also 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 locally admitted, or who is not duly authorized to practice, and as such amenable to discipline. No person should be held out as a *Practitioner* or member who is not so admitted. No *Practitioner* who is not admitted to practice in the courts 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. The continued use of the name of a deceased or former partner is or may be permissible by local custom, but care should be taken that no imposition or deception is practiced through this use. If a member of the firm becomes a Commissioner, or an Examiner or other employee of the Commission his name should not be retained in the firm name, as such retention may give color to the impression that an improper relation or influence is continued or possessed by the firm.

This canon does not inhibit the association of a *Practitioner* with a mercantile, manufacturing, or other commercial institution, in the capacity of its representative or adviser.

RULE 97—DISCIPLINE OF PRACTITIONERS

The Agency will censure, suspend, disbar or revoke the right of any *Practitioner* to Appear before it as follows:

(I. C. C. Rule 13, F. C. C. 1.714; F. P. C. 1.4 (b); F. T. C. VII; S. E. C. II (e))

97.1 Grounds for Disbarment. The following shall be grounds for disbarment:

(a) Intentional concealment of fraudulent representations in his application for admission to practice;

(b) Lack of the requisite qualifications to represent others in *Proceedings* before the Commission;

(c) Practice of fraud, misrepresentation or chicanery in his dealings with the Commission, its officers or employees, his clients or with other *Practitioners* or *Parties*;

(d) Intentionally making a false statement or representation in any *Procedural Instrument*;

(e) Repetition of an offense for which he has theretofore been censured or suspended by the Commission.

(f) Disbarment by any court.

97.2 Grounds for Censure or Suspension. The following shall be grounds for the censure or suspension of a *Practitioner*:

(a) Intentional deviation from any of the Canons of Ethics set forth in Rules 92 to 96, inclusive;

(b) Contemptuous or contumacious conduct at any *Hearing* or at any *Pre-hearing* or other *Conference*.

97.3 Order to Show Cause. Whenever the Commission finds, either of its own initiative or upon motion, of any *Practitioner* that a *Practitioner* may be guilty of an offense warranting disbarment, censure or discipline, it will issue and *Serve* upon such *Practitioner* an *Order to Show Cause* why he should not be disbarred, censured or suspended, which *Order* shall set forth tentatively the charges upon which such action may be taken. Within the time fixed in such *Order* the *Practitioner* may respond thereto under oath, setting forth his answer or defense, if any, to such charges. If such response raises any issue of *Material Fact*, the Commission will set the matter down for *Hearing* before Division One.

97.4 Final Order. At or following the *Hearing* prescribed in sub-rule 97.3, if one be held, otherwise upon the *Order to Show Cause* and the *Response* thereto, if any, Division One will enter an *Order* of disbarment, censure, or suspension as may be appropriate if it finds that grounds therefor exist. Otherwise, it will enter an *Order* dismissing the charges and discontinuing the *Proceeding*.

97.5 Exclusion from Proceeding. In the event a *Practitioner* during a *Hearing*, or *Pre-hearing* or other *Conference* shall refuse to obey the proper directions of the *Hearing Officer* or shall otherwise be guilty of disorderly, contemptuous or contumacious conduct at such *Hearing* or *Conference* the *Hearing Officer*, for good reasons stated in the *Record*, may exclude such *Practitioner* from further participation in such *Proceeding* and *Direct* that the matter be submitted to Division One for further action. Such *Practitioner* may *Appeal* in writing or by telegram to the Chairman of Division One, which *Appeal* shall set forth the reasons given by the *Hearing Officer* upon the *Record* and such *Practitioner's Response* thereto. The Chairman of Division One will immediately review the action of the *Hearing Officer* and affirm, reverse or modify the same. Pending action upon such *Appeal*, unless the *Hearing Officer* otherwise directs, the *Practitioner* shall be excluded from the *Hearing* or *Conference* room.

(F. P. C. 1.4 (2); F. T. C. XIV; S. E. C. II (f))

97.6 Reinstatement. A *Practitioner* who has been suspended or disbarred as provided in this Rule, at any time may *File* with the Commission and *Serve* upon the Association of Interstate Commerce Commission *Practitioners* a verified application setting forth in detail any change in conditions which warrant his reinstatement as a *Practitioner*. The said Association or any *Practitioner* within 60 days thereafter, may *File* and

Serve upon such Practitioner a Protest against the granting of the application with the specific grounds therefor, which Protest shall be verified by one or more Practitioners in good standing who shall state in such verification the source of their knowledge of the facts stated therein.

The applicant, within 30 days thereafter, may File a verified Reply to such Protest. Division One thereafter will grant or deny the application upon such Pleadings, unless it finds that there exists an issue of Material Fact, the determination of which would warrant the granting or denial of the application in which case it shall set the application for Hearing and proceed as provided in sub-rules 97.3 and 97.4 hereof.

RULE 99—REGISTER OF PRACTITIONERS

A register is maintained by The Agency in which there is entered the name and address of all individuals entitled to practice before it, the date upon which they were admitted and the type of practice to which they were admitted. On and after the effective date of These Rules no Practitioner admitted for general practice and no Practitioner admitted for specialized technical practice will be permitted to practice in any Proceeding before the Commission unless he is listed upon such register and no Practitioner who has been admitted to practice for more than five years prior to the preceding January 1st will be listed unless such Practitioner either shall have re-registered upon the form provided therefor by The Agency and shall have paid a re-registration fee of \$5.00 or shall be listed as a member in good standing on such January 1st of the Association of Practitioners before the Commission in the directory of the members of such Association duly certified by its Executive Secretary or Assistant Executive Secretary.

(I. C. C. Rule 7)

Chapter One—Prehearing Procedure

ARTICLE 10—PROCEDURAL INSTRUMENTS

RULE 100—ALLOWABLE PLEADINGS

The following Pleadings and, except by special permission, none other, may be filed as appropriate in Proceedings before The Agency:

100.0 Complaint by Person other than The Agency seeking imposition of a Sanction against a Person who under The Act is subject thereto.

(ICC 5 (b); CAB 302.200, .201; FCC 1.571, 572; FPC 02.44 (a), (b); MC 201.51)

100.1 Application for a License authorized by The Act.

(ICC 5 (b); FPC 1.5)

100.2 Petition for Relief other than the imposition of a Sanction or the grant of a License.

100.3 Motion by a Party for an order, rule, ruling or Direction designed to expedite the progress, consideration or disposition of the Proceeding.

100.4 Answer by a Person to the Complaint or Cross Complaint filed against him.

100.5 Cross Complaint by a Defendant against any Party for a Sanction, the right to which arises out of the subject matter of the Complaint.

100.6 Protest by an interested Person opposing in whole or in part the grant of a License for which an Application has been made.

100.7 Reply by an interested Person to a Petition or by a Party to a motion.

100.8 Response by a Person called upon to respond to an Order.

100.9 Replication by a Proponent but only to refute, avoid or explain a Material Fact raised as an issue for the first time in an Opponent Pleading.

RULE 101—CAPTION

The caption of each procedural Instrument shall show in the following order:

- (1) The official title of The Agency;
- (2) The docket number of the Proceeding if it has been docketed;
- (3) The title of the Proceeding, if any;
- (4) The name of the principal Proponent in the Proceeding, if any;
- (5) The name of the principal Opponent in the Proceeding, if any;
- (6) A description of the procedural Instrument;
- (7) The name of the Party tendering the Instrument.

(ICC Form of Complaint; CR 10 (a); FPC 1.15 (a); FTC XII)

RULE 102—FORMAT

All procedural Instruments shall conform to the following typographical specifications:

(ICC 15; CAB 302.3 (b); FCC 1.762, 763; FPC 1.15 (c); FTC CCHH H; MC 201.91; SEC XV)

102.1 Reproduction. They shall be printed, multilithed, multigraphed, planographed, mimeographed or photostated on opaque, unglazed, durable paper, but if mimeographed or photostated, upon one side of the sheet;

102.2 Size. Each shall be 8½ x 11 inches in size, except that when necessary, statistical exhibits may be 11 x 14; 11 x 17; or 17 x 22 inches in size, and the original, facsimile or conformed copies of executed documents may be of the same size as the original;

102.3 Binding. Each shall be bound on the left-hand side (not at the top or bottom) of the page and shall have a left-hand margin of 1½ inches, a right-hand margin of 1 inch and top and bottom margin of not less than ½ inch each.

102.4 Size of Type. They shall be set in not less than 10 point type or pica typewriter type, except that footnotes and tabular matter may be set in not less than 8 point type or not less than elite typewriter type;

102.5 Lineage. The printing shall not be more than 5 lines to the inch, except that indented quotations, tabular matter and footnotes may be not more than 7 lines to the inch;

102.6 Quotations. Quotations of more than 3 lines shall be indented. An omission of a part of the quoted material shall be indicated by asterisks. If any explanatory words are inserted in the quotation, they shall be included within brackets. If emphasis is supplied, it shall be so indicated.

(ICC 15; CAB 3 (b), (c); FCC 1.762, 1.763; FPC 1.15 (c), (d); FTC XXIII (H); MC 201.91; SEC XV)

RULE 103—COPIES OF PROCEDURAL INSTRUMENTS

Exclusive of service copies, the original attested procedural Instrument and 6 conformed copies thereof shall be filed with The Agency for its use, except as provided in the following Sub-Rules:

(ICC 16 (a); 23 (b), 35 (c); 38 (b); 40 (c); 42 (c); 72 (d); 52; CAB 302.3 (c); FCC 5.27 (c); FPC 1.15 (b); 1.7 (f); 33.6; 34.23; 34.6; FTC VIII; XII; MC 201.96; SEC XIII)

103.1 Service Copies. In addition to the copies required by any Rule hereof to be Served upon other Parties and, in addition to the said copies Filed for the use of The Agency, sufficient additional copies of a procedural Instrument must be filed with The Agency to enable it to Serve all Persons which it is required to Serve by law or rule.

(ICC 25 (d); 26 (a), (b); 72 (d))

103.2 Bankruptcy. The original attested procedural Instrument and 19 conformed copies thereof shall be Filed if the Proceeding be one under Section 77 of the Bankruptcy Act.

(ICC 16 (b))

103.3 Documents. Except as provided in Rule 103.2, the original and one conformed copy of all documents offered or tendered in a Proceeding (stipulations, exhibits, depositions, verified statements) shall be filed for the use of The Agency and one additional copy for each member of the Board, if any before whom the Proceeding is heard.

(ICC 52; 77; 64; 66; 84 (c); 86; MC 201.128)

103.4 Briefs. Except as provided in Rule 103.2, the original and 19 conformed copies of every brief, memorandum, and in the case of memoranda filed in support of Motions, Exceptions upon Appeal, or Petitions for Reconsideration, shall be filed for the use of The Agency.

(ICC 16; FCC 1.764, 1.856; FPC 1.29, 1.31 (f); FTC XXX (G); SEC XI (e))

RULE 104—TIME AND PLACE OF FILING AND SERVICE

Procedural Instruments must be delivered by messenger, mail or express to the office of The Agency in Washington, D. C., within the periods respectively set out in the Sub-Rules hereof. Such periods will be computed to begin at 12:01 A. M. following the day of the act, event, or default from which the period runs and continuing until the first 12:01 P. M. upon which The Agency is open for the transaction of business after the elapse of the number of days specified for such period.

(ICC 4 (b); 21 (a), (c); CAB 302.15 (c) (2); 302.16; 302.3 (a); FCC 1.521, 1.703; FPC 1.13 (b); MC 201.3; SEC XIII (a), (c), (d))

104.0 *Time of Service.* Where a Procedural Instrument is required by these Rules to be Served upon any Person, the Person Filing the same must make such Service thereof by either; (1) Delivering a conformed copy of the same to an adult person in the office, if any, otherwise in the residence of such Person; or (2) by depositing a conformed copy thereof, properly addressed, with postage prepaid, in the United States first-class or air mail prior to the time when such Procedural Instrument is required to be Filed; or (3) by depositing with the Western Union Telegraph Company a complete telegraphic copy of such Instrument, properly addressed, with charges prepaid prior to the time when the same is required to be Filed.

104.1 *Motions and Replies Thereto.* Except when made at a prehearing conference or at an oral hearing, argument or presentation, a Motion must be made in writing and Filed at least 5 days before any action or event to which it relates or with which it is involved, is set or scheduled to occur, and a Reply to such Motion must be Filed within 4 days after the Filing and Service of such Motion. A Reply to a Motion made at a prehearing conference, oral hearing, argument or presentation shall be made orally on the record following the motion. (CAB 12 (b); FCC 1.745)

104.2 *Petitions for Suspension of Tariffs and Replies Thereto.* A Petition for a suspension of a tariff shall be Filed within 18 days after the day upon which the tariff was Filed. A Reply to such a Petition must be filed 5 days before the day upon which a tariff is to become effective. (ICC 42 (b) (d))

104.3 *Interventions.* Petitions for leave to Intervene in a Proceeding shall be Filed within 30 days after the Pleading or Order initiating the Proceeding is filed. (ICC 72 (b); CAB 302.15 (c) (2) (iii))

104.4 *Opponent Pleadings.* Answers, Protests, Responses and Replies (except to a Motion or Petition for suspension of a tariff or to Exceptions or Petitions for Reconsideration) shall be Filed within 30 days after the Pleading or Order initiating the Proceeding is Filed. (ICC 35 (c); 40 (b); 23 (a))

104.5 *Replication.* If permissible, must be Filed within 10 days after the Opponent Pleading which it purports to refute, avoid or explain. (ICC 23 (a); 42 (d))

104.6 *Briefs, Memoranda and Replies Thereto.* Briefs of all Parties shall be Filed within 20 days after the close of Proof or, if there be an oral hearing or if the Initial Decision is not made following oral hearing, within 20 days after the filing of the transcript of such oral hearing by the official reporter. Memoranda shall be Filed contemporaneously with the Motion or Reply to the Motion, exceptions or Petitions for Reconsideration which they respectively support. A Reply shall be Filed within 10 days after the Brief, Memorandum, Exceptions or

Petitions for Reconsideration to which it is in response is Filed.

(ICC 92, 93, 94)

104.7 *Exceptions on Appeal from an Initial Decision and Replies Thereto.* Shall be Filed within 20 days after such Decision is Served, and Replies thereto within 10 days after same are Filed. (ICC 96)

(ICC 96)

104.8 *Petitions for Reconsideration or Rehearing of a Decision.* Shall be Filed within 30 days after the Filing of such Decision and Replies thereto within 20 days after the order granting Reconsideration. (ICC 96 (f); 10 (e); FTC XXIII (b); SEC XII (e))

(ICC 96 (f); 10 (e); FTC XXIII (b); SEC XII (e))

104.9 *Modification or Enlargement.* Except as to maximum time periods provided by law, the periods fixed in this Rule 104 and its Sub-Rules may be modified, reduced or enlarged by the Hearing Officer or The Agency on his or its own motion or upon request and for good cause. Such requests must be seasonably filed in writing or by telegram and need not be Served. If granted, the Party making the request shall promptly notify all Parties and so certify to The Agency. Such request, except in unusual cases, will not be granted unless such notice can be given at least 24 hours prior to the expiration of such period. (ICC 21 (b); CAB 302.17; FCC 1.811; FPC 1.13 (a), (d); FTC XI (b); MC 201.117, 192, 198, 201.4; SEC VII; XI (f))

(ICC 21 (b); CAB 302.17; FCC 1.811; FPC 1.13 (a), (d); FTC XI (b); MC 201.117, 192, 198, 201.4; SEC VII; XI (f))

RULE 105—AMENDMENT OR SUPPLEMENTATION OF PLEADINGS

Pleadings may be amended, supplemented, dismissed or withdrawn as follows:

105.1 *Right.* A Party may File and Serve an amended Pleading as a matter or right at any time prior to 5 days in advance of the production of Proof by Proponents. Leave to amend thereafter will be given where justice so requires. (ICC 20; CR 15 (a); FCC 1.766; FPC 1.11; MC 201.64; SEC IV (a), (b))

(ICC 20; CR 15 (a); FCC 1.766; FPC 1.11; MC 201.64; SEC IV (a), (b))

105.2 *Limitations.* All amended or supplemental Complaints must be Filed within the period required by law for the filing of the Complaint and they do not relate back to the filing of such original Complaint. (ICC 33; FCC 1.504)

(ICC 33; FCC 1.504)

105.3 *Supplemental Pleading.* Upon Motion of a Party and upon such terms as are just, the Hearing Officer or The Agency may permit him to File and Serve a supplemental Pleading setting forth transactions, occurrences or events which have happened since the date of the Pleading sought to be supplemented. (ICC 33; CR 15 (d); FCC 1.586)

(ICC 33; CR 15 (d); FCC 1.586)

105.4 *Amendments to Conform to Proof.* When issues not raised by the Pleadings are treated by express or implied consent of the Parties, they will be treated in all respects as if properly raised in the Proceeding, and upon Motion of any Party at any time the Hear-

ing Officer or The Agency may direct that the Pleadings be amended to conform to the Proof. If Evidence is objected to upon the ground that it is not within the issues made by the Pleading, the latter will be permitted to be amended whenever justice so requires. (CR 15 (b); FPC 1.11 (b); SEC IV (c))

(CR 15 (b); FPC 1.11 (b); SEC IV (c))

105.5 *Directed Amendments.* The Hearing Officer or The Agency upon his or its own motion or on the Motion of any Party may Direct a Party to Amend his Pleading in such manner as may be necessary to conform to these Rules. (FPC 1.11 (c); 34.21)

(FPC 1.11 (c); 34.21)

105.6 *Adversary Pleadings.* Any Adversary Party to a Proceeding may file an Answer, Protest, Response, Reply or Replication as may be appropriate to an Amended or Supplemental Pleading within the time period respectively applicable to such Pleading. (CR 15 (a); FPC 1.9 (g))

(CR 15 (a); FPC 1.9 (g))

105.7 *Withdrawal.* A Party may withdraw his Pleading as of right at any time before an Adversary Party has pled thereto but thereafter only by Direction or by Order and for good cause shown. (FCC 1.507 (a), (b); FPC 1.11 (d))

(FCC 1.507 (a), (b); FPC 1.11 (d))

RULE 106—CONSTRUCTION OF PLEADING

All Pleadings shall be so construed as to do substantial justice. (CR 8 (f))

(CR 8 (f))

RULE 107—JOINDER OF CLAIMS

Different claims or prayers for different kinds of Relief may be joined in a single Procedural Instrument under the following Sub-Rules:

107.1 *Complaints.* A Complaint or Cross Complaint may join either as independent or as alternate as many claims or prayers for Relief as the Complainant may have or believe himself entitled to. There may be a like joinder of claims where there are multiple Parties if the requirements of Rule 163 are satisfied. (FPC 1.6 (c))

(FPC 1.6 (c))

107.2 *Applications.* An Applicant may join in a single Application; prayers for the enlargement, modification, surrender, transfer or abandonment of one or more distinct and separate, lines, routes or Operations; or for two or more Unifications, whether of the same or different type; or of one or more Applications for the grant, enlargement, extension, supplementation, surrender, transfer or abandonment, with one or more Applicants for a Unification of the same or different types and/or with one or more Applications for the issue or alteration of Securities if all of such Licenses are a part of a single or connected transaction or relate to a common plan or connected with or supplement one another; one or more Applications for Tariff Relief of the same or of a different type or kind.

107.3 *Petitions.* A Petitioner may join in a single Petition: two or more prayers for Investigations other than a Petition for the Investigation and Suspension of a Tariff or Charge; and two or more prayers for Declaratory Orders.

RULE 108—JOINDER OF DIFFERENT PROCEEDINGS

A *Complaint* may be joined with an *Application* and/or a *Petition*, and an *Application* may be joined with a *Petition* where they are in respect of or arise out of the same transaction, occurrence or series of transactions or occurrences if any question of law or fact common to all of them will arise in the *Proceeding*, provided if such joinder is of *Proceedings* which involve different *Persons* there be asserted for or against such *Persons* claims or prayers for *Relief* in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the *Proceeding*.

RULE 109—IMPROPER PROCEDURAL INSTRUMENTS

Whenever a *Procedural Instrument* is filed which does not comply with these Rules or which contains redundant, immaterial, impertinent or scandalous matter the *Hearing Officer* or *The Agency* of his or its own motion or upon *Motion* of any *Party* will either (a) reject the same without filing, (b) strike the entire *Instrument* or any of the objectionable matter therein contained; (c) *File* same and direct appropriate amendment thereof.

(ICC 4 (c), (d); CAB 302.203, 302.405 (a), (b); 302.5; FCC 1.510; 1.506 (a), (b), (c); FPC 1.14 (2); 1.15 (f))

ARTICLE 11—COMPLAINTS

RULE 110—GENERAL REQUISITES

A *Complaint* must set forth fully and clearly the material facts which are relied upon to establish a violation of *The Act* or of any regulation or requirement made in pursuance thereof to the actual or potential injury of the *Complainant*; and particularly:

(ICC Rule 24 (a); 25 (a); 28; CR 8 (a); CAB 302.201; FCC 1.727; FPC 1.6 (a), (b); MC 201.51)

110.1 Paragraphing. The statements in a *Complaint* shall be made in successively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single *Material Fact*. Each claim founded upon a separate transaction or occurrence unless arising from a continuing unlawful act or default shall be stated as a separate count of the *Complaint*. A paragraph may be referred to by number in any other paragraph and in any subsequent *Procedural Instrument*.

(CR 10 (b))

110.2 Plaintiff. An accurate, unabbreviated designation of all *Complainants*, their respective status, if any, under *The Act* and if the *Proceeding* be brought in a representative capacity, the capacity in which it is brought. The legal right to bring the *Proceeding* need not be averred but will be presumed unless brought in issue by the *Answer*.

(ICC 27 (d); CR 9 (a); 10 (a); CAB 302.4; FCC 1.502; 1.575; MC 1)

110.3 Defendants. The name, *Business Unit*, post office address, and status under *The Act* of each *Defendant* shall be stated.

110.4 Statute. A direct and specific reference to the provision of *The Act* or of the *Rule* alleged to be violated or by reason of which a right of action is claimed shall be stated, and if more than one provision of *The Act* is claimed to have been violated, a separate statement of the material facts showing the violation of each must be made. Where the *Complaint* is one which must be brought within a specified statutory period of limitation reference thereto must be made and facts clearly stated which show that the action is timely brought.

(ICC 28; 25 (a), (e), (f); FCC 1.574; 1.579; 1.585; MC 201.52)

110.5 Style and Materiality. Statements of the *Complaint* shall be simple, non-legalistic, concise, direct, non-redundant, non-argumentative and shall be made only as to facts (not conclusions) which are relevant and material to the issues involved and shall not be impertinent, scandalous or provocative.

(ICC 4 (d))

110.6 Exhibit. Whenever detailed facts, transactions, *Amounts*, statistics, etc., are required or permitted to be specified, they shall be set forth in an appropriately designated *Exhibit* to the *Complaint* and only a concise summary thereof stated in the body of the *Complaint*. Where a *Writing* is relevant and material, a summary statement thereof may be made in the body of the *Complaint* and the *Writing* or such portions thereof as are relevant and material made an *Exhibit*. All details and *Writings* shall be combined into a single *Exhibit* and wherever practical shall be bound in with the *Complaint* as an appendix thereto. If not practical, such material shall be firmly bound together into a single document designated as "*Exhibit to the Complaint*" which shall accompany the *Complaint*. Such *Exhibit* shall be captioned in the same manner as the *Complaint* and on its title page shall contain an index and description of the matters severally contained therein.

(ICC Rule 84; 49 (b); CR 10 (c))

110.7 Adoption by Reference. Statements in a *Complaint* shall not be reiterated in a subsequent paragraph of the *Complaint* but shall be adopted therein by reference.

(CR 10 (c))

110.8 Relief. The *Complaint* must contain a detailed statement of the exact relief prayed which may be in the alternative or of different types. Damages must be specifically prayed in the original *Complaint* and, if not, they will be conclusively deemed to have been waived by *Complainant* in that and any subsequent *Proceeding*.

(ICC 32 (a), (b); CR 8 (a); FCC 1.584)

110.9 Attestation. Every *Complaint* shall be signed in ink by one or more *Practitioners* or by one or more of the *Persons* upon whose behalf it is filed or

by an authorized representative thereof, with the address of the signatory given in all cases; but

110.91 If signed by a *Practitioner* it need not be verified since his signature is an affirmation that: he has read the *Complaint*; prior to signature he made due inquiry as to the facts therein stated; he believes same to be true; there are good grounds therefor; it is not interposed for delay; and he has been duly authorized to file same.

110.92 A *Complaint* not signed by a *Practitioner* must be verified by oath or affirmation in judicial form with respect to all the matters and statements set forth as the *Practitioner's* affirmation in Sub-Rule 110.91.

(ICC 17 (a), (b); CR 11; CAB 302.202; FCC 1.501; 1.765; FPC 1.15 (e); 1.16 (a), (b); 33.7; 34.7; 34.24; FTC XII; MC 201.92; CAB 302.4 (b); SEC XV)

RULE 111—STATEMENT OF CLAIM

A *Complaint* or *Cross-Complaint* shall set out the *Material Facts* which tend to establish the ultimate finding, requisite under *The Act* to the grant of the relief prayed.

111.1 Tariffs. If the *Proceeding* involves the lawfulness of *Charges*, the *Complaint* must specifically refer to the *Tariffs* or schedules where the same are named.

(ICC Rule 31)

111.2 States Involved. The *Complaint* must specifically name the *States* in and through which the transportation giving rise to the *Complaint* is or was performed.

(ICC 31 (d))

111.3 Damages. A *Complaint* praying *Damages* must specify in detail: The name of each *Complainant* for whom *Damages* are sought; the name of each *Defendant* from whom *Damages* are claimed; a description individually or by groups of the shipments with respect to which *Damages* are claimed, showing the number, date on or period within which they moved, the commodity, rate, weight, charges, origin, destination, (or group of origin or destination taking the same rate); date or dates upon which or period within which the charges were paid, and by whom paid; the nature and amount claimed for each claimant and the basis on which the same is calculated and reference to any previous *Complaints* or *Proceedings* in which any of said shipments were involved.

(ICC 25 (b); 29; FCC 1.580, 1.581; MC 201.52; ICA 8, 9, 308 (b), (c))

RULE 112—UNREASONABLE CHARGES

A *Complaint* claiming the imposition of an unreasonable charge must state or exhibit specifically the rate, rating, charge, rule, classification, regulation, practice or allowance of which *Complaint* is made and the *Material Facts* tending to show that such *Charge* is unreasonable.

(FCC 1.578)

112.1 Comparison with Other Movements. If the *Charge* is claimed to be

unreasonable as compared with the *Charge* upon the same article for transportation between other points, the physical fact with respect to the similarity of transportation, operating and traffic conditions must be shown.

(MC 110.7)

112.2 *Comparison with Other Articles.* If the *Charge* is claimed to be unreasonable as compared with the *Charge* for the transportation of other articles, the *Facts* with respect to the cost and value of the respective transportation services and the respective volume of the movement must be shown.

112.3 *History.* The history of the present and former *Charge*, the basis upon which it was established, if known, must be stated, with reference to the nature, pendency or disposition of other *Proceedings*, if any, in which the reasonableness of the *Charge* was involved.

RULE 113—UNLAWFUL PREFERENCE OR DISCRIMINATION

A *Complaint* seeking the removal of an alleged unlawful *Preference* or *Discrimination* must describe in detail: The *Charge, Service, act or Practice* which is claimed to be *Discriminatory* and that which is claimed to be *Preferential*; the particular *Person, locality, port, district, gateway, transit point, region or Traffic* claimed to have been subjected to *Discrimination* and that claimed to have been given a *Preference*; the manner, degree and extent, if any, in which the *Complainant* is injured, damaged or adversely affected.

(ICC 30 (a); FCC 1.582; 1.583; MC 10.9)

RULE 114—INADEQUATE THROUGH SERVICE

A *Complaint* seeking the establishment of new or additional *Through Routes* or *Joint Charges* shall specify: The exact *Through Route* involved, including all participating carriers and all intermediate junctions; the *Joint Charges* sought to be established; the existing *Through Routes* and *Joint Charges*, if any, applicable thereover between the same points, the participating carriers and the intermediate junctions thereof; the *Facts* which show the inadequacy of the existing *Through Routes* and *Joint Charges*, if any, or of the transportation service presently provided over such existing *Through Routes*; and the *Facts* which tend to show a special or peculiar need of *Complainant* or others for the additional new *Through Route* or *Joint Charges*.

RULE 115—INADEQUATE FACILITIES

A *Complaint* designed to require the provision of adequate carrier *Facilities* shall describe in detail the nature, location, purpose and present utilization of the present *Facilities* which are claimed to be inadequate and the particulars in which such *Facilities* fail to meet the reasonable demands and requirements of the traffic and the improvements which are necessary in order to make such *Facilities* adequate to meet such demands and requirements; and particularly:

115.1 *Switch Connection.* A *Complaint* under Section 1 (9) of *The Act*

seeking an Order requiring a switch connection shall specify in detail: The lateral branch line of railroad or private siding which it seeks to have connected with respect to exact location and the nature and conditions of its grade, alignment, road bed, track, ties, ballast, culverts, bridges, trestles, drains, clearances, crossings, right-of-way and title thereto, and all other conditions likely to affect the practicability or safety of its operation; a similar description of the proposed connecting track and the part of the *Defendant's* railroad with which it is proposed to connect; the estimated original cost and annual maintenance of the proposed connecting track; the traffic and revenue to be derived by *Defendant* and the basis in detail upon which it is estimated; the prior requests, if any, which have been made upon *Defendant* to establish the connection and the reasons, if any, given by the *Defendant* for refusing so to do;

115.2 *Extension of Line.* A *Complaint* seeking an Order requiring a carrier under Section 1 (21) or 6 (11) of *The Act* to extend its line or lines shall specify in detail: A description of the proposed extension with respect to its approximate location, length, nature of the terrain to be traversed, value of the right-of-way necessary to be acquired, street, highway, railroad, street car line, river and creek crossings and the approximate cost of constructing and maintaining the same; the traffic which will be served by the proposed extension; the manner in and the means by which it is being presently transported, if any, and the estimated revenues which will accrue to *Defendant*, if any, by reason of such extension; the particular *Facts* which tend to show that such extension is required by public convenience and necessity; all prior requests, if any, which have been made upon *Defendant* for the construction of said extension and the reasons, if any, given for the refusal of such extension;

115.3 *Common Use of Terminals.* A *Complaint* under section 3 (5) of *The Act* seeking to obtain the right to use in common the *Terminal Facilities* of another railroad shall specify in detail: The location, size, condition of the *Terminal Facilities* presently used by *Complainant* and the particulars in which same are inadequate or uneconomical; a description of the *Terminal Facilities* which are sought to be used in common and of all the railroads presently using same; a description, supplemented by a map drawn to scale, of the lines of the *Complainant* and of all the railroads lation to said *Facilities*; the extent and nature of the proposed use of such *Facilities*; the volume of *Complainant's* traffic in motive power, cars and ton, to be handled therein; the *Facts* which tend to show that the joint use of such *Facilities* would be in the public interest, would be practicable, and would not substantially impair the ability of the present users thereof to enjoy the use of the same in handling their own business; terms and conditions proposed for the common use of such *Terminal*.

RULE 116—INADEQUATE TRANSPORTATION

A *Complaint* seeking an Order requiring the provision of additional or different or new transportation service shall specify in detail: The nature, movement, and location of the service claimed to be inadequate; the particular *Traffic, points and routes* involved in such transportation service; *Facts* tending to show the inadequacy, if any, of the present transportation service; the volume and movement of the *Traffic* with respect to which the present transportation service is claimed to be inadequate; the manner, degree and extent to which the claimed inadequacy affects, injures or damages the *Complainant*; the names, addresses, status and description of other *Persons* similarly affected by such alleged inadequate service; and the improvements or changes in the service which are required to make the same reasonably adequate, and particularly in a *Complaint* involving:

116.1 *Car Service.* Under Section 1 (11) to (14) (b) shall specify in detail: The rule, regulation, practice, rent, compensation, or arrangement with respect to *Car Service* claimed to be unjust or unreasonable; and the change in such rule or the new rule, regulation, practice, rent, compensation or arrangement necessary to make the same just and reasonable.

RULE 117—UNREASONABLE DIVISIONS

A *Complaint* seeking an Order establishing or prescribing just, reasonable, equitable, non-preferential and non-discriminatory divisions of *Joint Charges* for the transportation of persons or property shall specify in detail: A complete description of such *Charges*, showing the date established, the carriers and points between and the respective junctions through which the same apply; the short line distance between such origins and destinations and between such origins and destinations on the one hand and on the other the several and respective junctions; the nature and kind of the *Charges* involved, the *Traffic* upon which they apply and the minimum weights applicable thereto; the present divisions, the amount thereof, the date established and whether established voluntarily by agreement, and if not, reference to the *Order of The Agency* establishing the same and their basis; a complete description of the volume of *Traffic* carried by each *Complainant* with each *Defendant*, showing for a representative period the revenue received by each and in the case of passenger traffic the passengers and passenger miles carried by each, and in the case of freight traffic the number of shipments, tons and ton miles carried by each; a complete description of the nature, kind and amount of transportation service performed by each participant in the *Joint Charges* at terminals and in line haul; the revenue, expenses, rents, taxes, charges and appropriate traffic and service units of each participant for a representative period; any other *Material Facts* which touch upon the fair compensation of each of the participants; the divisions which *Complainant*

seeks to have established and the basis and justification therefor.

RULE 118—UNLAWFUL OPERATIONS, SERVICE, AGREEMENTS OR UNIFICATION

A Complaint seeking an Order requiring the discontinuance of any *Operation, Service, agreement or Unification* shall specify in detail: A complete description of the *Operation, Service, agreement or Unification* showing the location, nature, scope, history and duration thereof and the names, addresses, and status of all *Persons* participating therein; the provision of *The Act or Rule, Order* or regulation under which the same is claimed to be unlawful; the effect, injury or damage of the alleged unlawful *Operation, Service, agreement, or Unification* upon *Complainant* or upon its *Operations or Service*.

RULE 119—OTHER VIOLATIONS

A *Complaint* seeking an Order compelling compliance with any other provision of *The Act* or with any *Order, rule, regulation* or requirement not embraced within Rules 112 to 118 inclusive, shall specify in detail: The provision of *The Act, Order, rule, regulation* or requirement claimed to be violated; the *Material Facts* which show the violation by the *Defendant* of the same or its failure to comply therewith; the efforts, if any, made by *Complainant* or others to *Complainant's* knowledge to bring about voluntary compliance therewith by the *Defendant*; the manner and degree and extent to which the alleged violation affects, injures, or damages *Complainant* or impairs its *Operation* or service.

ARTICLE 12—APPLICATIONS FOR LICENSES

RULE 120—GENERAL REQUISITES

All *Applications for Licenses* will give the information in the manner and form as required by the Rules of this Article. This information must be stated factually and not argumentatively nor in the nature of legal conclusions or allegations. The Rules are designed to obtain all the *Facts* in the *Application* which are necessary for *The Agency* to grant or deny the *Application* under applicable statutory standards. The information should be stated concisely and if *Applicant* has reason to believe that it will be protested should be as complete as would be the *Applicant's Proof* at a hearing.

120.1 Kind of License. Every *Application* must show in its title the kind of *License* or *Authority* prayed and the section of the *Act* providing therefor.

120.2 Persons Involved. The *Application* shall state the name and post office address of every *Person Involved* and with respect to each: (a) The kind, date of formation and State of Domicile of its *Business Unit*; (b) Its status, with reference to the *Proceeding* where same was established; (c) The steps which have been taken and those necessary to be taken in the future for corporate authorization of the exercise of the *License*; and (d) A general description of the nature of its business activity or *Operation*.

120.3 Correspondence. After the information called for by each of the several sub-divisions and paragraphs of the *Rule*, the *Application*, under the paragraph number and heading of this paragraph shall show the name, title and post office address of the officer to whom correspondence in regard to the *Application* should be addressed.

(CFR 3.1 (f); 41.1 (k); 42.1 (f); 52.2 (a) (5); 55.1 (k); 55.3 (f); 56.1 (j); BMC Form: No. 44V; No. 45 VI; No. 76 (XII).

120.4 Opinion of Counsel. Unless specifically qualified in the last paragraph of each *Application*, which paragraph shall be numbered and headed as this paragraph, the signature to the *Application* by a *Practitioner* authorized to practice before *The Agency* is a certificate that he is familiar with the *Applicant's* organization, powers and duties and with the *Authority* requested by the *Application* and that in his opinion such *Authority* is within the *Applicant's* powers and purposes (individual, partnership, corporate, association, or fiduciary) and has been or, if not, will be duly authorized under the law by the *Applicant* upon the taking of acts, steps, or procedures specified in such statement, and that he is familiar with the facts stated in the *Application* and believes that the same are true and correct. If any of the foregoing certificate cannot be made by the signatory *Practitioner*, or if the *Application* be not signed by a *Practitioner*, such statement shall be made by a *Practitioner* in good standing who is familiar with such matters and attached to the *Application* as Exhibit Z.

(CFR 41.7 (g); 55.2 (d); BMC FORM: No. 45, Exhibit C 3)

120.5 Other Applications. Description of all other *Applications* for a *License*, supplementing, duplicating in whole or in part the *License* requested by the *Application*, its ultimate disposition, whether by grant, withdrawal, dismissal or denial, and, if granted, whether the *License* was exercised or the transaction approved, consummated and, if not, the reasons therefor, with appropriate reference to the docket number of *The Agency* given to said proceeding and the citation to the volume and page number of any published decision of *The Agency* respecting said *Application*.

(ICC Former Rule 18 (h) (5); CFR 53.6 (1); BMC Form: No. 72 V; No. 78 X; BWC Form: No. 4, Exhibit A 2)

120.6 Verification. The original *Application* shall be verified before a person authorized at the place of verification to administer oaths by the *Applicant*, if an individual, otherwise by a partners, officer or agent designated by the *Applicant* to verify and file the same, in which the affiant shall state: his name and address, and, if not the *Applicant*, the nature of his relations with and of the duties performed by him for *Applicant*; that he has read the *Application* and the Exhibits; that he has personal knowledge of the facts therein stated or, if he does not have personal knowledge, the source of his information with respect thereto; and that he believes all of said facts to be true. Where the *Appli-*

cation is not verified by an accounting officer of the *Applicant*, the originals of Exhibits D, D-a to D-d, E, E-a inclusive, shall be certified as correct by a certified or other public accountant or the chief accounting officer of the *Applicant*.

(CFR 3.3 (a); 41.2 (a); 41.8; 42.3; 42.16; 42.19; 52.5; 53.7; 141.58 (e); 145.58; 186.14 (d); 187.45 (d); 147.31 (a); 311.7 (a); 312.7 (a); BMC Form: Nos. 4 and 5; 12 and 18; 0-5-1; 40, Exhibit C Footnote 5; 44; 45; 46; 72; 76; 78; BWC Form: Nos. 1, 2, 3, 4, 7, 8; FF Form: No. 1, 39, 39 Exhibit C 4; Former ICC Rule 18 (d) (2))

120.7 Uniform Exhibits. To facilitate processing and consideration, exhibits to all *Applications* will be uniformly lettered, as set forth in the sub-divisions hereof. Whenever information can be given by the appropriate lettered exhibit or where the particular rule governing the *Application* calls for the same, such exhibit should be attached; provided that whenever information to be shown in an exhibit has heretofore been set forth in an exhibit previously filed with *The Agency* as a part of an *Application* under the same rule, in lieu of such exhibit, the *Application* shall make specific reference to such previous exhibit and *Application* or published decision of *The Agency* with respect to the same:

Exhibit 120.7A—Organization Papers. Duly authenticated copies of *Applicant's* (or in *Applications* for approval of rate making agreements, of the rate-making organization involved) charters, articles of association, articles of agreement or incorporation, indenture or trust agreement, decree or order of court, or probated testament, together with any governing by laws or code of regulations which evidence the powers and purposes of the organization.

(CFR 3.2 (b); 41.1 (c); 42.1 (g), (l); 52.2 (a), (b) (1)-(5); 52.3 (a) (1) (i), (ii), (iii), (iv); 55.1 (b); 55.2 (a); 56.1 (b); 56.2 (a) (1); 58.11 (b), (c); BMC Form: Nos. 4 and 5, Exhibit A (1) (e); 2 (c); 3 (e); Nos. 14 and 18 I B (iii); No. 40, Exhibit B; No. 44, Exhibit A 1; No. 45, Exhibit A9; FF Form: No. 39; Exhibit B)

Exhibit 120.7B—Authorization. A duly authenticated order of *Applicant's* principals, if *Applicant* is acting in a representative capacity; or if *Applicant* be an *Association* or corporation, a resolution of governing body (board of directors, counsel, stockholders or court) authorizing or directing the execution, signature and filing of the *Application*, and the execution, delivery and/or performance of any act or transaction for the approval or authorization for which the *Application* is filed.

(CFR 41.1 (j); 42.1 (h); 52.3 (b); 55.1 (j); 55.2 (c); 56.2 (b) (1)-(3); 58.11 (c); BMC Form: No. 40, Exhibit D, No. 44, Exhibit A 3, 4; B 2, 3; No. 45, Exhibit A 10, A 4, 5)

Exhibit 120.7C—Affiliation. Statement and chart showing name, address, business activities and operations of every *Person* with whom an *Applicant*, real *Party* in interest, or other *Person* involved in, or which is a *Party* to, or which will result from a proposed transaction, the approval of which is sought, giving nature, extent and duration of such *Affiliation* and the intercorporate, interlocking or contractual relations or dealings with such *Person*.

(CFR 41.1 (i); 41.6-3; 52.2 (b) (10); 52.3 (b) (10); BMC Form: No. 40, Exhibit E; FF Form: No. 39, Exhibit E)

Exhibit 120.7D—Balance Sheets. General Balance Sheet, certified as correct by the chief accounting officer of the Person for whom it is made or by a certified or other public accountant, as of the end of the previous calendar year and as of the latest practicable date in the current year.

(CFR 42.9:3; 52.3 (b) (8); 55.2 (k); 56.2 (g); BMC Form: No. 40, Exhibit C; No. 45, Exhibit A 10 A 6; Exhibit B 4 B 2; FF Form: No. 1, Exhibit C (1); No. 39, Exhibit C 1)

Exhibit 120.7D-a—Giving Effect Balance Sheet. A balance sheet similarly authenticated as of the latest available date, showing the changes which would result if the proposed License had been granted and exercised or the proposed transaction approved and consummated prior to the date thereof and the effect which such changes would have had upon the items in such current balance sheet.

(BMC Form: No. 44, Exhibit A 5; Exhibit C 5; No. 76 VIII; No. 78 VII)

Exhibit 120.7D-b—Asset Accounts. Detailed analysis of Balance Sheet Asset Accounts to show: Number, cost less accrued depreciation, of each kind or class of automotive equipment, garage and shop equipment, other equipment, structures, improvements to leasehold property, together with the cost of land; and *Investment and Advances to Affiliated and non-Affiliated Persons.*

(BMC Form: No. 40, Exhibit C 1; FF Form: No. 1, Exhibit C 1)

Exhibit 120.7D-c—Liability Accounts. Detailed analysis of Balance Sheet Accounts to show: Long Term Obligations by maturities separately, for equipment notes and other long term obligations; *Capital* between capital stock and capital surplus; Amount of *Earned Surplus* or deficit at the beginning of the period, adjustments applicable to prior years, current year profit and loss, miscellaneous profit and loss, credits and debits, appropriations for sinking fund, other reservations or dividends and surplus or deficit at the end of the period; Depreciation Reserves by classes of property and the rates thereof; Reserve for injuries, loss and damage; Other Reserves, a statement of the policy followed by Applicant with respect to each Reserve Account; *Unpaid Claims* for each class of risk, showing date of accident, claim number, date of claim, nature of injuries or damages, amount of damages claimed, amount of reserve, date of suit, if any, and name of court where suit is pending.

(BMC Form: No. 40, Exhibit C—Footnote; FF Form: No. 39, Exhibit C 1—Footnote)

Exhibit 120.7D-d—Contingent Liabilities. Number and amount of unpaid claims and judgments for injuries, loss or damage at date of *Application* not covered by policies of insurance companies in good standing and for which adequate reserves had not been made or shown on Balance Sheet; Amount of Special Reserve required adequately to provide for unpaid claims and judgments arising out of accidents occurring on or before date of current Balance Sheet but of which notice was not received until a subsequent date and for which no specific or special reserve has been included in the reserves shown on the Balance Sheet; Nature and amount of reserves required adequately to provide for all liabilities accrued as at date of current Balance Sheet, notice of which was not received until date subsequent thereto but prior to the date of *Application* and for which no reserve has been otherwise provided; Dividend arrears accumulated upon Applicant's stock, aggregate and per share; defaults in principal, interest, or sinking fund requirements, whether or not shown on the Balance Sheet, with amounts and full explanation thereof; se-

curities pledged as collateral for any long term obligations or short term loans or to secure the performance of contracts, together with net book cost thereof;

(BMC Form: No. 40, Exhibit C and Footnote; F. F. Form: No. 39, Exhibit C 1 and Footnote)

Exhibit 120.7E—Earnings Statement. Income and Profit and Loss Accounts, certified by the chief accounting officer or a certified or other public accountant, for the previous calendar year and for current year to the latest available date.

(CFR 41.7 (F); 42.93; 52.3 (b) (9); 52.2 (1); 56.2 (h); BMC Form: No. 40, Exhibit C; No. 44; Exhibit A 7; Exhibit B 6; No. 45, Exhibit A 10—A 10; Exhibit B 4 B 6; FF Form: No. 1, Exhibit C 1; No. 39, Exhibit C 1)

Exhibit 120.7E-a—Giving Effect Earnings Statement. Supplementation of the income and profit and loss accounts for the current period to show the changes therein which would have been made had the proposed License or transaction been granted or consummated prior to the beginning of the period and the effect of such changes upon the several items of said accounts.

(BMC Form: No. 44, Exhibit C 7)

Exhibit 120.7F—Key Map of Operations. A key map, drawn to an exact scale, clearly depicting, in separate colors, Applicant's (and other involved Persons) present routes or lines, main and branch, territory served, and the principal points or localities presently served, which would be affected by the grant of the License or consummation of the proposed transaction, and the particular routes or lines, main or branch, and terminal, construction or operations which are, or would be, involved in the granting of the License or the consummation of the transaction for which Authority is prayed in the *Application*.

(CFR 41.1 (e); 41.7 (c); 42.1 (j); 52.3 (b) (6); 55.2 (e); 56.2 (d); BMC Form: No. 44, Exhibit C 8; No. 45, Exhibit C 5; No. 78 IX)

Exhibit 120.7G—State Authority. An authenticated copy of the order, certificate, permit, license or franchise of competent authority authorizing Applicant's operations and/or transportation in intrastate commerce over the routes, between the points, or within the territory of the particular classes of traffic therein authorized; or Applicant to act as a self-insurer.

(CFR 52.1 (a) (4); 55.1 (d); 56.1 (d); BMC Form: No. 12 IV; No. 44, Exhibit C 1; BWC Form: No. 1, Exhibit B 1 A)

Exhibit 120.7H—Evidence of Utilization. Abstract of delivery receipts, trip reports or manifests, drivers' logs, port of entry receipts, mileage tax receipts, route schedules or other documentary evidence showing the extent to which a carrier licensee has utilized its present license; and naming place where all of such documents will be kept in the order in which they were abstracted and held available for inspection by representatives of The Agency or any Party to the proceeding upon reasonable request and notice at reasonable times.

(BMC Form: No. 44, Exhibit B 7; BWC Form: No. 1, Exhibit B 1 B; No. 2, Exhibit A V A, B; B V A B; No. 8, Exhibit A V)

Exhibit 120.7I—Agreements. Facsimile copy of all agreements containing any terms and conditions relating to or affecting any proposed transaction for which Authority or approval is prayed.

(CFR 3.2 (a); 52.2 (c) (2); 52.3 (b) (7); BMC Form: No. 4, Exhibit B 4; No. 44, Exhibit C 1; No. 45, Exhibit C 1; No. 76 III (5))

Exhibit 120.7J—Specimens. Specimen copies of proposed Securities, proxies, contracts, billing, tickets, shipping papers or

other agreements involved or connected with any License or Authority for which the Application prays.

(CFR 56.2 (e); 58.11 (a); 55.2 (f); 58.9 (r))

Exhibit 120.7K—Indentures. A copy of the mortgage, indenture, or other instrument by which notes, bonds, or other evidences of debt are, or are proposed, to be secured.

(CFR 56.2 (f); 55.2 (g))

Exhibit 120.7L—Property to be Acquired by Purchase With the Proceeds of Securities. An itemized statement, classified in accordance with The Agency's effective classification of accounts, of property to be acquired with the proceeds of a Security issue, showing (a) the name and post office address of the owner or vendor and, if equipment, the name of the builder, the unit price paid or to be paid, and, if purchased through competitive bidding at prices higher than the lowest bid, the reason for accepting the higher bid; and (b) general description of the property, showing the kind, character, size, location, construction, make, model, capacity, special devices, and if for second-hand equipment, the name of the builder, date, and former owner, and, if for equipment to be rebuilt, the date originally built, the original cost, a bill of material showing reusable material, the price at which it is to be taken into the rebuilt unit, any material and labor used in rebuilding.

(CFR 52.2 (i) (j))

Exhibit 120.7M—Additions and Betterments. A report, attested by a competent engineer, showing the quantities and prices, actual or estimated, and the disposition of total costs by the primary accounts of The Agency's applicable classification of accounts, together with an abstract of each Authority for Expenditure or of each completion report, as may be appropriate, of amounts for the construction, completion, extension or improvement of Facilities or additions and betterments thereto, whether completed or not, or expenditures, whether made or not, or for reimbursement of money expended for same from income or other monies in the treasury of the Applicant.

(CFR 56.2 (k) (m))

Exhibit 120.7N—Refunding. A statement containing a full description of the terms and conditions, principal amounts, accrued interest, maturities, call premiums, discounts, commissions, counsel fees, and all other expenses of sale or other disposition with respect to the discharge or refund of existing obligations, including notes maturing not more than two years after date thereof.

(CFR 52.2 (1); 55.2 (h))

Exhibit 120.7O—Other Investment. A statement containing the complete details of the purposes of a proposed issue or assumption of Securities with respect to purposes other than those comprised within Uniform Exhibits 130.7L, 130.7M, 130.7N.

(CFR 56.2 (n); 55.2 (i))

Exhibit 120.7P—Plan. A copy of proposed plan for the Alteration of Securities or for corporate reorganization.

(CFR 55.2 (b); 175.1 (a))

Exhibit 120.7Q—Securities Unaffected by Plan. A detailed statement of the carrier's creditor obligations not affected by a proposed plan for Alteration, showing the full title of the same, the title and date of indenture, if any, under which the same were issued, the name of the trustee under the indenture, the principal amount of Securities authorized and issued and the denomination of such Securities, the date of the Securities, interest rate or rates thereon, interest payment dates, the date or dates of

maturities, with the amounts respectively maturing on each date, if maturing serially.

(CFR 55.2 (j))

Exhibit 120.7R—Proposed Charges. A statement, with the appropriate tariff authority, of the exact rates, charges, fares, classifications, rule or regulation which it is desired to establish, the routes over, articles or classes upon which they apply, and the names or description of the points of origin and destination.

(CFR 141.58 (e); 147.31 (a); 186.14 (e) (1); 187.45 (d), (e), (1) (2); 311.7 (a); 312.7 (a); Former ICC Rule 18 (e) (3))

Exhibit 120.7S—Present Charges. A statement, with appropriate tariff authority, of the present Charges, rates, fares, classification, rules or regulations which it is desired to change, and the articles or classes upon which they apply, and the names or description of the points of origin and destination, and precise changes or cancellations indicated.

(CFR 141.58 (e); 147.3 (a); 186.14 (e) (3); 187.45 (d) (3); (e) (3); 311.7 (a); 312.7 (a))

Exhibit 120.7T—Fourth Section Departures. A statement of the names or description of intermediate points at which it is desired to maintain higher Charges than at further distant points, or a sufficient number of such points to illustrate the situation, including the points at which the highest and lowest Charges in excess of those at the more distant points would apply, distances between all points to be shown.

(Incorporate as Form 6 to Rules of Practice of I. C. C. prior to adoption of revised rules in 1942. Rule 18, paragraphs (3) (4) and (f) (3))

Exhibit 120.7U—Fourth Section Map. A map, drawn to scale, showing the relative location of the various lines or routes, the competitive points, the representative intermediate points at which higher Charges are to be made, and the delineation or indication of related or group points.

(Old Rule 18, I. C. C. Rules of Practice, paragraphs (h) (2) and (e) (3)).

Exhibit 120.7—Authentication of Damages. A certificate over the personal signature of the comptroller or general auditor of the Applicant carrier, and/or of any carrier making collection of any part of the Charges that he has read the Application and that the facts stated therein have been verified against the accounts of the company as audited under his direction, and the amount of the aggregate weight, freight charges collected and retained, and the refund to which the complainant is entitled on the basis of the reduced rate, and the present rate per hundred weight or per ton, and the statement of billing attached, corresponds to the checked billing as shown by the records of the company. In addition, the complainant or the person to whom the damages are to be paid, either personally or by authorized officer or agent, shall certify that the amount of Charges upon the shipments as shown in the Application were paid and borne by such Person.

(Form for Special Docket Application prescribed by the order of Division 2 of the I. C. C. on October 1, 1934)

120.8 Detail Exhibits. Detailed information called for in any of the Rules of Articles 12 and 13, which can be more clearly or concisely presented in exhibit or tabular form, shall be furnished in an attached supplemental exhibit and only a general statement or summary given in the Application proper; which, however, must specifically refer to such exhibit which shall be entitled "Detail Ex-

hibit To Rule No. ----" (number of the rule or sub-rule which calls for the information). If more than one such statement is necessary to be put in exhibit form in response to a single rule or sub-rule, they shall be included as consecutively numbered parts of a single exhibit identified as above.

120.9 Supplemental Exhibits. Where prior to a hearing an Applicant is Directed to furnish additional information to supplement, correct or explain information given in the Application, he shall do so by separately and consecutively numbered exhibits which refer to the said Direction and which shall be entitled, "Supplemental Exhibit No. ----"

RULE 121—RATE MAKING AGREEMENTS

Applications under Section 5a of *The Act* for approval of carrier rate making agreements shall give the following information:

121.1 The Applicant. Name and post office address of Applicant and each Carrier in whose behalf the Application is filed, its kind of Business Unit, its business activities, and its status under *The Act*, making reference to the docket number of the Proceeding, if any, before The Agency in which same was recognized or established.

(CFR 3.1 (a), (b), (c))

121.2 Authorization. If the Application be filed upon behalf of non-signatory Carriers appropriate reference shall be made to the source of the signatory's authority to file same on behalf of such Carriers.

(CFR 3.3 (a))

121.3 Affiliations. If the agreement involved is implemented by a rate making organization (bureau, conference, or committee, incorporated or unincorporated) a full description of said organization and the name of any other similar organization with whom it is Affiliated or related by contract, agreement or otherwise and a complete description of such relationship, Affiliation or arrangement. (Attach Uniform Exhibits 120.7 A and C)

(CFR 3.1 (d))

121.4 The Agreement. A statement of the precise nature, terms and conditions of the rate making agreement for which approval is prayed. (Attach Uniform Exhibit 120.7 I)

(CFR 3.1 (d))

121.5 Procedures. A detailed and precise description of the rate making procedures established by such agreement or of any rate making organization (Rule 139.3 *supra*) through which said agreement is to be implemented.

(CFR 3.1 (d))

121.6 Scope. The territorial scope, Traffic and traffic movement covered by such agreement.

(CFR 3.1 (d))

121.7 Expenses. A detailed statement of the manner in which the expense of implementing the agreement or of such rate making organization is distributed among the parties to the agree-

ment or among the members of such organization by assessments, dues or otherwise.

(CFR 3.2 (d))

RULE 122—TARIFF RELIEF

Applications for special permission to depart from the provisions of Sections 4 (1); 6 (3); 20 (11); 217 (c); 218 (a); 306 (d), (e); 405 (d), or of *The Agency's* applicable Tariff Rules will comply with the provisions of Rule 120 and give the following information:

(ICC 25 (e); FCC 1.523; FPC 45.8 (c), (h))

122.1 Persons Involved. The name and post office address of the Applicant and of each Carrier in whose behalf the Application is filed, its kind of Business Unit, its business activities and status under *The Act*, making reference to the docket number of the Proceeding, if any, before *The Agency* in which was recognized or established; except that if the Application be by the publishing agent of the tariffs involved such Carriers may be designated by reference to such tariffs; and if the Application be filed upon behalf of non-signatory carriers appropriate reference to the source, nature and evidence of the signatory's authority to file same in behalf of such carriers;

(CFR 137.31 (e), 141.58 (e), 145.48; 147.31 (a); 186.14 (d) (2); 187.45 (d) (2); 311.7 (e); 312.7 (e) Order Division 2, October 1, 1934; and Released Rates Order 331.1; Rule 18: (a) (e) (1))

122.2 Relief Prayed. The precise relief prayed with reference to the provisions of *The Act* or Rules relief upon to authorize same; the specific provision of *The Act* from which it is proposed to depart; and the business reason or purpose of the proposed departure;

(CFR 141.58 (e))

122.3 Proposed Charges. Identification of the tariff or supplement thereto and the item number thereof, present or proposed, containing the proposed Charge and a general statement of its traffic and territorial application; and the basis of or for the proposed Charge; (Attach Uniform Exhibit 130.7).

(CFR 141.58 (e); 145.58; 147.31 (a); 186.14 (e) (1), (2); 187.45 (e) (1), (2); 311.7 (a); 312.7 (a); Released Rates Order 331.2, 3)

122.4 Present Charges. Identification of the tariff, supplement and items providing for the present Charge which will be superseded or otherwise affected by the proposed change, and the general effect of such change; and particularly in: (Attach Uniform Exhibit 130.7S).

122.41 Fourth Section Applications. A statement generally describing the extent to which the Charges at the intermediate points will be higher than those at the more distant points and the basis upon which the Charges at the intermediate points were established and/or are maintained; (Attach Uniform Exhibits 130.7T and U).

(ICC Former Rule 18 (e) (4); (f) (3))

122.5 Reasonableness. Material Facts tending to show that the proposed Charges are just and reasonable, and particularly in:

122.51 *Special Docket Applications.* That, and in what respects the applicable tariff *Charge* from which it is sought to depart is expressly admitted to be unjust and unreasonable in the particular case;

122.52 *Fourth Section Applications.* That the proposed *Charges* at the more distant points are fully compensatory and that the higher *Charges* proposed to be maintained at the intermediate points are reasonable, with reference to the docket number of any *Proceeding* before *The Agency* in which the reasonableness of the latter is in issue;

(ICC Former Rule 18 (f) (2), (4), (5))

122.53 *The Relationship.* Between the points of origin or destination covered by the proposed change and points of origin or destination not covered thereby; and similarly the relationship, if any, of the *Traffic* covered by the proposed change to other like or similar *Traffic*; and in *Applications for Released Rates* based upon existing *Charges*, upon analogous commodities or apply in other localities or territories or upon other *Carriers*, full details with respect thereto must be given.

(CFR 141.58 (e); ICC Former Rule 18 (e) (3); Released Rates Order 331—Third)

122.6 *Competition.* Separately by types the names and addresses of all *Carriers* who publish *Charges* upon the same *Traffic* between the same points as those involved in the *Application*, with appropriate reference to the tariffs where same are published (or if a number of such *Carriers* participate in a joint tariff naming such *Charges* they may be described generally in referring to such tariff); the differences, if any, between the *Charges* of such *Carriers* and those proposed in the *Application*; details of any notice given by *Applicant* to such *Carriers* of its intention to file, or of the filing, of the *Application*, and the views of said *Carriers* with respect thereto if known; and particularly in *Fourth Section Applications* based upon:

(CFR 141.58 (e); 145.18; 147.31 (a); 186.14 (e); (4)-(6); 187.45 (e) (5); 311.7 (a); 312.7 (a))

122.61 *Carrier Competition.* Respective distances to the more distant points over routes of *Applicant* and those over which the competitive *Charge* applies; the comparative service given over such routes; relative volume of *Traffic* moving thereover; and the extent, if any, to which such competition applies at the intermediate points;

(ICC Old 18 (g) (1)-(3))

122.62 *Market Competition.* Name of the common market and the competitive producing points; *Carriers* operating over direct lines or routes from such producing points to the common market, and the distances via same; extent to which similar competition, if any, exists at the intermediate markets, if any, via such direct lines; extent to which *Charges* from competitive producing points conform to the *Fourth Section of The Act*; and the volume of *Traffic* respectively moved from the producing points.

(ICC Old Rule 18 (g) (4))

No. 95—Part II—6

122.7 *Damages.* *Applications* for authority to pay damages or waive collection of undercharges arising by reason of an unjust or unreasonable *Charge* shall describe the shipments involved, showing number, commodity, aggregate weight, origin, destination, point of reconsignment, consignor, consignee, bill of lading, carrier, date, and point of issuance, route, aggregate freight charges collected, date when and by whom such charges were paid, carrier, date of delivery;

(Order of Division 2, October, 1934)

122.71 *Authentication.* The foregoing statement of *Charges* must be verified against the audited accounts of carrier collecting charges and certified in Uniform Exhibit 120.7 V)

(Order of Division 2, October, 1934)

RULE 123—OPERATING LICENSE

All *Applications* for: exemption of a *Carrier* or *Operation* from any provisions of *The Act* (ICA 204 (a), (4a), 303 (e), 306 (e); grant, enlargement, modification, transfer, surrender or revocation of an *Operating Authority* as a *Carrier* or *Broker* or to abandon or discontinue an operation or service previously performed (ICA 1 (18), 206-210, 210a (a), 212, 309, 310, 312, 410) will give the information, and in the manner and form, respectively required by the Rules of this Article 12.

(CAB 500.400, 401, 402; FCA 310 (b); FCC 1.525, 526; FPC 02.4; 1.527, 528; 6.1-6.5; 9.1-9.10; 33.2; 34.2 (q))

123.0 *Present Operations.* A description of the *Applicant's* present *Operations*, their nature and extent, the States within which they are located, a general description of the routes and termini thereof, with appropriate reference to the docket number of the *Proceeding*, if any, before *The Agency* in which to conduct said *Operations* was granted; and same may be applicable to the type of *License* applied for, the following additional information: (Attach Uniform Exhibit 120.7F).

(BWC Form: No. 2, Exhibit A II, A, B, E; Exhibit B I A; No. 8, Exhibit A I A, B; II C)

123.01 *Conduct.* Concise description of *Applicant's* organization, personnel, method of operation, and rules and regulations employed to comply with insurance, safety, accounting, and tariff requirements.

(BMC Forms: Nos. 4 and 5, Exhibit C 1-4, Exhibit E)

123.02 *Utilization.* The extent to which, during each of the preceding 12 months, *Applicant* or a proposed transferor has not fully utilized its *Authority* with respect to routes, territory, class, kind, description, type of *Traffic* or size or volume of shipments thereof, with a full explanation therefor;

(BMC Form: No. 44, Exhibit B (4); BWC Form: No. 2, Exhibit A I C)

123.03 *Points Served.* Names of all important points or ports (including all places having a population of 25,000 or more) served, designating at which points *Applicant* maintains a station;

(BWC Form: No. 1, Exhibit A II A-E)

123.04 *Service.* The kind, frequency, continuity, regularity of *Applicant's* service on its main and branch routes or lines respectively, and the seasons during which service is rendered;

(BWC Form: No. 2, Exhibit A I D, E, II G; Exhibit B I C; No. 8, Exhibit A I C-E, II F, G)

123.05 *Traffic.* The carload, truckload, less carload, or less truckload tons of freight, separately, respectively originated, terminated or received from connections at each point in which *Applicant* maintains a station.

123.1 *Exemption.* A complete and precise description of the routes, points served and termini of the *Operation* for which exemption is sought, its terminals and a specification of motor equipment owned, leased, or operated, separately by class and type of equipment, and marine equipment by the name or number, type of construction, size and tonnage.

(BMC Form: No. 72 III D; BWC Form: No. 4, Exhibit A 8)

123.11 *Local Exemptions.* In *Applications* for exemption under Section 203 (b) (8) of *The Act*, a description of the municipality or municipalities or zone commercially a part thereof, to which *Applicant's* *Operation* is confined and the arrangement or method, and with whom, under which it transports passengers or shipments which originate or terminate without such municipality or zone; and a description of the State or municipal *Authority*, certificate, permit, license or franchise, if any, which authorizes *Applicant* to transport passengers in intrastate commerce over the entire length of its interstate routes. (Attach Uniform Exhibit 120.7G.)

(BMC Form: Nos. 12 and 18, III, IV)

123.12 *Interchange.* In *Applications* involving exemption of motor carrier operations under Section 204 (a) (4a) of *The Act* or involving water carrier operations, the names and addresses of all carriers with whom the *Applicant* interchanges interstate *Traffic* and/or equipment; the arrangement under which such interchange is made and if the *Traffic* is interchanged under joint rates whether such rates were established by concurrence of *Applicant* in tariffs of the connecting carrier or by concurrence of the connecting carrier in tariffs of *Applicant*.

(BMC Form: No. 72 II C; BWC Form: No. 3, Exhibit A II E, No. 8, Exhibit A II H)

123.2 *New Rail, Motor or Water Operation.* In *Applications* for a new, enlarged, extended, supplemental or alternate operation or route, a particular description of the main and branch lines, the termini, port, routes or construction involved; the route or track miles, respectively, of new main or branch lines or routes; and more particularly:

(CFR 41.2 (d), (f); BMC Form: No. 78 II-IV; BWC Form: No. 2:3; Exhibit A II A, B; Exhibit B II A; No. 7: I, III; No. 8, Exhibit A II A-E)

123.21 *Purpose.* Its chief uses and purposes and whether primarily for a di-

rect profit from transportation thereon, or for the advantage of any other *Person*, and, if so, who, and the advantages thereto, and *Applicant's* corporate contractual or financial relations therewith; (CFR 41.6:22)

123.22 Territory. The general character and terrain of the country which the proposed line will traverse, approximate area and population of the area which will be served, the kinds of industry carried on therein and the relative importance of each, including their age, growth, extent, and probable future growth and permanence; the name and population of each city, town, and village at which a *Station* would be established or maintained, and the name, area and population of each county through which the proposed line will extend;

(CFR 41.1 (f); 41.6:9, 16, 17, 18, 19)

123.23 Present Service. Names of places on proposed route now served by common carriers, railroad, motor carrier or water carrier, and the name of each such carrier maintaining a *Station* thereat; the names of places within the area to be served by such line that have no common carrier service, and the distance in miles of such places from the nearest *Station* of a common carrier and the character of the connecting highway;

(CFR 41.6:9-13)

123.24 Coordination. The routes or lines, main and branch, the territory and principal points presently served by *Applicant* or an *Affiliate* which would be affected by the proposed *Operation* and the manner in which such *Operation* will be conducted and coordinated with the *Applicant's* present *Operation*;

(BMC Form: No. 78 XI; BWC Form: No. 2, Exhibit B II A, B; No. 7 II, No. 8, Exhibit A I A, B)

123.25 Railroad Construction. Dates on which construction is expected to begin and be completed, the engineering work in full detail which has been done with respect to the same, including (a) the gauge and number of main line tracks, (b) the weight of rail and main line tracks, (c) the rate of maximum grade in each direction and whether and how compensated for curvature, (d) the rate of limiting grade fixing the train load in each direction and whether and how compensated for curvature, (e) the location, length, rate and direction of ascent for each helper grade, if any, (f) the average amount of curvature per mile, in degrees, and the maximum rate of curve, (g) the approximate length and height of wooden trestle or other temporary construction.

(CFR 41.1 (d); 41.6:32-34; 41.7 (a)-(e))

123.3 Abandonment. The line, route, operation or service to be abandoned; the miles in each county to be abandoned; and the extent to which continued operation by other carriers will supply the service to be abandoned by *Applicant*, and particularly:

123.31 Service. The names, in geographic order, of all points on the involved *Operation* at which the *Applicant*

maintains a *Station*, the approximate population of each, and the names of all other carriers which maintain *Stations*, at each point to be served, or the distance by highway to the nearest *Station* of another carrier, the approximate population of the territory dependent for service upon the line, and the nature of industries therein, and the extent to which such industries are dependent upon the involved *Operation* for transportation;

(CFR 42.9:8, 11)

123.32 Property. A detailed description of the property to be abandoned, when and by whom, and for what purpose it was acquired or constructed, the present state of its maintenance and the estimated salvage value thereof, with the basis for such estimate.

(CFR 42.1 (c); 42.9:2, 4, 5)

123.4 Forwarder. The territory of the proposed operation, the origin points which will be served by *Stations*; and destination points to be served by *Stations*; the principal breakbulk points; and the terms and conditions of the bill-of-lading or shipping contract to be issued to shipper, and particularly:

(FF Form: No. 1, Exhibit A 3, 4)

123.41 Service. The class of the public to whom proposed service will be held out and the methods, manner and means of effecting pickup, assembly, consolidation, distribution and delivery of shipments;

(FF Form: No. 1 A (1), (2))

123.42 Responsibility. Extent to which *Applicant* assumes responsibility for the shipment from origin to destination.

(FF Form: No. 1, Exhibit A 4)

123.5 Broker. The class or classes of *Traffic* for which new or additional *Authority* is sought to make arrangement for transportation and whether for individual passengers, groups of passengers, baggage, newspapers or articles of commerce generally, or specified articles or commodities, and the territory and principal points to be served by the new or enlarged License; and particularly:

(BMC Forms: 4 and 5, Exhibit B 1, 2)

123.51 Service. The kinds of carrier service to be sold, procured, or arranged for; the methods and facilities to be employed in promoting sales thereof; and the nature, amount, terms and conditions of any insurance policy, bond or other security for the performance of its obligation which *Applicant* tenders;

(BMC Forms: 4 and 5, Exhibit C 5)

123.52 Operations. Description of officers and personnel employed or to be employed and of carriers who have been and will be employed in its *Operation* and their status under *The Act*; docket number of the *Proceeding*, if any, in which such status was recognized.

(BMC Forms: Nos. 4 and 5, Exhibit E)

123.6 Transfer. A precise description of the *Operations*, lines, routes, and property, tangible or intangible, to be

transferred or leased, and a statement of all of the terms and conditions of any and all agreements covering the transaction. (Attach Uniform Exhibit 120.7I).

(BMC Form: No. 76 III (5), (9), (10))

123.7 Self Insurance. An *Application* for *Authority* to self-insure under Sections 215 or 403 (c) (d) of *The Act*, shall show the following information relating to:

123.71 State Authority. The States in which *Applicant* has qualified as a self-insurer and upon what terms and conditions, together with a full explanation of a denial of any *Application* to any State to so qualify, or for any revocation of its authority to self-insure in any State.

(BMC Form: No. 40, Exhibit A 1, 2, 3)

123.72 Safety Organization. The organization, method, operation, personnel, cost, and length of time maintained of *Applicant's* safety organization, if any.

(BMC Form: No. 40, Exhibit A 10, 33; FF Form: No. 39, Exhibit A 6)

123.73 Claim Organization. The organization, method of operation, personnel employed and length of time maintained of *Applicant's* claim department, if any.

(BMC Form: No. 40, Exhibit 40 A 11; FF Form: No. 39, Exhibit A 7)

123.74 Property. Description of *Carrier* property employed by *Applicant* in its operations; number, location, size and investment or annual rent of terminals; number and net book value of each class or type of equipment by age groups.

123.75 Finances. *Applicant's* capital structure, number of shares, and par or stated and book value of each class of capital stock; aggregate long term debt, annual fixed charges; amount of *Applicant's* net income or its Profit and Loss appropriated for Improvements and for dividends during each of the preceding five years; and particularly: (Attach Uniform Exhibits 120.7D and E).

123.76 Current Position. A detailed statement of the kind, nature, book and actual value of *Applicant's* current assets, degree of liquidity and the kind and amount of the several classes of current liabilities, those due, currently within the following 60 days and past due for 60 days or more, with an explanation for their nonpayment; number, size and investment in terminals, number, average age and net book value by classes of equipment.

123.77 Present Insurance. The names, addresses of Insurance Companies with whom *Applicant* has carried insurance during the past 5 years, covering liability for bodily injury, property damage and cargo, separately, the premiums earned, the loss expense incurred and loss ratios of each class of insurance, the amount of insurance of each class in each Company now carried, indicating the extent of limits, the primary or excess cover and *Applicant's* own net retention on each class of risk, and also a full explanation for any cancellation by any Insurance Company carrying any

of the aforesaid classes of risks during the past 5 years.

(BMC Form: No. 40, Exhibit A 4-8; FF Form: No. 39, Exhibit A:1-4)

123.78 Authority. A statement of the precise *Authority* desired, the business purpose therefor; the classes of risks proposed to be self-insured by *Applicant* and the character and amount of insurance which will be carried in the future, if such *Authority* is granted.

(BMC Form: No. 40: 2, 3; Exhibit A 9; FF Form: No. 39: 2, Exhibit A 5)

RULE 124—FINANCE APPLICATIONS

All *Applications*: for *Issue*, *Assumption of Obligation*, and/or alteration or modification of *Securities* or the provisions of *Instruments* securing same; corporate reorganization under Bankruptcy Act or under Title 11, Chapter 10 of the United States Code; for ratification of appointment as Trustee in Bankruptcy; to solicit proxies or represent or act for *Security* holders; to hold the position as officer or director in more than one carrier; will give the information, and in the manner and form, respectively required by the Sub-Rules hereof:

124.1 Security Issues. In *Applications* involving *Issue* or *Assumption of Securities*, a precise and complete statement of the *Securities* to be issued or assumed and the uses and purposes thereof and of their proceeds; and more particularly: (Attach Uniform Exhibits 120.7D, 120.7E).

124.11 Purposes. A general description of the property to be acquired, the improvements, additions or betterments made or to be made, the obligations to be refunded, or other purposes or uses to which the proceeds of the *Securities* are to be put. (Attach Uniform Exhibits 120.7J, 120.7K.)

124.12 Capital Stock. The kind and class thereof, number of shares authorized, presently outstanding and proposed to be issued, the par or stated and book value of each share and in the aggregate, voting rights, preferences, conversion privileges, call provisions, and liquidation rights.

(CFR 55.1 (e))

124.13 Other Securities. The title and date thereof and of the *Indenture*, if any, under which same are to be issued, name of the Trustee thereunder, principal amount authorized, previously issued, presently outstanding, and to be issued, denomination of the *Securities* to be issued, date thereof, interest rate and payment dates, date and amount of each maturity with reference to the provision of said *Indenture* authorizing the proposed *Issue* and with respect to sinking fund, redemption and conversion duties, rights or privileges, if any.

(CFR 55.1 (e); 56.1 (e) Note 4)

124.2 Alteration. In *Applications* involving the *Alteration of Securities* or *Instruments*, a precise and complete statement of the *Securities*, *Instrument*, or any provision thereof, and of the reasons for and the purposes of such proposal and the effect upon the *Applicant's* capital structure if the *Authority*

be granted and consummated; and more particularly: (Attach Uniform Exhibits 120.7D-a, J, K; 130.7N, P and Q)

(CFR 55.1 (e))

124.21 Securities Affected. Specification of each class of *Security* proposed to be affected thereby, the number of shares outstanding, the par or stated and book value, aggregate principal amount, the percentage thereof for which assurances of assent have been obtained from the holders, and whether 75 percent thereof is held by fewer than 25 holders.

(CFR 55.1 (1); (n))

124.22 Pledged Securities. Aggregate principal par or stated and book value amount of each class of such affected *Securities* pledged to secure other obligations of *Applicant* or any *Affiliate*, with details of such obligations, the amount thereof and the *Instrument* pursuant to or under which they were issued or by which they are secured, and the name of any Trustee therein.

(CFR 55.1 (o))

124.23 Controlled Assent. Of the aggregate principal amount, par or stated and book value of each class of affected *Securities*; and the amount held by a holder whose assent to the proposal is within the control of *Applicant* or an *Affiliate*.

(CFR 51.1 (q))

124.24 Guarantors. Designation of any *Person* who has undertaken or assumed any liability in respect of affected *Securities* and whether such *Person* has consented in writing to the proposal.

(CFR 51.1 (r))

124.3 Terms and Conditions. A complete and precise statement of all terms and conditions, agreements, contracts, underwritings, or other arrangements made or proposed for or in connection with the proposed *Issue*, *Assumption* or *Alteration*; how and by, to or through whom, it is proposed to issue the proposed *Securities* or to effect the proposed *Alterations*; the price or rate at which it is proposed to sell or otherwise dispose of the *Securities* to be issued; an estimate in detail of all costs, fees, expenses, commissions, and discounts to be paid, allowed or deducted in connection with such proposed *Issue*, *Assumption* or *Alteration*; and in: (Attach Exhibit 120.7I).

(CFR 55.1 (g), (1); 56.1 (g) (h))

124.31 Applications for Alteration. Extent, manner, medium, times and places and means and *Persons* by and to which *Applicant* proposes to give notice of the hearing upon the *Application*; the reasons for selecting same; procedures and methods to be used in procuring and verifying assents of holders of affected *Securities*; the character of *Proof* of same to be offered; and a description of the terms and conditions of any certificates of deposit to be issued by *Applicant* or others.

(CFR 55.1 (m) (s) (t))

124.5 Unification. Whether the transaction for which approval is sought

is one (a) involving pooling of traffic, service, or gross or net earnings, or (b) for the consolidation or merger of the properties or franchises, or any part thereof, of two or more carriers, or (c) for the purchase, lease or contract by one or more carriers to operate the properties of another, or (d) for one or more carriers jointly to acquire control of another, or (e) for a *Person* which is not a carrier to acquire control of two or more carriers, or (f) for a carrier by railroad to acquire trackage rights over, or joint ownership in, or joint use of, a railroad line or lines operated by another, or (g) for a carrier to acquire control of, or have interest in, a common carrier by motor vehicle, water or vessel; and particularly:

(CFR 52.2 (c) (1))

124.51 Routes and Property. The routes, termini and mileage of the lines involved in the transaction, the principal points, ports and junctions, with main and branch line route mileage shown separately; and a description of any routes or property of any *Party* to the transaction which is not to be included therein. (Attach Uniform Exhibit 120.7F.)

(CFR 52.2 (c) (4); BMC Form: No. 44, Exhibit B3 (a), (b))

124.6 Interlocking Officers. An *Application* under Section 20a (12) to hold the position of officer* or director of more than one carrier subject to Part I of The Act shall give the following information:

(FCC 1.524; FPC 45.8)

124.61 Applicant. Full name, occupation, business address, place of residence, and post office address of the *Applicant*. (CFR 53.6 (a))

124.62 Securities Owned. A specification of every *Carrier* of which *Applicant* holds stock, bonds, or notes individually or otherwise, and the amount, and an accurate description of the *Securities* owned or held by him of each *Carrier* for which he seeks authority to act; and if it is contemplated that *Applicant* will represent on the Board of Directors any other owner of any *Carrier Securities* the name of the beneficial owner, the general nature of its business activity, its status under *The Act* the character of the representation, and the kind and amount of such *Securities*.

(CFR 53.6 (b))

124.63 Carrier. Each and every position with any *Carrier* which is held by the *Applicant* at the time of the *Application* and each which he seeks authority to hold, the date upon which he first entered the performance of any duties of any such position, if he has entered

*A person who performs any duty which is ordinarily performed by a president, vice-president, secretary, treasurer, general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, freight traffic manager, passenger traffic manager, chief engineer, general superintendent, general land or tax agent, or chief purchasing agent.

upon such performance, and the nature of the duties so performed.

(CFR 53.6 (c))

124.64 Other Activities. The name and description of every *Person*, other than a *Carrier*, of which *Applicant* is an officer or director, the business activities thereof, and any *Affiliation* or regular business dealings between such *Person* and any of the *Carriers* involved.

(CFR 53.6 (g))

124.65 Carriers Involved. Status of each *Carrier* covered by the requested authorization under *The Act*, and if it is a *Carrier* which does not make annual reports to *The Agency*, a full statement with respect to its capitalization, operations, *Traffic*, and earnings; and complete information of any *Affiliation* or relationship, operating, financial, competitive, or otherwise, between the several *Carriers* involved. (Attach Uniform Exhibit 120.7C.)

(CFR 53.6 (d), (e), (f))

124.7 Corporate Reorganizations. An *Application* submitting to *The Agency* a plan of reorganization under Section 77 of the Bankruptcy Act, or under Title 1, Chapter 10 of the U. S. Code, in addition, shall show the following information:

124.71 Proceeding. The name and title of the *Proceeding* in connection with which the plan or reorganization is filed, the court in which same is pending, name of the debtor by or against whom petition for reorganization was filed; the date of filing and of approval of the petition for reorganization.

(CFR 59.2 (a) (1), (2))

124.72 Applicant. Name and address of *Applicant* and his relation to or status or the capacity in which he appears in said bankruptcy proceeding.

124.73 Debtor's Operation. The manner in which debtor's properties are operated and if operated under lease or operating arrangement, individually or as a part of a general system of transportation, the name and address of such system, its status under *The Act*, and the character or terms of the lease or operating arrangement.

(CFR 59.2 (a) (3))

124.74 Corporate Control. If debtor is controlled by stock ownership or otherwise, the name of the *Person* exercising and the method, degree, and duration of such control and the status of such *Person* under *The Act*.

(CFR 29.2 (a) (4))

124.75 The Plan of Reorganization. A brief description of the nature of the plan and of the means proposed for its implementation.

124.76 Operations. A general description of any new or extended operation, or any acquisition of carrier operating authority, or of any proposed abandonment or discontinuance of a carrier operation or of any service thereover, as proposed in said plan.

(CFR 59.2 (a) (5))

124.77 Transfer or Unification. If any Transfer or lease of, or operating

contract covering the debtor's property, or any *Unification* of the debtor with another *Person* is contemplated under the plan or reorganization, the name and address of such transferee, lessee or operator, or of any *Person* involved in such *Unification*, and of all *Affiliates* of any of the same shall be given, together with the status of each under *The Act*.

(CFR 59.2 (a) (6))

124.78 Security Issues. If the plan contemplates the *Issue* or *Assumption* of the obligation of *Securities* by said debtor or prospective transferee, as the case may be, outstanding, and of the *Securities* to be issued and obligations to be assumed, or altered, segregated by kinds and classes, and the principal amount of the debt *Securities* and the par or stated and book value of stock.

(CFR 59.2 (b) (5))

124.8 Approval of Bankruptcy Trustee. An *Application* asking for ratification by *The Agency* of *Applicant's* appointment as trustee under Section 77 of the Bankruptcy Act, in addition, shall give the following information:

(Bankruptcy Act Section 77 (c) (1))

124.80 Proceeding. Name and title of the *Proceeding* in which such appointment was made, the court in which it is pending, and the name of the debtor.

(CFR 58.51)

124.81 Applicant. The name and address of *Applicant*, date and place of birth, all past principal occupations, and the periods covered by each, all present occupations, and his intention with respect to the continuation thereof while serving as trustee.

(CFR 58.51 (a)-(d) inclusive.)

124.82 Relations with Debtor. A full description and explanation of any relationship as officer, director, employee, stockholder of the debtor or any *Affiliate* thereof within one year prior to the date of his appointment.

(CFR 58.51 (e))

124.83 Other Relations. *Applicant's* business relation, connection, or *Affiliation* with any *Person* and any relation, connection, or *Affiliation* between such *Person* and the debtor or any *Affiliate* thereof.

(CFR 58.51 (f))

124.84 Investment. Names and addresses of all *Persons* in which *Applicant* or any member of his immediate family has a financial interest, direct or indirect, beneficial, contingent, or otherwise; the nature of such interest and the *Security*, if any, by which it is evidenced.

(CFR 58.51 (g))

124.85 Financial Obligations. Names and addresses of each *Person* to which *Applicant* is financially obligated, directly, indirectly, absolutely, contingently, or otherwise, in excess of \$4,000.00 to any one such *Person*; the nature of said obligation, and how or by what it is evidenced.

(CFR 58.51 (h))

124.9 Solicitation of Proxies. An *Application* for authority to solicit proxies

or to represent or act for creditors or stockholders in *Proceedings* under Section 77 of the Bankruptcy Act shall give the following information:

(Bankruptcy Act, Section 77 (p))

124.90 Proceeding. Name, title and nature of the *Proceeding* in connection with which *Applicant* proposes to act, and name of the debtor, and the court in which the *Proceeding* is pending.

(CFR 58.9 (h) and (i))

124.91 Applicant. Full name and post office address of *Applicant*, and, if *Applicant* is:

(CFR 58.9 (a))

124.911 Committee Member. An individual who proposes to act as a member of a protective committee, partnership, *Association* or other unincorporated organization, its name and address and the date when he became a member thereof.

(CFR 58.9 (b) (1))

124.912 Unincorporated Organizations. A protective committee, partnership or *Association*; the names and addresses of the individual members and the secretary and counsel thereof, with date of its organization and when each became a member, secretary, counsel, or an officer thereof. (Attach Uniform Exhibit 120.7A.)

(CFR 58.9 (b) (2))

124.913 Corporation. A *Corporation*, the names and addresses of the officers, directors, and of the twenty stockholders having as of the latest available date the highest voting power in *Applicant*, together with that of the counsel, if any, date of incorporation, and when each officer or director was elected or appointed. (Attach Uniform Exhibit 120.7A.)

(CFR 58.9 (b) (3))

124.914 Principal Occupations. Principal *Occupation*, for the last ten years prior to the date of the *Application*, of *Applicant*, if an individual, of each member, the secretary, and counsel, if the *Applicant* is a committee, partnership, *Association*, or other unincorporated organization, and of each officer, director, and principal stockholder (not more than twenty) if *Applicant* is a corporation or joint-stock company.

(CFR 58.9 (c))

124.915 Prior Solicitation. Whether the *Applicant* made such solicitation, or used, employed, or acted under or pursuant to, such proxies, authorizations, or deposit agreements prior to the date of *Application*.

(CFR 58.9 (e))

124.92 Affiliation. Any present and prior connection of the *Applicant* and each of the *Affiliates* of the *Applicant* with the original issuer of the *Security* and each of its *Affiliates*, the debtor and each of its *Affiliates*, *Persons* who originally sold or underwrote or participated in the same or underwriting of the *Security*, the trustee of the debtor and of the original issuer, the trustee of the *Instrument*, if any, under and pursuant to which the *Security* was issued, the de-

positary under the proposed agreement, if any, under which the *Security* is to be deposited, and any other *Person* acting for the original issuer or of the debtor. (Attach Uniform Exhibit 120.7C.)

(CFR 58.9 (n))

124.93 *Ownership of Securities.* The number of shares of each class of stock and the principal amount of each class of debt, direct or indirect, of the debtor and of its *Affiliates* owned by the *Applicant* and any of his *Affiliates* and any member of his immediate family on or about the date of the *Application*; and an explanation of any purchase or sale by the *Applicant* or of any of his *Affiliates* or his immediate family for within six months prior to the date of the *Application* or any *Securities* of the debtor or any of its *Affiliates*.

(CFR 58.9 (o) (p))

124.94 *Authority Sought.* Whether authority is sought (a) to solicit, use, employ, or act under proxies of *Security* holders or (b) to solicit deposit by *Security* holders of claims against or interest in debtor under a deposit agreement; and/or to act for depositor under such agreement.

(CFR 58.9 (d))

124.95 *Involved Security.* The name of the *Security* involved, the date of default, if any, the principal amount or number of shares presently outstanding, the name of the original issuer, the name of the *Person* currently obligated to pay the principal and interest thereon and of all *Persons* involved in any controversy with respect to such obligation and the names and addresses of the original underwriters of the same.

(CFR 58.9 (f), (g), (m))

124.96 *Contracts.* The terms and provisions of all agreements by *Applicant* and each of its *Affiliates* with any other *Person* (including its own members and officers, directors or principal stockholders) representing or seeking to represent any creditor or stockholder of the debtor, whether as an individual, committee, *Association*, unincorporated organization, corporation, joint-stock company, or as a member, officer, director or principal stockholder of the *Applicant* or of any other *Person*. (Attach Uniform Exhibit 120.7 I.)

(CFR 58.9 (r))

124.97 *Utilization of Authority.* The manner in which the *Applicant* proposes to utilize or act under the authority, if granted; the name and addresses of the *Persons*, if known, to be employed or compensated, directly or indirectly, by *Applicant* in the solicitation for which authority is sought; the rates of compensation to be paid such employees; the estimated maximum amount required to pay each such employee for advances or reimbursement of expenses; the rate of *Applicant's* compensation for services; the estimated maximum amount required for reimbursement of *Applicant's* expenses; the arrangements contemplated by *Applicant* to obtain funds for such expenses

prior to approval by the court and *The Agency*; the names of any depositaries with which *Applicant* has arranged or proposes to arrange for the deposit of *Securities*; the terms and provisions of all contracts and agreements entered into by the *Applicant* and the names of its *Affiliates* who are *Affiliated* with such depositary. (Attach Uniform Exhibits 120.7I and J.)

(CFR 58.9 (j), (k), (q))

124.98 *Other Committees.* The names and addresses of other *Persons*, including committees or other organizations in the process of formation, known to the *Applicant* to represent, or propose to represent, or have sought to represent holders of the *Security*.

(CFR 58.9 (l))

RULE 125—TERMS AND CONDITIONS

Every *Application* shall state the terms and conditions under which the proposed transaction is to be effected, including the manner in which it is proposed to consummate the same, and of all contracts or agreements involved relating to or affecting same; and particularly: (Attach Exhibit 120.7I.)

(CFR 52.2 (2); BMC Form: No. 44, Exhibit C 1; BMC Form: No. 45, Exhibit C 1; Form 46 III)

125.1 *Property.* A detailed description of all property, facilities, equipment, terminals, operating authority, or intangibles to be acquired or constructed in connection with or for the operation of any proposed new, enlarged, extended, supplemental or alternate operation, or any *Transfer* or *Unification*; and particularly:

125.11 *Value.* The book, and if desired, appraised value, of each class and principal unit of property involved; policy followed as to depreciation and other reserves and depreciation rate by classes of property; all incumbrances showing amount, maturities, and interest rate to be assumed by *Applicant*; the book value or cost, whichever is the lesser, of any intangible property involved and *Applicant's* proposed treatment of such intangibles.

(CFR 52.2 (c) (5), (9); 52.3 (b) (11), (12); BMC Form: No. 44 III, Exhibit A 6, B-5, C-2, 3, 6; No. 45 III; Exhibit A 10-A 7, 8; Exhibit B 4 B 3, 4; No. 76 III (1) (2) (IV); No. 78 VI)

125.2 *Cost.* The total cost to the *Applicant* for the acquisition or construction of property which will be necessary if the License is granted or the proposed transaction authorized and approved, and, in the case of *Transfers* or *Unifications*, an explanation of the amount of the consideration involved therein, the basis upon which such consideration was arrived at, and method of payment thereof;

(CFR 52.2 (d) (1) (ii); BMC Form: No. 44, Exhibit D-1, D-4; No. 45, Exhibit C-2; No. 76 III (1), (3))

125.3 *Financing.* The manner in which the cost or consideration involved in the transaction will be financed, the *Securities* which will be issued and any contracts or agreements

for the underwriting of such *Securities*, and all ads, gifts or donations which have been given or agreed to be given in consideration of *Applicant's* undertaking the transaction or instituting the proposed *Operation*, and a statement of the over-all effect thereof upon *Applicant's* financial structure and stability; (CFR 41.1 (1); 41.6 (27), (28); 52.2 (c) (10) (ii); BMC Form: No. 44, Exhibit C-4; No. 76 III (4); No. 78 (VII))

125.4 *Brokers.* Nature, terms and conditions of contracts, agreements, tickets and shipment papers with carriers and/or their patrons and the compensation or the basis thereof to be charged for the brokerage service. (Attach Uniform Exhibit 120.7J.)

(BMC Form: No. 4 and 5, Exhibit B-5)

RULE 126—SERVICE TO THE PUBLIC

An *Application* for an *Operating* or *Unification License* shall show the nature, class, kind and frequency of transportation service which will be rendered by the *Applicant* in the territory involved if the *License* sought, be granted or the transaction be approved; the manner in which the same will be coordinated with the present service; and any respects in which an improved or otherwise affected service will be rendered to the public; and particularly:

(CFR 41.6:6; 52.2 (d) (1) (iii); BMC Form: No. 44, Exhibit D-2; No. 78 V; BWC Form: No. 1, Exhibit A I; FF Form: No. 1, Exhibit D (1))

126.1 *Abandonment.* In *Applications* for abandonment the extent to which present service will be worsened or impaired, the transportation which will be available to the points served by the *Operation* to be abandoned; and any transportation service which *Applicant* proposes to substitute for that to be abandoned or discontinued;

(CFR 42.9:7, 17)

126.2 *Over-all Effect.* The over-all effect, if any, which the exercise of the License, if granted, or the consummation of the transaction, if approved, is likely to have upon the general territory within which the present and proposed *Operations* are located, and the States and principal cities located in such territory.

(CFR 41.1 (e))

RULE 127—TRANSPORTATION EFFICIENCY

The over-all effect which the proposed *Operation*, *Abandonment*, *Transfer* or *Unification* would have upon the efficiency and economy of *Applicant's* operation and the stability of its financial position shall be stated in any *Application* therefor; and in addition, particularly:

127.1 *Traffic.* A general description by classes of the volume of *Applicant's* present traffic, and an estimate, with the basis therefor, of any increase or decrease therein which is expected to result from the granting of the *Application* or approval of the transaction; and in *Applications* involving:

127.11 *New Operations.* An estimate, with basis thereof of the class, nature, kind and amount of *Traffic* expected to

be originated or terminated at points to be served by the proposed *Operation* annually, and, separately the amount of such *Traffic* to be handled over said line as a cut-off or bridge, and the revenue which *Applicant* estimates it will receive from each of said traffics, the amount of such *Traffic* now handled by *Applicant* and *Applicant's* revenue therefrom, the amount which will be created by the transaction and the amount diverted from existing carriers;

(CFR 41.6:8, 21, 22, 23, 29, 31)

127.12 *Abandonment*. The volume and revenue of *Traffic* transported by *Applicant* over the involved *Operation* in each of the past two calendar years and for that part of the calendar year for which the information is available, of local and interline passengers and of local and interline freight originated and delivered at points on the line by principal commodities; and if there has been any marked decrease in the volume of such traffics within recent years, the explanation thereof.

127.2 *Economy*. A description of the transportation economies, if any, which are expected to be realized as a result of the exercise of the *License*, if granted, or of the transaction if approved, and an estimate, in detail, of the annual effect of such economies upon the operating expenses and net earnings available for the fixed charges of *Applicant*, with the bases for such estimates.

(CFR 52.2 (d) (1) (ii))

127.3 *Fixed Charges*. A detailed explanation of any decrease or increase in fixed charges expected to result from the exercise of the *License*, if granted, or from the consummation of the proposed transaction if approved; the sources of additional income with which to meet them, and *Applicant's* ability to pay and discharge them from present income.

(CFR 41.6:35; 52.2 (d) (1) (ii), (iv); BMC Form: No. 44, Exhibit D III)

127.4 *Earnings*. An estimate, in detail, of the increase or decrease in transportation revenues received by *Applicant* for transportation service performed during the preceding 12 calendar months and its operating expenses, rents, and taxes, and its net operating income before income taxes and net income after income taxes, which is expected to result if the *License* be granted and exercised or the proposed transaction authorized and consummated, with an explanation of the basis for such estimate; and in *Applications* involving: (Attach Exhibit 120.7 E-2.)

(CFR 41.6:29, 30; BMC Form: No. 72-III E; No. 76 VI)

127.41 *Abandonment*. An explanation in detail of the estimates with respect to the earnings of *Applicant*, and of any system of which it is a part, showing particularly: the total of each class of *Traffic* and revenue therefrom; *Traffic* originated or terminated at points on the line to be abandoned; the amount handled over such line as a bridge; the amount of *Traffic* and revenue therefrom which would be retained by the *Applicant* after the abandonment

and of the net savings; by primary accounts in *Applicant's* and such system's operating expenses, rents and taxes, both incurred upon the line to be abandoned and incurred in transporting such *Traffic* over other lines of the *Applicant* and such system which are to continue to be operated.

(CFR 42.9:3, 14)

RULE 128—EFFECT ON OTHER PERSONS

The effect, if any, upon an *Application* for an *Operating* or *Finance License* of the exercise of the *License*, if granted, or the consummation of the transaction if approved; and particularly:

128.0 *Employees*. The effect of the transaction upon the interests of carrier employees who may be affected thereby and reasonable terms and conditions which are necessary adequately to protect such interests under the provisions of *The Act*.

(CFR 52.2 (d) (1) (v); 52.2 (d) (2) (ii); BMC Form: No. 44, Exhibit D 5)

128.1 *Present Connections*. The amount and revenue therefrom of *Traffic*, and the carriers involved, now interchanged with other carriers and the junction points thereof which would be affected, and the manner in which it would be affected, by the exercise of the *License*, if granted, or by approval and consummation of the proposed transaction.

(CFR 41.6:14; 42.9:6)

128.2 *New Connections*. The names of the connecting carriers and the junction at which such connection would be made, the estimated volume of *Traffic* which would be interchanged, and the amount thereof which is not and cannot be carried by existing carriers, and the facts concerning any agreement, tentative or otherwise, with such carriers covering such interchange with respect to the division of rates or trackage rights in connection with the proposed *Operation*.

(CFR 41.6:14, 24, 26)

128.3 *Competitive Service*. Name and address of every other *Carrier* serving each of the points located upon the proposed new or extended *Operation* having a population of 10,000 or more which are not now served by the *Applicant*, indicating whether or not such other *Carrier* now maintains a *Station* at such point, and the extent, *Traffic*, and territory to and within which each of said other *Carriers* would be competitive with the *Applicant* for *Traffic* originated or terminated at such point.

(CFR 41.6:10, 11, 13, 15, 20)

128.4 *Exemption Applications*. The extent, territory to or within which the *Operation* and transportation sought to be exempted is competitive with transportation by any common carrier by railroad, motor vehicle, water, pipeline, or express company, particularly with respect to the inherent nature of the *Traffic*, special equipment requirements, or the fact that the shipments are in bulk.

(BWC Form: No. 1, Exhibit A I A 1, 2, 3)

128.5 *Security Holders*. The effect of a proposed *Issue* or *Alteration* if any, upon the holders of each class of *Applicant's Securities*, affected and unaffected, or of any obligations which are secured by a pledge of any of *Applicant's Securities*.

RULE 129—JUSTIFICATION

Other *Material Facts* tending to show that the *License* applied for should be granted or the transaction for which approval is sought should be approved, and among other things, that same:

129.1 *Discretion*. Is within the statutory discretion of *The Agency*.

129.2 *Corporate Powers*. Is within *Applicant's* corporate powers and purposes.

129.3 *Appropriate*. Is necessary and appropriate for and consistent with the proper performance by *Applicant* of its duties under the law.

129.4 *Impairment*. Will not impair its ability to perform and discharge such duties.

129.5 *Cost*. Does not impose or entail an excessive, unreasonable or improvident cost or consideration upon *Applicant*.

129.6 *Competition*. Will not unduly or unreasonably restrain competition.

129.7 *Public Interest*. Is required by public convenience and necessity or is compatible or consistent with the public interest, as the provision of *The Act* applicable to the grant of the particular *License* shall require.

(CFR 41.1 (h); 42.1 (e); 52.2 (d); BMC Form: Nos. 4 and 5, Exhibit D; Nos. 12 and 18 V, No. 44, Exhibit D 6, 8; No. 45 V (a), (b); Exhibit D; No. 46 II, Exhibit A; No. 72 IV)

129.8 *Interest of Security Holders*. If an *Alteration* will be in the best interests of each class of *Applicant's* stockholders and of each class of obligations affected by such *Alteration* and not adverse to the interests of any creditor not affected thereby.

129.9 *Temporary Operation*. If for a temporary *Operation* there is an immediate and urgent need therefor not capable of being met by any existing *Carrier* service, that failure to grant *License* may result in destruction of or injury to *Lessor's* properties or interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

ARTICLE 13—MOTIONS

RULE 130—GENERAL REQUISITES

Subject to the provisions of Article 10, a *Party* may *Move* for an *Order*, rule, ruling or *Direction* designed to expedite the progress, consideration or disposition of the *Proceeding*. Such *Motion* may be made orally, on the record, at a pre-hearing conference, an oral hearing, oral presentation or oral argument. If not so made, it shall be made in writing.

(CAB 302.18 (a), (b); FPC 1.12 (a), (b); FTC IX; SEC VI (a))

130.1 Relief. Every *Motion* or *Reply* oral or written shall refer to the Rule of this Article under which it is made and shall describe the particular *Relief* desired.

(CAB 302.18 (b); FPC 1.12 (a))

130.2 Factual Justification. *Material Facts* relied upon to justify the *Motion* or the *Reply* thereto, if of record, should be appropriately documented; if not of record, they should be concisely and accurately stated and the *Motion* or *Reply* verified by one or more *Persons* having knowledge of the *Facts*.

(CAB 302.18 (b))

130.3 Supporting Memoranda. Any *Motion* or *Reply* thereto, may be supported by *Memorandum*.

(FPC 1.12 (a); SEC VI (b))

RULE 131—TO MAKE DEFINITE AND CERTAIN

If a *Pleading* to which a *Responsive Pleading* is permitted is so vague or ambiguous that a *Party* cannot reasonably be required to frame a *Responsive Pleading*, he may *Move* for a more definite statement before interposing his *Responsive Pleading*. The *Motion* shall point out the defects complained of and the details desired. If the *Motion* is granted, and the *Direction* or *Order* is not obeyed within 10 days after *Service* thereof, the *Pleading* to which the *Motion* was directed may be struck or such other *Direction* or *Order* made as is deemed just.

(CR 12 (e); ICC 36 (a), (b))

RULE 132—TO STRIKE

Upon *Motion* made by a *Party* before responding to a *Procedural Instrument* or if no response is permitted by these Rules, within 10 days after *Service* of such *Procedural Instrument* upon him or upon the initiative of the *Hearing Officer* or *The Agency*, at any time, the *Hearing Officer* or *The Agency* may order stricken from any *Procedural Instrument* any insufficient defense or any redundant, immaterial, improper, impertinent or scandalous matter.

(ICC 4 (b); CR 12 (f))

RULE 133—MOTION FOR SUMMARY DECISION

After the *Pleadings* are closed but within such time as not to delay the *Proceeding*, any *Party* may *Move* for a *Summary Decision* upon the *Pleadings*. Upon consideration of such *Motion* the *Hearing Officer* or *The Agency* may take as established uncontroverted *Material Facts* except new *Material Facts* stated in a *Replication*.

133.1 At Close of Proponent's Proof. Upon the close of *Proponent's Proof*, upon direct, if at an *Oral Hearing*, otherwise within 5 days after the close of such *Proof*, any *Party* may *Move* for a *Summary Decision* upon the *Pleadings* and the *Proponent's Proof*. In ruling upon such *Motion* the *Hearing Officer* or *The Agency* may take as established uncontroverted statements of *Material Facts* in the *Pleadings* (except of new matter in *Replications*) of all *Parties* and the *Proof* of the *Proponent*.

(CR 12 (c))

RULE 134—MOTION TO CONSOLIDATE OR JOIN

Upon *Motion* of any *Party* or upon his or its own initiative the *Hearing Officer* or *The Agency* may at any time consolidate or join two or more *Proceedings* which involve a common question of law or fact or may order a joint hearing and determination of any or all of the matters in issue in said *Proceeding*.

(CR 42 (a); CAB 302.12 (a); FCC 1.724 (a); FPC 1.20 (b); SEC XVIII)

RULE 135—SEVERANCE

Upon *Motion* of any *Party* or upon his or its own initiative, the *Hearing Officer* or *The Agency* in the furtherance of convenience or to avoid prejudice, unjust embarrassment, delay, or expense to any *Party* may *Order* separate hearings and disposition of any *Proceedings* wherein two or more *Proceedings* or *Parties* have been joined.

(CR 20 (b), 42 (b))

RULE 136—TO WITHDRAW OR DISMISS

Any *Party* at any time may *Move* to withdraw a *Procedural Instrument* Filed by him or to dismiss any *Proceedings* brought by him.

136.1 Of Appearance. Any *Person* who has entered an appearance in a *Proceeding* may *Move* at any time to withdraw such appearance. Any *Person* who has entered an appearance as a *Practitioner* or representative of a *Party* may at any time *Move* for leave to withdraw as such *Practitioner* or representative.

RULE 137—REPLIES TO MOTION

Within the time provided in Rule 104.1, any *Party* may *Reply* to a *Motion* made by any other *Party*.

(CAB 302.12 (c); .18 (c); FPC 1.12 (c); 1.33 (2))

RULE 139—DISPOSITION OF MOTIONS AND APPEALS THEREFROM

Unless otherwise *Directed* or *Ordered*, for good cause, a *Motion* will be disposed of by *Direction* or *Order* upon the *Motion* and *Reply* thereto and *Memoranda*, if any.

(FCC 1.741; .742; .747)

139.1 Initial Disposition. Initial disposition of *Motions* made prior to the *Initial Decision* by a *Hearing Officer* will be made by such *Hearing Officer*. The initial disposition in all other cases will be made by *The Agency*.

(CAB 302.18 (e); FCC 1.744; FPC 1.12 (b); FTC IX)

139.2 Appeal. A *Direction* by a *Hearing Officer* granting a *Motion* for *Summary Decision* may be *Appealed* by any *Party* except the *Movant* by filing interlocutory *Exceptions* thereto within 5 days after such *Direction*. *Replies* to such *Exceptions* will not be permitted and the *Motion* will be disposed of summarily by *The Agency*. In all other cases, the initial disposition of a *Hearing Officer* is not subject to interlocutory *Appeal* but will be reviewed upon *Exceptions*, if any, to the *Initial Decision* thereafter made upon the merits.

(CAB 302.18 (f); FCC 1.750; FTC IX)

139.3 Reconsideration. *Petitions* for *Reconsideration* of the initial disposition of a *Motion* or of *Decision* upon *Review* by *The Agency* are governed by the same Rule as *Petitions* to *Reconsider* other *Decisions* of *The Agency*.

ARTICLE 14—PETITIONS

RULE 140—GENERAL REQUISITES

This Article contains the Rules governing the content, notice (except constructive notice) of, replies to, and disposition of all *Petitions* for *Relief* other than that obtainable by *Complaint* or *Application*, excluding however *Petitions* for *Reconsideration* or *Rehearing*.

(FPC 1.7 (a))

140.0 Paragraphing. The statements in a *Petition* shall be made in successively numbered paragraphs, the contents of each of which shall be limited to the statement of a single *Material Fact*. The statements in a *Reply* to a *Petition* shall be made in paragraphs which bear the same number as the paragraph of the *Petition* which stated the *Material Fact* which the *Reply* admits, qualifies, conditions, avoids, or denies. If new *Material Facts* are set up in the *Reply*, they shall be stated in separate paragraphs consecutively numbered beginning with the next higher number after the highest number of the *Petition*. A paragraph in either the *Petition* or the *Reply* may be referred to by number in another paragraph thereof and in any subsequent *Procedural Instrument*.

140.1 Parties. The *Petition* or *Reply* thereto shall contain an accurate, unabbreviated designation of the *Person* upon whose behalf it is filed and his status, if any, under *The Act* and in the *Proceeding*, and if in a representative capacity, the capacity in which it is filed. The legal right to file a *Petition* or *Reply*, except in the case of one already a *Party* to the *Proceeding*, will not be presumed but must be established by statement of *Material Fact* which show such right.

140.2 Interested Persons. The name, *Business Unit*, post office address and status under *The Act* of each other *Person* known or believed by the *Petitioner* to have a proprietary or pecuniary interest which may be affected by the grant of the *Relief* sought shall be stated in the *Petition* unless such *Person* are numerous, in which they shall be accurately and definitely described by groups or classes of *Persons*.

140.3 Style and Materiality. Statements of a *Petition* or *Reply* shall be simple, non-legalistic, concise, direct, non-redundant, non-argumentative and shall be made only as to facts (not conclusions) which are relevant and material to the issues involved and shall not be impertinent, scandalous or provocative.

140.4 Exhibit. Only a concise summary of facts, transactions, amounts or statistics shall be stated in the body of a *Petition* or *Reply* and where required or permitted to be specified, the details thereof shall be set forth in an appropriately designated *Exhibit*. Where a writing is relevant and material a summary statement thereof may be made

in the body of the *Petition* or *Reply* and the writing or such portions thereof as are relevant and material made an *Exhibit*. All such details and writings shall be combined into a single *Exhibit* and wherever practical bound in with and as an appendix to the *Petition* or *Reply*. If not practical, such material shall be firmly bound together into a single document, designated as the *Exhibit* to the *Pleading* which it shall accompany. Such *Exhibit* shall be captioned in the same manner as such *Pleading* and on its title page shall contain an index and description of the matters severally contained therein.

140.5 *Adoption by Reference*. Statements in a *Petition* or *Reply* thereto shall not be reiterated in a subsequent paragraph of the *Pleading* but shall be adopted therein by reference.

140.6 *Relief*. The *Petition* must contain a detailed statement of the exact *Relief* prayed which may be in the alternative or of different type. *Damages* must be specifically prayed in the original *Petition* and if not they will be conclusively deemed to have been waived by the *Petitioner* in that and any subsequent *Proceeding*. The *Reply* must specify the extent, if any, that the *Relief* prayed should be granted, conditioned or varied and may suggest an alternative or different type of *Relief* or *Proceeding* as proper or lawful.

140.7 *Memoranda*. A *Petition*, *Reply* or *Replication* may be accompanied by a *Memorandum* in support thereof.

140.8 *Timeliness*. A *Petition* must be filed within the time required by law for the filing of *Complaints* or other *Pleadings* seeking the same *Relief*, and in the absence of statutory limitation shall set forth facts which negate unreasonable delay or laches in the filing thereof.

140.9 *Attestation*. Every *Petition* and a *Reply* to a *Petition* shall be signed in ink by one or more *Practitioners* or by one or more of the *Persons* upon whose behalf it is filed or by an authorized representative thereof, with the address of the signatory given in all cases; but

140.91 If signed by a *Practitioner* it need not be verified since his signature is an affirmation that: he has read the *Pleading*; prior to signature he made due inquiry as to the facts therein stated; he believes the same to be true; there are good grounds therefor; it has not been interposed for delay and he has been duly authorized to file same.

140.92 A *Petition* or *Reply* not signed by a *Practitioner* must be verified by oath or affirmation in judicial form with respect to all the matters and statements set forth as the *Practitioner's* affirmation in Sub-Rule 140.91.

RULE 141—PETITION TO INTERVENE

A *Person* who is not entitled to *Appear* as of right in a *Proceeding* (Rule 160) may file a *Petition* for leave to *Intervene* in such *Proceeding*, which *Petition*, if granted, will constitute and be treated as his *Complaint*, *Application*, *Answer*, or

Protest, as the case may be, under the following Sub-Rules:

(ICC 72 (a); CR 24 (b), (c); CAB 302.15, 302.15 (c) (1); FCC 1.722 (b); FPC 1.8 (b); FTC IX; MC 201.81)

141.1 *Interest*. The *Petition* shall set forth facts which show that the *Petitioner* has a pecuniary interest which is not adequately represented by existing *Parties* and as to which *Petitioner* may be bound by the *Decision* in the *Proceeding* or any other interest of such nature that *Petitioner's* participation in the *Proceeding* will be in furtherance of the public interest or the national transportation policy.

(ICC 72; CR 24 (b); FCC 1.722 (b); FPC 1.8 (b) (2), (3); MC 201.81)

141.2 *Position*. A *Petition* for *Intervention* shall state clearly and unequivocally the position of the *Petitioner* in the *Proceeding* as a complainant, defendant, or real party in interest and whether or not he supports or opposes the *Relief* sought in whole or in part, or if in part, what part, or what different or alternative *Relief* he proposes.

(ICC 72; FCC 1.722 (b); FPC 1.8 (c); MC 201.81)

141.3 *Broadening Issues*. The *Petition* must specifically show in what respects, if any, the granting of the *Petition* will broaden the issues as then made by the *Pleadings*, with a statement of facts which justify such broadening.

(ICC 72 (c))

141.4 *Proponent*. If the position of the *Petitioner* be that of a *Proponent* he shall set forth the matters required of the original *Proponent* in the *Proceeding*, except that instead of repeating the statements made in the *Complaint* or *Application*, *Petitioner* may adopt same by reference to the paragraphs by number thereof in whole or in part, with such amendment, qualification or supplementation as may be deemed relevant and material.

141.41 *Damages*. If *Intervenor* seeks *Damages* as a *Complainant*, the *Petition* must specify in detail the matters set out in Rule 111 and its Sub-Rules.

(ICC 72 (a); MC 201.81)

141.42 *Licensing*. Where a *Petitioner* seeks the grant of a *License* similar to, in addition to or in lieu of the *License* prayed in the original *Application* in the *Proceeding* he shall set forth in the *Petition* all of the information required for an *Application* for such a *License* under the Rules of Articles 12 and 13 hereof, adopting by reference to the paragraphs of original *Application* such statements thereof as he desires to adopt. Facts set forth in the original *Application* should not be reiterated or paraphrased.

141.5 *Opponents*. If the position of the *Petitioner* be that of an *Opponent* he shall set forth the matters required to be set forth in an *Answer*, if to a *Complaint*, or in a *Protest* if to an *Application*, except that instead of reiterating or paraphrasing the statement of an *Answer* or *Protest* already filed in the *Proceeding* he shall adopt the same by reference to the paragraph by number

thereof in whole or in part, with such amendment, qualification or supplementation as shall be deemed relevant and material.

141.6 *Timeliness*. If the *Petition* is not filed within 30 days after the initiation of the *Proceeding* good cause for the delay must be shown and in addition it must be shown that the granting of the *Petition* will not unduly delay the *Proceeding*.

(FPC 1.8 (d))

RULE 142—PETITION TO INVESTIGATE AND SUSPEND TARIFF

Petition seeking an *Order of Investigation* and *Suspension of a Tariff* or *Charge* shall set forth the following information:

(ICC Rule 42 (a); CAB 302.505; FCC 1.590; MC 201.61)

142.1 *Tariff and Charge*. The *Tariff* or *Schedule* sought to be suspended should be identified by name of the publishing carrier or agent, the tariff number of *The Agency* and the specific items or particular provision protested. Similar information with respect to the *Tariff* and *Charge* presently applicable and which the proposed *Tariff* and *Charge* would supersede, together with a concise statement of the effect of the proposed change, which may be supplemented by an *Exhibit* of these details.

(ICC 42; CAB 302.505; FCC 1.590; MC 201.61)

142.2 *Interest*. Facts showing the nature and extent of the *Petitioner's* interest in the *Traffic* involved and the pecuniary effect, if any, of the proposed change upon the *Petitioner*.

142.3 *Unlawfulness*. Facts which tend to show that the involved *Tariff* or *Charge* is unlawful, with reference to the particular section of *The Act* which it is claimed to be violated, and particularly:

142.31 *Unreasonableness*. If claimed to be unreasonable as compared with other *Charges* upon the same article for like transportation or upon other articles of like transportation characteristics, the facts therefor should be stated with reasonable definiteness.

142.32 *Preference or Discrimination*. If *Discrimination* is alleged, the comparable *Charge*, claimed to be *Preferential* and the particular *Person*, place or *Traffic* claimed to be *Preferred*.

142.33 *Uncompensatory Charge*. If it be claimed that the proposed *Charge* is non-compensatory, a comparison of the *Charge* with the cost should be shown (detailed in the accompanying *Exhibit*), with reference to the source, basis and formula upon which the statement of cost is made.

142.34 *Disruption of Rate Structure*. If it be claimed that the proposed *Charge* will injuriously disrupt the rate structure, facts respecting the nature, classification, and history of the proposed *Charge* must be given which tend to show the disruption and its effect upon the public interest.

142.35 *Destructive Competition*. If it be claimed that the proposed *Charge* is

destructive of competition, a concise statement of the existing competition for the *Traffic*, the competitive *Charges* and services, the approximate volume of the *Traffic* carried by the various competitors and the effect of the *Charge* upon the several competitors respectively.

142.9 *Oral Hearing*. A request for an oral hearing upon the *Petition* should be made therein.

RULE 143—PETITION FOR OTHER INVESTIGATIONS

A *Petition* for any general or special investigation authorized under any provision of *The Act* shall show clearly and concisely: The subject matter and the alleged violations, acts or defaults sought to be investigated; the statutory authority for the investigation; the interests of the *Petitioner* in the subject matter and *Facts* which establish the need in the public interest for the investigation.

(FTC IV; CAB 302.206 (a) (b))

RULE 144—EMERGENCY CHARGES

A *Petition* by one or more *Carriers* or by their joint agent who publishes such *Charges*, to establish changes in *Charges* urgently demanded by an immediate emergency shall give the following information:

(CAB 302.303)

144.1 *Proposed Changes*. A concise statement of the proposed changes, with specific reference to the *Tariff* wherein such changes are contained, which *Tariff*, unless otherwise ordered by *The Agency* is to become effective not earlier than 75 days after the filing of the *Petition*.

144.2 *Present Charges*. A statement of the present *Charges* which are proposed to be changed and the general over-all effect thereof.

144.3 *Emergency*. A full and complete statement of the *Facts* which show the immediate need for the proposed *Charges* to become effective.

144.4 *Justification*. A complete statement of the *Facts* which tend to show that the proposed *Charges* are just, reasonable and fully consonant with the national transportation policy and the public interest.

144.5 *Oral Hearing*. Any request for an *Oral Hearing* or an *Oral Argument* should be made in the *Petition*.

RULE 145—PETITION FOR DECLARATORY ORDER

A *Petition* for a declaratory order under Section 5 (d) of the Administrative Procedure Act, in addition to the general requisites of Rule 140, shall set forth the following information:

(CR 57; FCC 1.728; FPC 1.7 (c))

145.1 *Controversy*. If the *Proceeding* be brought for the purpose of terminating a controversy between the *Petitioner* and any other *Person*, it shall set forth fully, distinctly, and fairly the subject matter of the controversy, the right, title, interest, liability or default in-

involved and the respective claims of the *Parties* to the controversy.

145.2 *Removal of Uncertainty*. If the *Petition* be to remove uncertainty it shall set forth in *haec verba* the provision of the statute, *Decision*, *Rule* or regulation, judgment, decree or writing which is involved or a full and complete description of the act, action or failure to act which gives rise to the uncertainty.

145.3 *Relief*. A clear, succinct statement of the *Relief* prayed by the *Petitioner*.

145.4 *Justification*. A clear and succinct statement of the *Material Facts* relied upon to show that the *Relief* should be granted.

145.5 *Persons Affected*. The name and post office address and status under *The Act* of all *Persons* which *Petitioner* knows or believes will be affected by the declaratory order prayed for.

RULE 146—OTHER PETITIONS

A *Petition* for *Relief* which is not covered by Rules 141 to 145, inclusive, in addition to the general requisites of Rule 140, shall give the following information: (ICC 102; FCC 1.21; MC 201.62)

146.1 *Interest*. A clear and succinct statement of the *Material Facts* which show *Petitioner's* interest in the subject matter for the *Relief* sought.

146.3 *Justification*. A concise statement of the *Material Facts* relied upon to establish the *Petitioner's* right to the *Relief* sought.

RULE 147—NOTICE

The *Petitioner* shall give *Notice* (for constructive *Notice* see Rule 154) of the *Filing* of a *Petition* by delivering to the *Persons* respectively described in the Sub-Rules hereof a conformed copy of such *Petition* or by depositing in the United States First Class Mail, with postage prepaid, a conformed copy thereof on or before the day upon which such *Petition* is *Filed* with *The Agency*, properly addressed to:

147.1 *Interventions*. All *Parties* then of record in the *Proceeding* in which *Intervention* is sought.

(FPC 1.8 (f) (1))

147.2 *Investigation and Suspension of Tariff*. The *Carrier* by or for whom the *Tariff* or *Charge* is published or the publishing agent, in the case of agency tariffs published for the account of two or more *Carriers*.

147.3 *Other Investigations*. Every *Person* whose alleged violations, acts or defaults are sought to be investigated.

147.4 *Emergency Charges*. Every State board of a State in which there is located one or more points to or from which the proposed charges will apply and every *Person* who prior to the *Filing* of the *Petition* has given notice to the *Petitioner* of his desire to be notified of the *Filing* of all such *Petitions* for emergency charges.

147.5 *Declaratory Orders*. All *Persons* whom *Petitioner* knows or believes

are *Parties* to the controversy or who will be affected by the grant of the *Relief* prayed.

147.6 *Other Petitions*. All *Persons* whom *Petitioner* knows or believes will be affected by the *Relief* prayed.

147.7 *Certificate*. The original *Petition* shall contain the signed certificate of the *Practitioner Filing* the *Petition*, of the manner in which, the time at which, and the *Persons* upon whom the notice of the *Filing* of the *Petition* was given, and a conformed copy of such certificate shall be attached to or included in all copies of the same are so *Served*. If the *Petition* be not signed by a *Practitioner* the same information with respect to the notice shall be made under oath by the *Person Filing* the same and a conformed copy of such verification attached to or included in all *Service* copies.

RULE 148—REPLIES AND REPLICATIONS

Replies and *Replications* to *Petitions* are governed by Rule 140 and the following Sub-Rules:

148.1 *Who May Reply*. A *Person* entitled to notice under Rule 147 and any other *Person* who by a *Petition* for *Intervention* shows an interest in the subject matter may *File* a *Reply* to a *Petition*.

148.2 *Interest*. Every *Reply* shall state concisely and succinctly the interest in the *Proceeding* of the *Person* upon whose behalf the *Reply* is *Filed*.

148.3 *Statements of Fact*. The *Reply* shall be made in Paragraphs which bear the same paragraph number as the paragraph of the *Petition* which contains the *Material Facts* to which the *Reply* is directed. It shall state the parts, if any, of the *Material Facts* alleged in the *Petition* which are admitted to be true and with respect to all other parts thereof shall specifically qualify, condition, avoid, or deny the statement of the *Petition*. General denials will be treated as admissions.

148.4 *New Matter*. New *Material Facts* may be set up in separately numbered paragraphs of the *Reply* which tend to controvert, qualify, condition or avoid the *Facts* set up in the *Petition* or which tend to show that the *Relief* prayed for in the *Petition* should not be granted.

148.5 *Relief*. A *Reply* in which affirmative *Relief* is sought shall succinctly and fully describe same, together with the *Material Facts* relied upon to support the prayer therefor.

148.6 *Replication*. A *Petitioner* may *File* a *Replication* to, and only to, new matter set up in a *Reply*. The response to such new matter shall comply with the requirements of Rule 148.3 dealing with *Replies*.

148.7 *Oral Presentation*. A *Reply* or a *Replication* may request that the *Petition* and *Reply* be set down for oral hearing or argument or a *Petitioner* who has not filed a *Replication* may make such a request in writing in his *Petition* or following the *Filing* of a

Reply. Any such request should set forth concisely the reasons why it is necessary that the matter be orally heard or argued.

RULE 149—DISPOSITION AND APPEAL

Except as otherwise *Directed* or *Ordered* for good cause or as provided in the Sub-Rules hereof, a *Petition* will be disposed of by a *Direction* or an *Order* upon the *Petition*, *Replies*, *Replications*, *Oral Presentations* and *Memoranda*, if any.

(ICC 72 (e); CAB 302.15 (b) (c) (4); FPC 1.8 (f) (2); FTC IX; SEC XVII (d) (9))

149.1 *Transfer.* Wherever it shall appear that a *Petition* other than one for *Intervention* or for the *Investigation* and *Suspension* of a *Tariff* or for publication of an emergency charge, involves bona fide issues of *Material Fact*, *The Agency* will transfer the *Proceeding* to the formal *Hearing Docket*, in which case the *Proceeding* will be disposed of as if upon *Complaint* and *Answer*.

149.11 *Emergency Charges.* Whenever it shall appear that *Material Facts* have not been shown which justify the publication of any or all the proposed *Charges* *The Agency* will enter an *Order* of *Investigation* and *Suspension* and transfer the *Proceeding* to the *Formal Hearing Docket*.

149.2 *Initial Disposition.* The *Initial Disposition* upon *Petitions* to *Intervene* will be made by the *Hearing Officer* and upon *Petitions* for *Investigation* and *Suspension* of a *Tariff* or *Charge* by the *Suspension Board*. In all other cases the *Initial Disposition* will be made by *The Agency*.

(ICC 72 (e))

149.3 *Appeals.* A *Direction* of a *Hearing Officer* permitting an *Intervention* is not subject to interlocutory appeal but will be reviewed upon *Exceptions*, if any, to the *Initial Decision* of the *Proceeding* upon the merits thereafter made. A *Direction* by the *Hearing Officer* denying a *Petition* to *Intervene* may be appealed by the *Petitioner* by *Filing Interlocutory Exceptions* thereto within 5 days after such denial. *Replies* to such *Exceptions* will not be permitted and the *Appeal-Intervention* shall be decided summarily by *The Agency*; However, in:

149.31 *Suspension Proceedings.* *Appeals* from the *Direction* of the *Suspension Board* granting or denying a *Petition* for *Investigation* and *Suspension* of a *Charge* or *Tariff* will be reviewed by *The Agency* upon written or telegraphic request by either the *Petitioner* or the *Respondent* made within one day following such *Direction*. *Replies* to such request will not be entertained and the request will be decided summarily by *The Agency*.

149.5 *Petitions for Reconsideration.* *Petitions* for *Reconsideration* of the *Initial Disposition* of a *Petition* or of the *Decision* upon *Review* by *The Agency* in *Petition Proceedings* will be governed by the same rules as the *Petitions* to *Reconsider* other *Decisions* of *The Agency*.

ARTICLE 15—FILING AND SERVICE

RULE 150—FILING

The original and the requisite conformed copies of every *Procedural Instrument* permitted to be *Filed* under these *Rules* shall be *Filed* in the office of *The Agency* at Washington, D. C., within the time required for *Filing* under Rule 104 hereof.

RULE 151—METHOD AND TIME OF PERSONAL SERVICE

Whenever a *Direction*, *Order* or *Procedural Instrument* is required to be *Served*, other than by *Constructive Service*, upon any *Person* (Rule 153), such *Service* must be made by delivery of a conformed copy of the same to an adult *Person* in the office, otherwise in the residence, of such *Person*, if any, on or before the date when same must be *Filed*, or either: (1) By depositing a conformed copy thereof, properly addressed, with postage prepaid in the United States First Class Mail at least two days prior to the time when the same, if a *Procedural Instrument*, is required to be *Filed*, provided that if the office or residence of such *Person* is not within one thousand miles of the origin post office, such conformed copy shall either be deposited in the United States Air Mail; or (2) By depositing with the Western Union Telegraph Company a complete telegraphic copy of same, properly addressed, with charges prepaid, prior to the time when the same is required to be *Filed*.

(ICC Rule 22; APA Section 5 (a); CAB 302.7 (a), (b), (c), (d); FCC 1.767 (a), (c); FPC 1.17 (d); FTC VI; MC 201.94; SEC XIV (a), (b))

RULE 152—BY WHOM SERVICE IS MADE

The Agency will *Serve* all *Directions*, *Orders*, *Notices* and other papers issued by it. Every *Procedural Instrument* required to be *Served* shall be *Served* by the *Party Filing* same.

(ICC 22, 34; APA 6 (b); CAB 302.8 (1); FCC 1.577; FPC 1.17 (a), (b); FTC VI; MC 201.93; SEC III (a))

RULE 153—PERSONS WHO MUST BE SERVED

All *Directions*, *Notices*, *Orders* and *Procedural Instruments* shall be *Served* upon all counsel then of record and upon *Parties* who are not represented by counsel, and in addition:

(FCC 1.767 (a) (b); FPC 1.17 (c); MC 201.63; 155)

153.1 *Orders.* An *Order* opening an *Investigation* or an *Order* to show cause shall be *Served* upon the *Respondents* named therein and any *Order* imposing a *Sanction* shall be *Served* upon the *Person* upon which it is imposed, or in either case upon his *Agent*, specially or generally, designated by him or by law to receive *Service* of such *Order*.

(APA 6 (b))

153.2 *Defendants.* *Service* of a conformed copy of the *Complaint* must be made by the *Complainant* upon every *Person* named as a *Defendant*.

(ICC 34, 24 (b))

153.3 *Operative Licenses.* The *Applicant* for a *License* which involves the *Exemption*, grant, modification, extension, enlargement, supplementation, surrender, *Abandonment*, *Transfer* or *Unification of Operations* must serve a conformed copy of the same upon the *Governors* or *State Boards* of every *State* in which any part of the *Involved Operations* are conducted within the time required by Rule 151, and shall also, within one day after receipt of a copy of an *Intervention* in said *Proceeding*, *Serve* a conformed copy of the *Application* upon such *Intervenor*.

(ICC 39; CAB 302.403; FCC 1.527 (d))

153.4 *Securities.* In *Applications* involving the issuance *Alteration* of *Securities* or indentures under which *Securities* are issued or secured, the *Governors* and *State Boards* of all *States* in which the *Applicant* operates.

(ICA 20 (a) (b); 201 (a) (8))

RULE 154—CONSTRUCTIVE SERVICE

The Agency will cause *Notice*, giving the title of the *Proceeding*, the name of the *Applicant* or *Petitioner* and a description of the *Relief* sought to be published in the daily *Federal Register* of *Applications* involving *Operations* and *Petitions* other than *Petitions* to *Intervene* or *Petitions* for the *Investigation* and *Suspension* of a *Tariff*.

154.1 *Railroad Extensions and Abandonments.* *Notice* of an *Application* for a *Certificate of Convenience and Necessity* for the construction, extension or abandonment of a line of railroad as prepared by *The Agency* must be published by *Applicant* for 3 consecutive weeks in some newspaper of general circulation in each county in or through which said line is constructed or operates.

(ICA 1 (19))

RULE 159—PROOF OF SERVICE

The *Complainant*, *Cross Complainant*, *Applicant* or *Petitioner*, respectively, shall include in or attach to the attested *Complaint*, *Cross Complaint*, *Application* or *Petition* the names and post office addresses of all *Persons* upon whom a copy of the *Instrument* was personally delivered or the date upon which it was deposited in the United States Mail and the class of such mail, which certificate shall either be signed by a *Practitioner* or verified by the *Person* who deposited the same in the mail.

159.1 *Other Instruments.* Every other *Procedural Instrument* shall contain or have attached to it a certificate of a *Practitioner* that the same has been duly *Served* as required by these *Rules* upon all *Parties* then of record in the *Proceeding* or the verified statement of the *Person* who *Served* the *Instrument*, setting forth the name and post office address of each *Person* to whom a conformed copy of the *Instrument* was sent, the day upon which it was delivered personally, deposited either in the United States mail and the class of the mail in which it was deposited or with

the Western Union Telegraph Company.

(ICC 22; CR 5 (d); CAB 302.7 (d) (e); FCC 7.87 (b); FPC 1.17 (e); FTC VI; MC 201.95)

ARTICLE 16—PARTIES

RULE 160—WHO ARE PARTIES

The *Parties* to a *Proceeding* consist of the *Complainant*, *Petitioner*, *Defendant*, *Applicant*, *Respondents* and *Intervenors*. (CAB 302.210; 301)

RULE 161—APPEARANCE

A *Person* appears in a *Proceeding* by *Filing* a *Complaint*, *Application*, *Petition*, *Answer*, *Response*, *Notice of Intervention*, or *Petition to Intervene*.

161.1 *Representation*. A *Party* may appear in *Person* or by a *Practitioner*, *Partner* or *Officer* if it be a corporation or unincorporated association.

(APA 6 (a); FTC VII; ICC 71 (a); MC 201.21, 22; FCC 1.711, .712; FTC VII; SEC II (a) (d))

161.2 *Entry of Appearance*. The *Person* who appears for a *Party* under Rule 161.1, at the time of *Filing* the *Procedural Instrument* constituting the appearance of such *Party* under Rule 160.1 shall also file on a single sheet of paper, 8½ x 11 inches in size, an entry of appearance, stating the name and address of the *Party* for whom the appearance is made, the name and address and relation to the *Party* of the *Person* filing the entry of appearance, and if the appearance be special a statement of the particular questions or issues to which the appearance is confined. Such entry of appearance shall also certify that a copy thereof was duly *Served* on the counsel of record of every *Party* of record as of the date of the certificate.

(MC 201.23)

161.3 *Kind of Appearance*. An appearance may be either general with respect to all issues involved or confined to a particular issue or question, in which latter case his entry of appearance shall state the questions or issues to which his appearance is confined; otherwise his appearance will be considered as general.

161.4 *Standards of Conduct*. All *Persons Appearing* must conform to the standards of conduct required by the Code of Ethics of the Interstate Commerce Commission Practitioners. He or a qualified associate or substitute shall be in continuous attendance at any oral hearing if his appearance was general or, if special, at any hearing at which the questions or issues to which his appearance is confined or set or scheduled to be considered, except as he may be otherwise permitted upon the record by the *Hearing Officer*.

161.5 *Absence from Oral Hearings*. If a *Person* by whom the appearance of a *Party* has been entered and the *Party* shall wilfully or contumaciously absent themselves or withdraw from an oral hearing without good cause or without the permission of the *Hearing Officer*, *The Agency* upon motion or of its own initiative may treat such absence or

withdrawal as a default under Rule 168 hereof.

RULE 162—INTERVENTION

Interventions are of two kinds, those of right and those where leave to *Intervene* has been granted under Article 14.

162.1 *As of Right*. Any *Person* having a proprietary or pecuniary interest which may be affected by the granting of the Relief sought may *Intervene* in an *Application Proceeding* involving the exemption, grant, modification, enlargement, supplementation, surrender, abandonment, transfer, or *Unification of Operations* or in *Investigation Proceedings* by *Filing* and *Serving* a *Notice of Intervention* in such *Proceeding* within 15 days after publication of *Notice of the Filing* of the *Application* or *Petition* for or *Order of Investigation* and within 15 days thereafter *Filing* and *Serving* an *Intervention* therein supporting or protesting the *Application*.

(ICC Rule 73; FCA Section 309 (b); CAB 302.302, 302.214, 302.14; 15 (d); FTC IX; MC 201.82; SEC XVII (a), (b), (e))

162.11 *Designation*. The *Intervention* shall be captioned either as a *Proponent Intervention* or as a *Protest*, depending upon the position of the *Intervenor*.

162.12 *Proponent Intervention*. Shall set forth the matters required of the original *Proponent* in the *Proceeding* except instead of repeating statements made by such original *Proponent* he shall adopt the statements in the *Application* or *Petition* by reference to the paragraphs by number, with such amendment, qualification or supplementation as may be deemed relevant and material.

162.13 *New Matter*. *New Material Facts* may be set up in separately numbered paragraphs of the *Intervention* which tend to support, controvert, qualify, condition or avoid the facts set up in the *Application* or *Petition*, or which tend to show that the *Relief* prayed should or should not be granted or the *Order* suggested should or should not be made.

162.14 *Affirmative Relief*. *Affirmative Relief* will not be granted upon an *Intervention* filed as of right. If such *Relief* is desired it must be sought under Rule 141 by *Intervention*.

162.15 *Broadening the Issues*. An *Intervention Filed* as of right may not broaden the issues. If such *Relief* is desired it must be obtained by a *Petition for Intervention Filed* under Rule 141.

162.2 *Public Intervenors*. Any *Agency* of the United States, any State Board and any Bureau of *The Agency* with the approval of the *General Counsel of The Agency*, may *Intervene* as of right within 15 days after the publication of the *Notice of the Filing of the Application, Petition* or *Order* by *Filing* and *Serving* a *Notice of Intervention* if within 30 days after the publication of said *Notice* it shall *File* an *Intervention* setting forth the matters and in the form required by Sub-Rules 162.11-162.15, inclusive.

(SEC 17 (a))

RULE 163—JOINT PARTIES

Two or more *Persons* may join in one *Complaint*, *Application*, or *Petition* if they claim or seek *Relief* jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the *Proceeding*. Two or more *Persons* may be joined as *Defendants* or *Respondents* if there is asserted against them jointly, severally, or in the alternative, any claim or prayer or suggestion of *Relief* in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences, and if any question of law or fact common to all of them will arise in the *Proceeding*. A *Proponent* or *Opponent* need not be interested in obtaining or defending against all of the *Relief* which is sought. (Identical with CR 20 (a); ICC 27 (b), (c); 48; FPC 1.6 (c); MC 201.53)

163.1 *Necessary Parties*. Except as to a *Person* constituting a class (Rule 166), *Persons* having a joint interest shall be made *Parties* and joined on the same side as *Proponents*, *Defendants* or *Respondents*. When a *Person* who should join as a *Proponent* he may be made an *Opponent* or in *Application* or *Petition Proceedings* an involuntary *Proponent*.

(CR 19 (a))

163.2 *Misjoinder and Nonjoinder*. *Misjoinder of Parties* is not ground for dismissal of a *Proceeding* or denial of the *Relief* sought. *Parties* may be dropped or added by order of *The Agency* on motion of any *Party* or of its own initiative at any stage of the *Proceeding* and on such terms as are just. Any claim against a *Party* may be severed and proceeded with separately.

(CR Rule 21)

RULE 164—SUBSTITUTION OF PARTIES

Upon motion or of its own initiative, *The Agency* upon finding that a *Party* has died, become incompetent, or has transferred an interest, may substitute the successors or representatives or transferee for the original *Party*, provided that a claim or prayer for *Relief* under an *Application* or *Petition* shall not be transferable unless the interest of the original *Applicant* or *Petitioner* which gave rise to the claim or prayer shall be transferred.

(CR 25 (a), (b), (c); CAB 302.10; MC 201.32)

164.1 *Public Officer*. *The Agency* upon motion of the successor to an officer of the United States, the District of Columbia, the Canal Zone, a Territory, insular possession, a State, county, city or other governmental agency who was a *Party* to any *Proceeding*, where it finds that during the pendency thereof such officer has died, resigned or otherwise ceased to hold such office, may substitute such successor for the original *Party*.

(CR 25 (d))

RULE 165—SEVERANCE OF PARTIES

The Agency upon motion or of its own initiative and upon finding that sepa-

rate hearing or disposition is desirable or necessary for the expedition of a *Proceeding* or to prevent a *Party* from being embarrassed, delayed or put to expense because of a joinder of *Parties* or of *Proceedings*, will sever the *Parties* and/or *Proceedings* as justice shall require.

(CR 20 (b); 21)

RULE 166—CLASS REPRESENTATION

Where the *Person* constituting a class are so numerous as to make it impracticable to make them individual *Parties*, such of them, one or more, as will fairly insure the adequate representation of all, on behalf of all, may file a *Complaint*, *Application* or *Petition* or be made *Defendants*, or *Respondents* to a *Complaint* or *Petition* when the character of *Relief* sought by or against the class is joint or common.

(CR 23 (a))

RULE 167—AGENCY REPRESENTATION

A joint agent for two or more *Persons* or an association of a number of *Persons* having a common status under *The Act* and a common interest, the protection or defense of which is within the scope of the agent's duty or within the scope of the objectives of the association, may file a *Complaint*, *Application*, or *Petition*, or may be made a *Defendant* or *Respondent* in any *Proceeding* affecting the common interest or *Relief* sought with respect thereto.

RULE 168—DEFAULT

Failure or refusal of a *Party* to plead, appear and *Produce Proof* in the manner, at the time and places required by these Rules may be deemed by *The Agency* as a waiver of any claim or prayer for *Relief* or of any defense, protest or objection to the *Complaint*, *Application* or *Petition* and *The Agency* upon motion or of its own initiative may dismiss the *Proceeding* insofar as it was instituted by such *Party* and may strike from the appearance docket the appearance of such *Party* who thereafter will not be permitted to participate in the *Proceeding*, provided that nothing in this Rule will relieve a *Proponent* from establishing the facts required by *The Act* to be found by *The Agency* as the basis for the granting of the action sought.

(CAB 302.208; FCC 1.508; SEC III (d))

RULE 169—DOCKETING

The Secretary of *The Agency* will maintain a separate appearance docket file in which the entries of appearance of each *Party* will be filed in the order of their receipt.

(FCC 1.711; FPC 1.20 (e))

ARTICLE 17—DEFENSIVE PLEADINGS

RULE 170—NATURE AND PURPOSE

Except to the extent that the *Material Facts* alleged in a *Complaint*, *Application* or an *Order of Investigation* are respectively denied, explained, qualified, conditioned or avoided by *Answer* of *Defendant*, *Response* of the *Respondent*, or *Protest* of the *Protestant*, such *Material Facts* may be treated by *The Agency* as true unless the entire record otherwise

requires. The purpose of the defensive pleading is primarily to define the issues of *Material Fact* which it will be necessary to determine in the *Proceeding*.

(ICC 19)

RULE 171—ANSWER

The *Defendant* shall *Answer* the *Complaint* within 30 days after *Filing* thereof and include therein his response to any amendments or supplements to the *Complaint* which have been *Filed* within 20 days after *Filing* of the *Complaint*. *Answers* to amendments or supplements to the *Complaint* *Filed* more than 20 days after the *Filing* of the *Complaint* shall be *Filed* within 20 days after such amendments or supplements were *Filed*. The *Answers* are subject to the following Sub-Rules:

(ICC 35, 49)

171.1 *Statement of Defense*. The *Answer* shall be confined to clear and concise statements of *Material Fact* (not legal conclusions) with redundancy or argument. Such statement shall be made in separate paragraphs, under the paragraph number of the *Complaint* to which they are in response. It shall state which, if any, of the *Material Facts* alleged in such paragraphs of the *Complaint* are true, and with respect to all other *Material Facts* shall specifically qualify, condition, or avoid or deny the statement thereof made in the *Complaint*. General denials will be treated as admissions.

(CAB 302.6; FCC 1.583, 1.589; FPC 1.9 (a); FTC VIII (a); MC 201.55)

171.2 *New Matter*. New *Material Facts* may be set up in separately numbered paragraphs of the *Answer* if they tend to controvert, qualify, condition, explain or avoid the facts set up in the *Complaint* or if they tend to show that the *Relief* prayed for should not be granted or that in lieu of such *Relief* other or different *Relief* should be granted.

(ICC 49; CR 8 (b), (c))

171.3 *General Admission*. The *Defendant* may admit, for the purposes of the *Proceeding* only, that the *Material Facts* alleged in the *Complaint* are true but deny that such *Facts* entitle *Complainant* to the *Relief* sought or to any *Relief*, in which case the *Proceeding* will be determined summarily upon *Complaint* and *Answer*, together with any memorandum *Filed* by any *Party* within 20 days after such *Answer* is *Filed*.

(FTC VIII)

RULE 172—SATISFACTION OF COMPLAINT

Upon *Filing* and *Service* of a stipulation signed by the *Complainant* and any *Defendant* that such *Defendant* has satisfied the *Complaint* against him, and setting forth when the manner in which such satisfaction was made, the *Complaint* with respect to such *Defendant* will be dismissed.

(ICC 37; CAB 302.6; FPC 1.9 (h); MC 201.54)

RULE 173—CROSS COMPLAINTS

A *Defendant* may *File* and *Serve* with or as a part of his *Answer* a *Cross Complaint* against any *Party* for a *Sanction*,

the right to which arises out of the subject matter of the *Complaint*; which *Cross Complaint* will be governed by the provisions of Article 11 as if it were an original *Complaint*.

(ICC 35 (b); CR 13; FCC 1.587; FPC 1.9)

RULE 174—RESPONSE

A *Respondent* in any *Investigation Proceeding* may, and if required by the *Order of Investigation* shall, *File* and *Serve* a *Response* to such *Order* within 20 days after *Service* thereof. Such *Response* shall be confined to clear and concise statements of *Material Fact* (not legal conclusions) without redundancy or argument. It shall respond in separate paragraph, under the paragraph number of the *Order*, to each statement or tentative statement of *Material Fact* in the premises of such *Order*. It shall state which, if any, of such *Facts* are true and with respect to the other *Facts* shall specifically qualify, condition, avoid or controvert the same. General denials will be treated as admissions.

174.1 *New Matter*. New *Material Facts* may be set up in separately numbered paragraphs of the *Response* if they tend to controvert, qualify, condition, explain or avoid the *Material Facts* stated in the premises of the *Order*.

174.2 *General Admission*. The *Respondent* may admit for the purposes of the *Proceeding* only, that the *Material Facts* stated in the premises of the *Order* are true but deny that such *Facts* authorize or justify the making of a *Rule* or the imposition of any *Sanction* against him. If all *Respondents* join in such a general admission, the *Proceeding* will be determined summarily upon the *Order of Investigation*, the *Responses*, and such memoranda as are *Filed* by any *Party* within 20 days after such *Response* is filed; otherwise, *The Agency* may sever the *Proceeding* with respect to such *Respondent* and summarily determine same, or may make such other *Order* as shall be reasonable and just.

RULE 175—PROTESTS OF APPLICATIONS

The *Petition to Intervene* (Rule 141) of a *Protestant* who has been granted leave to *Intervene* will constitute his protest. An *Intervenor* as of right who has *Filed* and *Served* the *Notice of Intervention*, pursuant to Rule 162.1, within 15 days thereafter may *File* and *Serve* a *Protest* of an *Application*.

175.1 *Content*. Every *Protest* shall specify the statements, if any, of *Material Facts* set out in the *Application* in paragraphs numbered to accord with that of the paragraph in which such *Facts* are stated, which are admitted for the purposes of the *Proceeding* to be true, and shall specifically controvert, qualify, condition, explain or avoid all other statements of *Material Facts* therein.

175.2 *New Matter*. New *Material Facts* may be set up in separately numbered paragraphs of the *Protest* which tend to controvert, qualify, condition, explain or avoid the *Facts* set up in the *Application* or which tend to show that the *Relief* prayed should not be granted.

(FPC 1.10 (a)-(d))

RULE 176—PROTESTS OF TENTATIVE VALUATIONS

Any Person to whom Notice of a tentative valuation has been given pursuant to Section 19a (h) of *The Act* or who has been granted leave to *Intervene* in the *Proceeding* within 30 days after such Notice may File a Protest thereof.

176.1 *Content.* A Protest of a tentative valuation shall contain a concise statement of the essential elements of Protest with particular reference to the matters in the tentative valuation concerning which Protest is made and shall include a statement of the changes therein desired by Protestant. When practicable, each object of Protest should be set up as a separate item in a separately numbered paragraph. Each item of Protest against land values or areas must state the valuation section and zone on the Commission's maps in which the land is located. When Protestant claims that property owned or used has been omitted, a full description of such property and its location must be included in the Protest.

(ICC Rule 41; FCC 1.592)

RULE 177—REPLICATIONS

Any Proponent in a *Proceeding* may File a *Replication* denying, explaining, qualifying, conditioning or avoiding new *Material Facts* set up in a *Defensive Pleading* within 10 days after the pleading containing such new matter is Filed.

177.1 *Final Pleading.* Unless otherwise Directed or Ordered, solely upon the initiative of the Hearing Officer or The Agency, no Reply to a *Replication* will be permitted. However, *Material Facts* for the first time raised in the *Replication* will not be taken as true unless otherwise established by competent Proof.

RULE 179—DEFAULT

All Persons who admit or who fail specifically to controvert, explain, qualify, condition or avoid statements of *Material Fact* in an *Application* or tentative valuation or statements of new *Material Facts* set up in a *Defensive Pleading*, except for good cause shown, will not thereafter be permitted to produce Proof in contravention of such *Material Facts*.

ARTICLE 18—PROCESSING

RULE 180—DOCKETING

Upon receipt by the Secretary, a Complaint, Application or Petition, if in substantial consonance with *These Rules*, will be given an appropriate docket number and assigned for processing to the appropriate Bureau as provided in This Article and the Parties Filing the same so advised; otherwise, it will be returned to such Party with a statement of the reasons for such action. All *Procedural Instruments* thereafter Filed in the *Proceeding* thus commenced, will be Filed in such docket and referred to the Bureau to which such *Proceeding* has been assigned for handling.

RULE 181—ASSIGNMENT

All Reports, Decisions, Orders and Notices of The Agency will be Served by the Office of the Secretary. All com-

munications, including *Procedural Instruments* received by the Secretary relating to *These Rules* will be handled by the Secretary, or, in his discretion, referred to the Legislative and Rules Committee. All other communications received by the Secretary will be assigned to the several offices for initial processing as follows:

181.1 *Administrative Matters.* Communications relating to public relations, budget and fiscal matters, personnel, stenography, and supplies and publications, will be assigned to the Office of Administration for handling by the Managing Director, Budget Officer, Personnel Director, Chief of Section of Stenography and Purchasing Agent, as respectively provided in Rule 41 and Sub-Rules 41.0 to 41.4 inclusive.

181.2 *Law and Enforcement.* All communications and documents relating to legal opinions or advice, court proceedings, inquiry into violations of provisions of *The Act* and *Orders of The Agency*, safety enforcement, motor carrier enforcement, other enforcement or discipline of Practitioners, will be assigned to the Office of Law for handling by the General Counsel, Associate Counsel, Director of Inquiry and attorneys as respectively provided in Rule 48 and Sub-Rules 48.0 to 48.5 inclusive.

181.3 *Rulemaking or Investigations.* All Communications or Documents relating to Proposal for or Proposed Rulemaking or Investigation, will be assigned to the General Counsel and the Directors of the several Bureaus for Consideration and to specific Bureaus for Recommendation as follows:

181.31 *Office of Law—Enforcement.*

181.32 *Bureau of Traffic.* If they involve Tariffs, Rate-Making Agreements or Charges.

181.33 *Bureau of Operations.* If they involve classification of Carriers, Operating Authority, Insurance, Service, Locomotive inspection, railroad or motor carrier safety, accident investigations, hours of service, or explosives and dangerous articles.

181.34 *Bureau of Finance and Statistics.* If they involve Carrier annual or other reports or statistics, cost finding, interlocking officers, Unifications of Carriers, Issuance, Alteration of Securities, or corporate Reorganizations.

181.35 *Bureau of Accounts and Valuation.* If they involve Accounts, Accounting or Valuation.

181.4 *Charges.* All communications and documents relating to orders of Investigation, Rate Making Agreements and Charge Complaints will be assigned to the Director of the Bureau of Traffic for Reference as provided in Rule 71.3; those relating to Voluntary Reparation and Released Rates will be assigned to the Assistant Director of the Bureau of Traffic for initial handling under Rule 42.3; those involving Fourth Section Applications will be Referred Directly to the Fourth Section Board under Rule 37.7 and those involving Petitions to Investigate and Suspend Tariffs, to the

Suspension Board under Rule 37.8. Orders of Investigation and Suspension will be assigned to the Director of the Bureau of Traffic for Reference to the Assistant Director of Charges Hearings, the Associate Director, Regional Hearings, or the Joint Board as provided in Rule 71.32; those involving rail, water, pipe, motor or forwarder Tariffs will be Referred to the Assistant Director or Branch Chief as provided in Rules 42.1 to 42.26.

181.5 *Operations.* Communications and documents relating to Proceedings of which the Bureau of Operations has jurisdiction will be assigned to the Director of the Bureau of Operations and Referred by him as provided in Rule 71.4; all other communications or documents involving Operations will be assigned for handling or Reference by the Assistant Director, Director of Locomotive Inspection or Branch Chiefs as provided in Rules 43.3 to 43.9, inclusive.

181.6 *Finance Matters.* Communications or documents relating to Proceedings of which the Bureau of Finance has jurisdiction, will be initially assigned to the Director of that Bureau and by him Referred as provided in Rule 71.5; all other communications and documents relating to matters of which such Bureau has jurisdiction will be handled by the Director, Assistant Director, or a Section Chief thereof as provided in Rules 44.1 to 44.9, inclusive.

181.7 *Accounting and Valuation.* All communications and documents relating to Proceedings arising out of matters of which the Bureau of Accounts and Valuation has jurisdiction, will be assigned initially to the Director of that Bureau for Reference by him as provided in Rule 71.6.

RULE 182—PARTICIPATION IN PROCEEDINGS BY BUREAUS

Officers and employees of The Agency, except Hearing Officers, may actively participate under the direction of the General Counsel in any Proceeding in which The Agency or any Bureau or office thereof has Filed an Intervention. Participation in all other Proceedings by such officers or employees is limited as follows:

182.1 *Recommendation.* The head of any office or Bureau may File recommendations respecting any proposal for or proposed Rule Making or Investigation with the Director of the Bureau to which the same has been assigned for recommendation to a Division as provided in Rule 181.3. The Director of the latter Bureau will transmit these recommendations along with his own to the appropriate Division.

182.2 *Memorandum.* Within 10 days after a Pleading has been assigned to a Bureau for Reference as provided in Rules 181.4 to 181.7, inclusive, the Director of such Bureau may File and Serve a written memorandum with respect thereto which shall become a part of the Record in such Proceeding. The author of such memorandum may be cross-examined with respect to statements of Fact or of opinion, which state-

ment may be rebutted by any *Party*. (Rule 225)

182.3 *Intervention*. The General Counsel, upon his own motion or upon the request of the Director of any Bureau may *File* and *Serve* an *Intervention* upon behalf of any office or Bureau of *The Agency* subject to the same provisions and Rules as *Interventions* by other *Persons*.

182.4 *Institution of a Proceeding*. The Director of a Bureau or the General Counsel is authorized to *File* and *Serve* a *Petition* for the institution of a *Proceeding* which involves any matter within the scope of the duties of his office or Bureau.

RULE 183—INFORMAL PROCEEDINGS

The Director of the Bureau of Traffic shall Refer to the Charges Board any *Proceeding* assigned to him for *Reference* under *These Rules* which in his opinion should be handled informally with the *Parties*.

183.1 *Tentative Decisions*. Whenever the Charges Board, after mediation between the *Parties* in a *Proceeding Referred* to it under this Rule is unable to bring them into agreement, it shall investigate informally with respect to the *Material Facts* in dispute and *File* and *Serve* upon the *Parties* a tentative *Decision* which, if no objections are *Filed* thereto within 30 days thereafter, shall become the *Final Decision of The Agency*.

183.2 *Formal Hearing*. Any *Party* to such *Proceeding* within 30 days after the *Filing* of a tentative *Decision* under Rule 183.1 may *File* and *Serve* verified objections thereto which shall specify the finding alleged to be erroneous. Upon the *Filing* of such objection, the Charges Board will proceed to *Hear* such *Proceeding* in the manner provided by *These Rules*, but with respect only to the issues raised by such objection, all other findings of the tentative *Decision* being taken as agreed to by the *Parties*.

ARTICLE 19—FORMULATION OF ISSUES

RULE 190—STATEMENT BY PARTIES

Except as otherwise *Directed* by the *Hearing Officer* with notice to all *Parties*, on or before 40 days after the *Filing* and *Service* of the *Complaint, Application, Petition* or *Order* instituting a *Proceeding*, each *Party* may, and if *Directed* by the *Hearing Officer*, shall *File* and *Serve* without comment or argument, a concise statement of the *Material Facts* which he believes to be in issue and his position with respect to each.

190.1 *Failure to File*. If any *Party* shall fail to comply with the *Direction* of the *Hearing Officer* to *File* and *Serve* such a statement, the *Hearing Officer* in his discretion, may deny him the right thereafter to object to the *Definition* of *Issues*. (Rule 193)

RULE 191—DISCOVERY

It is the duty of each *Party* and each *Practitioner* to make available to *Adversary Parties* *Evidence* in their possession as follows:

191.1 *Interrogatories to Parties*. The *Hearing Officer* may *File* and *Serve* upon any *Party*, and any *Party* may *File* and *Serve* upon any *Adverse Party* written interrogatories to be answered by such *Party*, or if not an individual by an authorized officer or agent, at any time after 20 days following the *Filing* and *Service* of the *Initial Pleading* in the *Proceeding*. Such interrogatories shall be answered separately and fully in writing under oath, shall be signed and shall be *Filed* and *Served* within 10 days after *Service* thereof. Within 5 days after *Service* of interrogatories, the *Persons* to whom the interrogatories are directed may *File* and *Serve* objections thereto to which the interrogating *Party* may *Reply* within 5 days. Answers to interrogatories to which an objection is not sustained shall be made, *Filed* and *Served* within 5 days after the *Officer's Direction* with respect thereto is *Filed* and *Served*. *Interrogatories* may relate to any matters which can be inquired into under Rule 234 and the provisions of Rule 234.4 are applicable for the protection of *Parties* to whom interrogatories are *Directed*.

(Compare CR 33)

191.2 *Inspection and Copying*. Upon *Motion* of any *Party Filed* and *Served* showing good cause therefor, and subject to Rule 254.4, the *Hearing Officer* may: (1) *Direct* any *Party* to produce and permit the inspection and copying or photographing by or upon behalf of the moving *Party* which constitute or contain *Documentary* or *Autoptic Evidence*, which is not privileged and relates to any of the matters within the scope of the examination permitted by Rule 254 and which are in his possession, custody or control; or (2) *Direct* any *Party* to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying or photographing the property or any designated object or operation thereon within the scope of examination permitted by Rule 254; at such time and place and upon such reasonable and just terms and conditions as shall be fixed in said *Direction*.

(Compare CR 34)

191.3 *Request for Admission*. A *Party* may *File* and *Serve* upon any other *Party* a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with such request or the truth of any relevant *Facts* set forth in said request. Each of the matters of which an admission is requested shall be deemed admitted unless, within 10 days after *Service* thereof, the *Party Files* and *Serves* either (1) A sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why we cannot truthfully admit or deny those matters, or (2) Written objections with good cause therefor why he should not be required to make the requested admissions. The requesting *Party* may *Reply* to such within 5 days. The objecting *Party* may *File* and *Serve* a sworn answer to such request within 5 days after the *Hearing Officer* shall have over-ruled such objec-

tions. A denial shall fairly meet the substance of the requested admission and shall specify so much thereof as is true and deny only the part that is untrue. Any admission made under this Rule is for the purpose of the *Proceeding* only and neither constitutes an admission for any other purpose, nor may be used in any other *Proceeding*.

(CR 36; CAB 302.212; FTC XIII; MC 201.65)

RULE 192—PREHEARING CONFERENCE

The *Hearing Officer* on his own motion or upon the motion of any *Party*, (which need not be served) may make and *Serve* a call for *Conference of Parties* or *Counsel* for the purpose of formulating, clarifying, or simplifying issues, *Stipulating* respecting *Material Facts* or *Method of Proof*, number of *Witnesses*, or any other matter designed to facilitate or expedite the *Proceeding*, to be held at the time and place specified in such call.

(APA 5 (b); ICC 68; CR 16; CAB 302.211, 302.23, 302.33, 302.321; FCC 1.813; FPC 1.18; FTC VIII (a))

192.1 *Limitation of Issues*. Following such *Conference*, the *Hearing Officer* will make and *Serve* a *Direction* reciting the actions taken thereat, amendments allowed to the *Pleadings, Stipulations* as to any of the matters considered, and limiting the issues to those not disposed of by *Admissions* or *Stipulations*. Such *Direction* thereafter will control the course of the *Proceeding* except as it may be modified to prevent injustice. *Stipulations* agreed to at such *Conference* will be binding upon the *Parties* thereto and upon all other *Parties* who had notice of the *Conference* and without good cause failed to participate therein.

(CR 16; ICC 68 (c); CAB 302.23 (b); FPC 1.18 (d) (e); MC 201.137; SEC III (e))

RULE 193—DEFINITION OF ISSUES

In *Proceedings* where no *Prehearing Conference* is held under Rule 212, the *Hearing Officer*, within 20 days after the close of the *Initial Pleading*, will make and *Serve* a tentative *Definition* of the *Issues* which if no objections thereto are *Filed* and *Served* within 10 days, will become final and thereafter will control and limit the course of the *Proceeding* unless subsequently modified to prevent manifest injustice.

193.1 *Objections to Definition*. Any *Party*, within 10 days after *Service* of said tentative *Definition of Issues*, may *File* and *Serve* objections thereto specifying the errors therein complained of and setting forth the particular *Issues* desired to be stated. *Replies* to said objections are not permitted unless the *Hearing Officer* so directs. The *Hearing Officer* will promptly rule upon such objections and make and *Serve* a final *Definition* of the *Issues*, which will have the effect provided in Rule 213.

193.2 *Exceptions*. No interlocutory *Appeal* will be allowed to the final *Definition of Issues* as provided in Rules 213 and 213.1. Exceptions thereto may be *Filed* and *Served* as provided in Rule 284.

(ICC 68 (d); CAB 302.23 (b); FPC 1.725 (a) (b))

RULE 194—SUMMARY DECISIONS

If upon *Definition of Issues*, it appears either (a) That upon undisputed *Material Facts* the disposition of the *Proceeding* is governed by statute, or binding precedent or rule, administrative or judicial; or (b) That the only matter in dispute is as to the ultimate inference as to the *Facts in Issue*, to be drawn from other *Material Facts*, the existence or non-existence of which is not in dispute; the *Hearing Officer* shall decide the *Proceeding* summarily as provided in Article 30.

194.1 *Motion*. *Motions* for such a *Decision* and *Replies* thereto shall be Filed and Served as provided in Rules 164 and 168.

194.2 *Direction to Show Cause*. If no such *Motion* be Filed and Served, the *Hearing Officer* before making the *Finding* provided in clause (a) or (b) of Rule 194, shall enter and *Serve* a *Direction* requiring all *Parties* within such time as shall be fixed in said *Direction*, not less than 10 days, to show cause why such *Finding* should not be made.

194.3 *Reply to Direction*. Any *Party* within the time so fixed may respond to such *Direction* by a concise statement, argument, and citation of authority in support of or in opposition to the making of such *Finding*. No *Replications* to such *Replies* are permitted.

194.4 *Decision and Appeal*. Any such *Decision* will be subject to Article 28.

RULE 195—ALIGNMENT OF PARTIES

In the final *Definition of Issues* (Rule 193), the *Hearing Officer* will align the *Parties* between *Proponents* and *Opponents*. Where the interest of two or more *Proponents* or two or more *Opponents* are adverse to each other, the *Hearing Officer* shall align the *Parties* into three or more sides to give effect to such diversity of interest. Such alignment will govern all subsequent *Proceedings* including introduction of *Proof*, cross-examination of *Witnesses*, *Briefs*, and *Oral Arguments*. It may be modified for good cause at any time by *Direction* of the *Hearing Officer* prior to the *Initial Decision* or by order of *The Agency* thereafter.

Chapter Two—Hearing and Decision

ARTICLE 20—PROOF

RULE 200—SOURCES OF PROOF

A *Material Fact* may be *Proved* by either or both an *Assumption* (Article 21) or *Evidence* (Articles 22, 23 and 24 *infra*).

RULE 201—BURDEN OF PROOF

Except as statutes otherwise provide, the *Proponent* of a *Rule* or *Order* shall have the *Burden of Proof* from whom it never shifts.

(97 U. S. 237; APA 7 (c))

201.1 *In Complaint Proceedings*, it rests upon *The Complainant*.

(FTC XVIII; 232 Mass. 188; 122 N. E. 310, 238 U. S. 11)

201.2 *In Application Proceedings*, it rests upon *The Applicant* to prove *Facts*

requisite for Findings required as a predicate for approval or authorizing of the proposed transaction.

201.3 *In Investigations of Charges* involving the lawfulness of existing carrier *Charges* or of proposed changes therein, it rests upon a *Party* who alleges either that the existing *Charges* are in any respect unlawful or alleges that proposed *Charges* are just, reasonable and lawful.

(CAB 302.506; ICC 15 (3) (7) (9), 216 (g), 218 (c), 307 (d), 370, 406 (e); M. C. 201.122)

201.4 *In Investigations of matters* other than *Charges*, or in *Ex Parte Proceedings*, it rests upon the *Party* who proposes a new *Rule* or *Order* or of any change in an existing *Rule* or *Order*, to prove the lawfulness, necessity and propriety thereof.

201.5 *In Other Petitionary Proceedings*, it rests upon *Petitioner* to show good cause for the exercise by *The Agency* of any statutory discretion.

201.6 *In Valuation Proceedings*, it rests upon *Protestant* to show that any statement, finding, appraisal, or valuation made in a tentative valuation is unlawful.

(ICC 16 (a) (h))

201.7 *In Making Affirmative Defenses*, a *Party* has the *Burden of Proving* the *Facts* essential to the establishment thereof.

(236 U. S. 397)

201.8 *In Making a Cross Complaint*, a *Party* has the *Burden of Proving* each of the essential allegations thereof.

(329 Mo 527, 92 ALR 641)

RULE 202—BURDEN OF PRODUCING EVIDENCE (GOING FORWARD)

The *Burden to Produce Evidence* at any particular state of *The Proceeding*, is upon the *Party* against whose contentions the *Order* would be made if no further *Evidence* were introduced except:

(240 U. S. 632)

202.1 *Control of Evidence*. The *Burden of Producing Evidence* is upon a *Party* who has peculiar knowledge or control thereof.

(139 U. S. 560)

202.2 *Investigations or Ex Parte Proceedings*. The initial *Burden to Produce Evidence* is upon the *Respondents*, if any, otherwise, upon the *Carrier Parties* to *The Proceeding*, except as otherwise provided by *Order of The Agency*.

RULE 203—RIGHT TO OPEN AND CLOSE

The *Party* who has the *Burden of Proof*, has the right and the duty to open and close the *Production of Proof*.

(FCC 1.842; FPC 1.20 (f); ICC 71)

RULE 204—ORDER OF PROOF

Unless otherwise *Directed* (Rule 235) the *Parties* in the order set out in the Sub-Rules hereof, shall submit *Proofs* in support of their respective positions, which may consist of any of the following: (1) a *Request* that a specified *Assumption* be made; (2) *Verified Statements* of *Direct Testimony* and *Documentary Evidence* identified therein

(Rule 232); (3) *Depositions* taken by any *Party* (Rules 232-234); (4) answers to interrogatories or to demands for *Admissions* made upon an *Adversary Party* (Rule 191).

(ICC 51; M. C. 201.152)

204.1 *Proponents' Proof in Chief*. Within twenty days after final *Definition of Issues*, *Proponents* shall *File* and *Serve Direct Testimony* of all their *Witnesses* in the form of either *Verified Statements* or *Depositions*, together with all *Exhibits* and *Documentary Evidence* which they propose to offer in chief.

204.2 *Opponents' Proof in Chief*. Within thirty days after disposition of *Preliminary Motions* (Sub-Rule 204.5) if any, otherwise, within thirty days after submission of *Opponents' Proof in Chief*, *Opponents* shall *File* and *Serve* their *Direct Testimony* of all their *Witnesses* in the form of either *Verified Statements* or *Depositions*, together with (1) all *Exhibits* and *Documentary Evidence* which they propose to offer in chief, and (2) if there be no *Oral Hearing* (Rule 235) their cross examination of *Proponents' Witnesses* in chief (Sub-Rule 252.8);

204.3 *In Proponents' Rebuttal*. Where no *Oral Hearing*, *Proponents*, within thirty days after disposition of *Preliminary Motions* (Sub-Rule 204.5) if any, otherwise, within thirty days after submission of *Opponents' Proof*, shall *File* and *Serve* any *Proof* in *Rebuttal* thereof;

204.4 *In Other Rebuttal Where No Oral Hearing*. If and only if the *Rebuttal Proof* submitted by *Proponents* under Sub-Rule 204.3 consists of new matter, *Opponents*, within fifteen days after the submission thereof, may *File* and *Serve Proof* in *Rebuttal* of such new matter (and no other) which may consist of any of the *Documents* described in Rule 204. No further *Proof* will be received from any *Party* except as may be permitted by an *Order* made under Rules 205, 265 or 286, *infra*;

(I. C. C. 51; M. C. 201.154)

204.5 *Preliminary Motions*. Any *Party*, within ten days after the submission of the *Proof* of an *Adversary Party* under the preceding Sub-Rules hereof, may *File* and *Serve* any of the following *Motions*: (1) to strike inadmissible, impertinent, or scandalous matter therefrom (Rule 182), (2) for Summary Adjudication (Rule 185), (3) to inspect or copy data underlying such *Proof* (Rules 246 to 248 inclusive), (4) to cross examine a *Witness* whose *Direct Testimony* was given in a *Verified Statement*, either by cross interrogatories (Rule 233) or *Oral Deposition* (Rule 234) or (5) to take the *Deposition* of any *Witness* who has declined to make a *Verified Statement* (Rule 234). Any *Adversary Party* may *File* and *Serve* a *Reply* to such *Motion* within ten days after the same is filed;

204.6 *Proponents' Proof At Oral Hearing*. *Proponent*, unless otherwise agreed among themselves, shall in the order designated by the *Hearing Officer*, open the *Hearing* by first tendering for cross examination seriatim the *Witnesses*

whose *Verified Statements* were submitted as provided in Sub-Rule 204.1, together with any *Exhibits* offered in connection with such *Testimony*. Thereafter *Proponents* may offer *Testimony* of other *Witnesses* which has been taken by *Deposition*;

204.7 *Opponent's Proof At Oral Hearing*. Opponent unless otherwise agreed among themselves, shall in the order designated by the *Hearing Officer*, similarly tender the *Witnesses* whose *Verified Statements* were submitted under Sub-Rule 204.6, together with the *Exhibits* and *Documentary Evidence* offered in connection therewith, thereafter *Opponents* may offer the *Testimony* which has been taken by *Deposition*;

204.8 *Rebuttal At Oral Hearing*. *Proponents* may then offer *Rebuttal* which will close the *Production* of the *Proof* unless it embraces new matter. In the latter event, *Opponents* may offer *Rebuttal* of such new matter (and no other). No further *Proof* shall be offered by any *Party* except as may be permitted by the *Hearing Officer* for good cause, or under Rules 205, 265 or 286.

(FCC 1.842, 1.846; FPC 1.20 (f); ICC 74)

RULE 205—NON-PARTY EVIDENCE

It is the duty of the *Hearing Officer* fully to develop the *Record* in order that complete justice be done. To that end he will, with or without motion, (1) interrogate any *Witnesses* freely and fairly; (2) call upon the parties or any of them for further *Evidence* upon any *Material Fact*; (3) *Subpoena* and interrogate *Witnesses*; or (4) call upon any Bureau of *The Agency* not a *Party* for written opinion upon any *Material Fact* other than a *Fact in Issue*, which opinion shall be signed by the *Officer* of the Bureau who is the author thereof.

(FPC 1.20 (j); M. C. 201.124)

205.1 *Cross Examination*. If in response to the request of the *Hearing Officer*, any Bureau of *The Agency* submits a written opinion upon any *Material Fact*, a copy thereof will be served upon the *Parties* and within twenty days thereafter, any *Party* may cross examine the author of the opinion at such time and in such manner as the *Hearing Officer* shall direct.

205.2 *Rebuttal*. Within such time, in such manner and at such place as the *Hearing Officer* may *Direct*, any *Party* may offer evidence which is not cumulative in *Rebuttal* of such opinion.

RULE 209—RECORD—WHAT CONSTITUTES

All *Procedural Instruments*, *Statements of Assumptions*, *Evidence*, *Rulings*, *Arguments* and *Decisions*, filed or recorded in accordance with *These Rules* will constitute the exclusive *Record* for *Decision* by *The Agency*. Letters, communications or memoranda not filed in accordance with the *Rules* are not a part of the *Record* or be considered, but will be filed in the correspondence files of *The Agency*.

(APA 7 (d); FCC 1.659, 1.723; M. C. 201.134)

209.1 *Excluded Matter*. *Offers of Proof of Testimony*, *Exhibits* or *Depositions* excluded by the *Hearing Officer*, will accompany but will not constitute a part of the *Record*, unless so ordered by *The Agency* or the *Court* upon review.

(FTC VIII (f))

209.2 *Correction of Transcript*. Patent errors may be corrected on *Brief* if appropriate notation thereof be made. Latent errors will be corrected only where agreed to by the *Practitioners* for both *Parties* or by the *Witness* and the official reporter. Unless otherwise directed by the *Hearing Officer*, latent errors must be called to the attention of all *Parties*, within thirty days after the transcript is filed with *The Agency*.

(FCC 1.848; CAB 20 (1); FPC 1.20 (1); FTC XV (b); ICC 90 (b); M. C. 201.136)

209.3 *Copies of Record*. Copies of all or any part of the transcript of the *Testimony* can be had by timely application to the official reporter and payment of the contract rate per page therefor. *The Agency* will furnish photostatic copies of other parts of the *Record* upon payment of the costs thereof.

(APA 7 (d); CAB 24 (k))

ARTICLE 21—NON-EVIDENTIAL PROOF: "ASSUMPTIONS"

RULE 210—STIPULATIONS AND ADMISSIONS OF RECORD

The existence or non-existence of a *Material Fact*, as made or agreed in a *Stipulation* or in *Admission of Record*, will be conclusively presumed against any *Party* bound thereby, and no other evidence with respect thereto will be received by such *Party*, provided:

(ICC 19, 68, 69; FPC 1.24, 1.25; FTC VIII (c); 233 Fed. 547)

210.1 *Upon Whom Binding*. Such a *Stipulation* or *Admission* is binding upon the *Parties* by whom it is made, their *Privies* and upon all *Parties* to the *Proceeding* who do not expressly and unequivocally deny the existence or non-existence of the *Material Facts* so admitted or stipulated, upon the making thereof, if made on the *Record* at a *Conference*, *Oral Hearing* or *Oral Argument*; or by a *Writing Filed* and *Served* upon all *Parties* within five days after a copy of such *Stipulation* or *Admission* has been *Served* upon them.

210.2 *Rescission or Withdrawal*. Any *Party* bound by a *Stipulation* or *Admission of Record* at any time prior to *Final Decision* may be permitted to rescind or withdraw the same in whole or in part by showing to the satisfaction of the *Hearing Officer* or *The Agency* that such *Stipulation* or *Admission* was made inadvertently or under a bona fide mistake of *Fact* contrary to the true *Fact* and that its rescission or withdrawal at the time proposed will not unjustly prejudice the rights of other *Parties* to the *Proceeding*.

RULE 211—PRESUMPTIONS

Upon *Proof* of the predicate *Facts* specified in the Sub-Rules hereof without substantial dispute and by direct,

clear and convincing *Evidence*, *The Agency*, with or without prior request or notice, may make the following *Presumptions*, where consistent with all surrounding *Facts* and circumstances.

(92 U. S. 284; 212 U. S. 429)

211.1 *Continuity*. That a *Fact* of a continuous nature, proved to exist at a particular time continues to exist as of the date of the *Presumption*, if the *Fact* is one which usually exists for at least that period of time;

(251 Fed. 83, 132; 62 Mich. 464, 474, 30 N. W. 84)

211.2 *Identity*. That *Persons* and *Objects* of the same name and description are identical;

(108 U. S. 32; 62 Fed. 920)

211.3 *Delivery*. Except in a *Proceeding* where the liability of the carrier for non-delivery is involved, that mail matter, communications, express or freight, properly addressed, marked, billed, and delivered respectively to the Post Office, Telegraph Cable, or Radio company, or authorized common carrier of property with all postage, tolls and charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

(165 U. S. 486; 100 N. Y. 446, 3 N. E. 485)

211.4 *Ordinary Course*. That a *Fact* exists or does not exist, upon *Proof* of the existence or non-existence of another *Fact* which in the ordinary and usual course of affairs, usually and regularly co-exists with the *Fact* presumed;

(106 Cal. 514, 39 P. 922; 219 U. S. 128)

211.5 *Acceptance of Benefit*. That a *Person* for whom an act is done or to whom a transfer is made has, does, or will accept same where it is clearly in his own self interest so to do;

(166 U. S. 557)

211.6 *Interference With Remedy*. That *Evidence*, with respect to a *Material Fact* which in bad faith is destroyed, eluded, fabricated, suppressed or withheld by a *Party* in control thereof, would if produced, corroborate the *Evidence* of the *Adversary Party* with respect to such *Fact*.

(52 English Reprint 587; 207 Fed. 594; 97 Fed. 466; 103 Ill. 485; 160 U. S. 379; 18 Wall. 516)

RULE 212—OFFICIAL NOTICE OF MATTERS OF LAW

The Agency or its *Hearing Officer*, with or without prior request or notice will *Officially Notice*.

212.1 *Federal Law*. The Constitution; Treaties; Congressional Acts, Resolutions, Records, Journals and Committee Reports; Decisions of Federal Courts and Administrative Agencies; Executive Orders and Proclamations; and all rules, orders and notices published in the *FEDERAL REGISTER*;

(159 U. S. 651; 256 U. S. 368; 243 U. S. 592; 232 U. S. 487; 255 U. S. 1; 23 Wall. 307)

212.2 *State Law*. The public laws and the decisions of *Courts* of record of each State of the United States.

212.3 Governmental Organization. Organization, territorial limitations, officers, departments, and general administration of the Government of the United States, the several States and Foreign Nations;

(218 U. S. 487)

212.4 Agency Organization. The Agency's organization, administration, officers, personnel, official publications, and practitioners before the Bar.

RULE 213—OFFICIAL NOTICE OF MATERIAL FACTS

In the absence of controverting Evidence, The Agency, and its Hearing Officers, with or without prior notice or request, may Officially Notice:

213.1 Agency Proceedings. The pendency of, the Issues and the position of the Parties therein, and the disposition of any Proceeding then pending before or theretofore concluded by The Agency.

213.2 Business Customs. General customs and practices followed in the transaction of Business;

(250 U. S. 207; 258 U. S. 388)

213.3 Notorious Facts. Facts so generally and widely known to all well-informed persons as not to be subject of reasonable dispute, or specific Facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including, but not exclusively, Facts stated in any publication authorized or permitted by law to be made by any Federal or State Officer, department or Agency.

(292 U. S. 290; 197 U. S. 11; 269 U. S. 177)

213.4 Technical Knowledge. Matters within the technical knowledge of The Agency as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(245 U. S. 574; 219 U. S. 186)

213.5 Public Records. Matters contained in Tariffs, schedules, and annual or periodic Reports of Persons which are required to be filed with The Agency.

(ICC 81; See 265 U. S. 74)

RULE 214—REQUEST OR SUGGESTION THAT OFFICIAL NOTICE BE TAKEN

Any Party may request, or the Hearing Officer, or The Agency may suggest, that Official Notice be taken of a Material Fact, which shall be clearly and precisely stated, orally on the record, at any Conference or Oral Hearing or Argument or may make such request or suggestion by written Notice, any Pleading, Motion, Memorandum, or Brief, Served upon all Parties, at any time prior to a Final Decision;

RULE 215—STATEMENT OF A FACT OFFICIALLY NOTICED

Where an Initial or Final Decision of The Agency rests in whole or in part upon Official Notice of a Material Fact, such Fact shall be clearly and precisely in such Decision. In determining whether to take Official Notice of Ma-

terial Facts, the Hearing Officer or The Agency may consult any source of pertinent information, whether or not furnished, as it may be, by any Party, and whether or not Admissible under the rules of Evidence.

RULE 216—CONTOVERSION OF FACTS OFFICIALLY NOTICED

Any Party may controvert a request or a suggestion that Official Notice of a Material Fact be taken at the time the same is made, if it be made orally; or by a Pleading, Reply or Brief in response to the pleading or brief or notice in which the same is requested or suggested. If any Decision is stated to rest in whole or in part upon Official Notice of a Material Fact which the Parties have not had a prior opportunity to controvert, any Party may controvert such Fact by appropriate Exceptions if such Notice be taken in an Initial Decision or by a Petition for Reconsideration if Notice of such Fact be taken in a Final Decision. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or non-existence of a Material Fact assumed or denied in the Decision.

ARTICLE 22—WITNESSES

RULE 220—COMPETENCY OF WITNESSES

Every natural person is qualified to be a Witness concerning any Material Fact, unless the Hearing Officer finds that:

220.1 Unintelligible. Such person is incapable of expressing himself so as to be understood by the Hearing Officer either directly or through the sworn interpretation of a Witness who can understand him, or

220.2 Non-Intelligence. Such person is incapable of understanding the duty of a Witness to tell the truth, or

(ALI 101)

220.3 Incredibility. No disinterested Person could reasonably believe that the Witness has personal knowledge of the Material Fact by his own sight, hearing or perception through any other sense.

(ALI 104; Stephens' Article 62)

RULE 221—VOLUNTARY APPEARANCE

A competent Witness who appears either of his own volition or at the request of any Party will be heard, examined, and cross-examined and have the same rights, Privileges, and duties as a Witness who appears under Subpoena.

RULE 222—SUBPOENAS

Subpoenas to compel the attendance of a Witness to give Testimony or to produce Documentary Evidence stating the name of The Agency, the name and address of the Witness, the books, papers, documents or tangible objects or things to be produced, the time and place at which the Witness is to appear and said Documentary Evidence produced, and the Party upon whose request the Subpoena is issued, will be issued under the seal of The Agency, signed by the Secretary or a member of The Agency or the Hearing Officer, on The Agency's own motion or upon request of any Party under the following conditions:

(C. R. 45 (a) (b) (d); APA Sec. 6 (c); ICA 12 (1), 205 (d), 316 (a) 417 (a), 17 (3); ICC 56 (a) (b); FCC 1.831; CAB 302.19 (a) (b); FPC 1.23 (a); FTC XVI; M. C. 201.101)

222.1 Request. Request for a Subpoena which may be filed and served by any Party or orally upon the Record at an Oral Hearing or Pre-Hearing Conference shall state: (1) the general Relevance and reasonable scope of the Evidence sought, (2) the time of and place where and the Officer before whom the Deposition is to be taken (Rule 234) or the time and place of the Oral Hearing, if one has been directed (Rule 235), (3) the exact residence or business address of the Witness and the distance therefrom to the place of Hearing or Deposition, and (4) whether the Witness has agreed, if subpoenaed, to travel to such place, (5) any Facts which require the attendance of the Witness at a place further distant than specified in Sub-Rule 221.2.

(APA Sec. 6 (c); C. R. 45 (a); ICC 56 (a); FCC 242)

222.2 Place of Examination. Unless otherwise directed by the Hearing Officer or The Agency, for good cause shown in the request, a Witness, without his consent, will not be required to attend a place of Oral Hearing which is not within one hundred (100) miles of his residence or place of business, nor a place for the taking of his Deposition outside the county of his residence or place of business and more than forty (40) miles from said residence or place of business.

(C. R. 45 (b) (e))

222.3 Service. Unless service of a Subpoena is acknowledged upon the face thereof by the Witness, as it may be, it shall be made by a Person who is not a Party or the Privy of a Party and who is not less than eighteen (18) years of age by delivering a copy thereof to the Person named therein, and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the Subpoena is issued on behalf of the United States or an Officer or Agency thereof, fees and mileage need not be tendered.

(C. R. 45 (c); ICC 56 (c) (d); CAB 19 (f); FCC 1.834 (a) (b); FPC 1.20 (b); M. C. 201.103)

222.4 Return. After being served, the Subpoena accompanied by the required return, affidavit, statement or acceptance of service, shall be returned forthwith as directed therein to the Secretary of The Agency, the Hearing Officer or the officer before whom the Deposition is to be taken. If service is made by a person other than a United States Marshal or his deputy, he shall make affidavit thereof. Failure to make proof of service will not affect the validity of the service.

(C. R. 4 (9); ICC 56 (d); CAB 19; FPC 1.20; FCC 1.834 (b); M. C. 201.103)

222.5 Quashing. Upon motion made promptly, and in any event at or before the time specified in the Subpoena for compliance therewith, by any Party or the Person to whom the Subpoena is directed, the Hearing Officer may (1)

quash or modify the *Subpoena* if it is unreasonable and oppressive, or (2) condition denial of the motion upon such conditions as shall be just, reasonable, and unoppressive.

(C. R. 45 (b); CAB 19 (f))

RULE 223—FEES AND EXPENSES

A *Witness* who is *Subpoenaed* to give a *Deposition* orally or upon interrogatories and responds thereto, is entitled to the same fees and mileage as is provided by law for like service in the District Courts of the United States, which shall be advanced and paid by the *Party* at whose request the *Subpoena* is issued. No *Witness*, whether *Subpoenaed* or not, shall be paid any greater amount than such fees, except as provided in the Sub-Rules hereof, nor shall any payment of fees, mileage or expenses of any *Witness* under any circumstances, be based upon any contingency with respect to the nature, character or outcome, either of his *Testimony* or of *The Proceeding*, or any issue arising therein.

(ICC 57 (d) (e); CAB 302.21; FCC 1.833; FPC 1.20 (c); FTC XVII; M. C. 201.102 M. C. 201.102, 201.179; SEC V (9))

223.1 Voluntary Reimbursement. In lieu of statutory fees and mileage, a *Party* may, if agreed to by the *Witness*, reimburse a *Witness* whether or not *Subpoenaed*, for (1) salary, wages or compensation actually lost by the *Witness* on account of preparing to and giving his *Testimony*, and (2) traveling and incidental expenses actually paid by the *Witness* in connection therewith. Each *Party* before the *Close* of the *Production of Proof* shall file a statement of all amounts paid each *Witness* under this Sub-Rule.

223.2 Expert Witnesses. A person regularly engaged for hire in any technical or professional field or endeavor may be employed by a *Party* under a contract to make an investigation or study of any *Material Fact* which lies within such field, prepare *Exhibits* and *Documentary Evidence*, and give *Testimony* with respect thereto, and at just and reasonable rates of compensation commensurate with the amount of such work and the time required therefor.

223.3 Effect of Violation. The violation of this *Rule* or any Sub-Rule thereof, may adversely affect the weight of the *Testimony* of the *Witness* involved and any *Practitioner* who knowingly violates, acquiesces in the violation thereof, or who knowingly offers as a *Witness* a person who has been paid or agreed to be paid in violation thereof without making known that fact on the *Record*, will be subject to discipline and in aggravated cases will be barred from further practice before *The Agency*.

RULE 224—PRIVILEGE

A person whether or not a *Party*, has the *Privilege* to refuse to disclose and to prevent a *Witness* from disclosing the following information under the following conditions:

224.1 Client and Lawyer. A confidential communication between a client and lawyer, however obtained, upon the claim of either client or lawyer.

(ALI 210)

224.2 Physician and Patient. Confidential communications between a physician and patient or information acquired by the physician in a professional capacity, whether from his own observations or the statements of the patient or others, upon the claim of either the physician or the patient.

224.3 Traffic Information. Information acquired by an officer or employee of any common carrier concerning the nature, kind, quantity, consignee or routing of property tendered or delivered to such common carrier for interstate transportation which may be used to the detriment of the shipper or consignee thereof or which may improperly disclose the business transactions of either to a competitor, upon the claim of the *Witness*, the carrier, the shipper or consignee.

(ICA Sec. 15 (11), 222 (e), 317 (b), 421 (f))

224.4 Trade Secrets. Upon the claim of the owner of a trade secret or his agent or employee, such trade secret, if the *Hearing Officer* finds that the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.

(ALI 226)

224.5 Official Information. Any matter of *Official Information* unless the *Hearing Officer* finds that disclosure thereof is not forbidden by statute, and that the officer of Government having custody thereof has consented to the disclosure and that the disclosure will not be harmful to the interests of the United States or of any State thereof.

(ALI 227, 228; CAB 302.39; FTC 29; SEC XIII)

224.6 Self-Incrimination. Upon claim of the *Witness* any matter which will incriminate him.

(ALI 203)

RULE 225—DIRECT EXAMINATION

The *Direct Testimony* of *Witnesses* which is not submitted in a *Verified Statement* (Rule 205) or in a *Deposition* taken upon written interrogatories (Rule 254) shall be taken orally in a *Hearing* or by *Deposition* upon direct, non-repetitious, concise, specific questions under the following rules:

225.1 Prepared Statements. The reading or recital of previously prepared statements or of written questions and answers will not be permitted, but such statements may be identified, verified and offered as *Exhibits*, subject to objection for inadmissibility, and the *Witness* tendered for Cross-Examination.

(ICC 77; FPC 1.20 (b) (g); FTC XV; M. C. 201.125)

225.2 Number of Examiners. Except where the interests or positions of parties are found by the *Hearing Officer* to be *Adversary*, a *Witness* upon direct examination, may be examined only by the *Counsel* who tenders him. Unless the *Hearing Officer* in his discretion otherwise permits, any other questions which any *Party* upon the same side desires to put, must be submitted to this *Counsel* and if he agrees be put by him.

225.3 Leading Questions. Except in the case of *Hostile Witnesses* (Sub-Rule 225.4) or with respect to items, dates, numerous details or where the memory ordinarily needs suggestions, *Leading Questions*, if objected to by the *Adverse Party* or by the *Hearing Officer*, will not be permitted to be asked upon direct examination.

225.4 Hostile Witnesses. Whenever a *Witness* is *Hostile*, unwilling or evasive, or is an *Adverse Party*, or his *Privy*, the *Party* calling him may interrogate by *Leading Questions* and contradict and impeach him in all respects as if he had been called by the *Adverse Party*.

(C. R. 43 (b); FTC XV)

225.5 Refreshing Memory. A *Witness*, while under examination, may refresh his memory by referring to a *Writing* whether or not made by himself, where (1) he is thereby enabled actually to recollect the *Facts* so that he can then testify in reality from memory, or (2) after referring to the *Writing* he does not recollect the *Facts* but does remember that he made or saw it when the *Facts* were fresh in his mind, and that it then stated the *Facts* correctly, (3) the memorandum is as to items, dates, names, amounts, places, statistics, calculations and similar details which he knows are correctly and accurately stated therein, (4) after referring to the writing he neither recollects the *Facts* nor remembers having seen it before and yet from seeing his handwriting therein or signature thereto he is able to testify to its genuineness, (5) the *Witness* is an expert and the *Writing* is a professional treatise.

(Stephens Article 136 Note 2; ALI 504)

225.6 Inspection. Before a *Witness* is permitted to testify from a memorandum under Sub-Rule 225.4, it must be shown to the *Adverse Party*, if he requires it, who at that time may cross examine with respect to the time and circumstances under which it was made, but not upon the statements therein contained. If demanded by the *Adverse Party*, the memorandum shall be offered in *Evidence*.

(Stephens Article 137)

RULE 226—CROSS EXAMINATION

Parties shall have the right to conduct such non-repetitious cross examination of *Witnesses* introduced by *Adversary Parties* as may be required for a full and true disclosure of the *Facts* subject to:

226.1 Limitations. Cross examination will be confined to specific *Material Facts* to which the *Witness* testified on direct examination or to matters covered in Sub-Rule 226.2 unless upon motion and for good cause, the *Hearing Officer* permits questions as to other *Material Facts*, in which latter case the cross examiner with respect to these *Facts* makes the *Witness* his own.

(Stephens Article 128, American Note 1)

226.2 Collateral Matters. A *Witness*, upon cross examination, may be asked questions irrelevant or Collateral to the issues which are designed to test his bias, accuracy, veracity, credibility or which tend to degrade or disgrace him. Where

such questions do not relate to *Material Facts*, the *Witness* or *Counsel* who tendered him, may claim the privilege of declining to answer them and such claim may be considered in weighing his credibility. The *Hearing Officer* has the discretion with or without objection to limit the scope, range and extent of such questions, but in no event will a *Witness* be subjected to insult, abuse, bulldozing, bullying, threats or other intimidation.

(Stephens Article 129)

226.3 Number of Cross Examiners. Except where the interests or positions of the Parties on the same side are Adversary, all questions must be put through a single cross examiner, selected by such Parties if they can agree, otherwise by the *Hearing Officer*. The *Hearing Officer* has discretion to depart from this Sub-Rule in any case in which, and to the extent, he finds that the interests of any Party or the Public so requires.

RULE 227—IMPEACHMENT

Except in the case of a *Hostile Witness* (Sub-Rule 225.4), a Party cannot impeach his own *Witness*, but he may prove the truth by other *Witnesses*. A Party may impeach the *Testimony* of a *Witness* for an Adversary Party under the following conditions:

227.1 Prior Inconsistent Oral Statement. Where, under cross examination, the *Witness* upon being asked, has not distinctly and unequivocally admitted to having made a statement at a time and place and under circumstances specifically designated relative to a *Material Fact* inconsistent with his present *Testimony*, *Proof* may be introduced that he did, in fact, make such a statement.

(Stephens Article 131, American Note 1)

227.2 Prior Inconsistent Written Statement. Where a *Witness* under cross examination is shown a *Writing* purporting to contain a statement relative to a *Material Fact* inconsistent with his present *Testimony*, which he does not distinctly and unequivocally admit to having made, *Proof* may be introduced that he did make it. If, under such circumstances, he admits having made the statement, it may be read into the *Record* and the *Witness* may give such explanation thereof as he desires either at that time or upon redirect examination.

(Stephens Article 132, Note 1)

227.3 Direct Impeachment. The credit of any *Witness* for an Adversary Party may be impeached by *Testimony* of disinterested persons of their own knowledge that the general reputation of the *Witness* for truth and veracity is bad and that based upon such reputation, they believe him to be unworthy of credit upon his oath. Such *Witnesses* may not give specific reasons for their belief upon direct examination, but if required to do so, as they may be, on cross examination, may not be contradicted with respect thereto.

(Stephens Article 33, American Note 2)

RULE 228—RIGHTS OF WITNESSES

Any person compelled to testify or voluntarily testifying in a *Proceeding*,

may be accompanied, represented and advised by Counsel and may obtain upon payment of the lawfully prescribed fees therefor a copy of the transcript of his *Testimony* and of all *Documentary Evidence* which he was compelled to produce.

(FPC 1.4 (2), 1.20 (b); FTC XXX C (3), III (c); SEC XX (b); M. C. 201.129)

ARTICLE 23—TESTIMONY

RULE 230—COMPETENCY

Except as otherwise provided in Rule 231, *Testimony* is admissible to Prove any *Material Fact*, subject to the following limitations:

230.1 Direct Perception, Testimony of an act, action, state, condition, occurrence, object, thing, or statement perceptible by any human sense, will only be received from a *Witness* who says that he saw, heard, felt or otherwise Perceived the same;

(43 N. Y. 279, Stephens Article 62)

230.2 Direct Opinion, Testimony of an *Opinion* or of the grounds on which an *Opinion* is held, will only be received from a *Witness* who holds the *Opinion* on those grounds.

(58 F. 945; 39 F. S. 957; Stephens Article 62)

230.3 Cumulative, where the *Testimony* is rejected as *Cumulative*.

(Rule 279)

230.4 In Parole Evidence Rule, as between the Parties (or their Privies) to the instrument, in the absence of fraud, accident or mistake, *Testimony* to vary, alter or contradict a valid written instrument upon which a civil right or liability depends and which is complete and unambiguous will not be received.

(1 F. 2d 614; 267 Mich. 270, 255 N. W. 587; 31 F. 2d 859; 55 F. 2d 110)

RULE 231—BEST EVIDENCE

Where the existence, execution, contents or condition of a *Document* or *Object* is a *Fact in Issue*, only the *Best Evidence* thereof within the power of the Party to produce, will be received.

(Rule applies only (1) to direct and not collateral issues—78 F. 460—and (2) to Documentary or Autoptic Evidence—316 Penn. 434, 175 A 422; 274 Mich. 470, 264 N. W. 868)

RULE 232—VERIFIED STATEMENTS

Except as otherwise ordered in a particular *Proceeding*, the *Direct Testimony* of a *Witness* may, and if required by Rules 204 or 205, must be given either by *Deposition* (Rule 234) or by a *Verified Statement* under the following Sub-Rules.

232.1 Formal Requisites. Each *Verified Statement* must be in writing and conform to the requirements of Sub-Rule 101.1 as to caption, 101.2 as to paragraphing, and 101.9 as to format. It shall also show in the caption and at the top of each of the pages (which shall be consecutively numbered) the name of the *Witness* and the Party's identification number of the *Verified Statement*.

232.2 Identification. The first paragraph of the *Verified Statement* must show the name, correct residence and

business addresses, business or profession, employer if any, the relationship, if any, between the *Witness* and any Party to the *Proceeding* and the interest of the *Witness* and his employer in the *Proceeding*.

232.3 Qualification. The second paragraph of the *Verified Statement* must state the source of the knowledge of the *Witness* respecting the *Facts* to be stated and his experiential qualifications to give any opinions which are stated.

232.4 Paragraphing and Content. If in question and answer form, each question and otherwise each paragraph, shall be separately numbered and confined to the statement of a single subject or *Fact*. It shall state concisely, clearly and without repetition *Facts* or *Opinions* of the *Witness* dealing directly with a *Material Fact* respecting which *Testimony* is Competent and shall not contain statements of position, *Conclusions*, *Arguments* or improper, scandalous, impertinent or provocative language or accusations.

232.5 Opinions. If the *Witness* expresses an *Opinion* as to a *Material Fact*, he shall briefly, concisely and without argument give the grounds upon which he bases such *Opinion*.

232.6 Verification and Attestation. Each *Verified Statement* must be verified before an officer qualified to administer oaths in the place where the statement is made and must affirmatively show that the facts stated are personally known to the *Witness*. The verification shall be attested by the signature, capacity and impression seal, if any, of the *Officer* administering the oath and the date thereof. The *Practitioner*, if any, of the Party submitting the *Verified Statement* must certify whether the *Verified Statement* was made or verified by the *Witness* in his presence.

232.7 Filing and Service. The original and two copies of each *Verified Statement* will be filed with *The Agency* within or at the time provided in Rules 204 or 205 and contemporaneously a copy served on each Party.

232.8 Cross Examination. An Adversary Party may cross examine (Rule 226) the Deponent of a *Verified Statement* either by a *Deposition* on cross interrogatories (Rule 233) or upon oral examination (Rule 234) or at an *Oral Hearing* if (1) the *Proceeding* shall have been directed to be heard by *Oral Hearing*, or (2) upon motion Filed and Served upon all Parties, and for good cause shown, the *Hearing Officer* so directs.

232.9 Redirect Examination. The Party tendering a *Witness* who has filed a *Verified Statement* and has been cross examined by cross interrogatories (Rule 233), within five days after answers to such cross interrogatories have been filed, may reexamine by *Deposition* upon oral examination or by redirect written interrogatories, a copy thereof being filed with *The Agency* and served upon all Parties. Any Adversary Party within five days thereafter, may send recross interrogatories to the Officer named in

the notice in the same manner as provided for cross interrogatories in Sub-Rule 233.1, but copies thereof need not be served on other *Parties*. All provisions of Rule 233 and its Sub-Rules, shall apply to redirect written interrogatories and recross written interrogatories, except the provisions (Sub-Rules 233.1, 233.2) for submission to and answer by the *Deponent* directly.

RULE 233—DEPOSITION UPON CROSS INTERROGATORIES

Within five days after the expiration of the time for filing a *Verified Statement* under Rules 204 or 205, any *Adverse Party* may cross examine a *Deponent* of a *Verified Statement* filed under either of said Rules by a *Deposition* upon cross interrogatories as follows:

233.1 By Whom Taken. An original and two copies of such cross interrogatories with each question separate and consecutively numbered, at the option of sender may be mailed under seal to the *Deponent* or to any person having an office in the metropolitan area of *Deponent's* residence or place of business, who is authorized to administer oaths, and who is not a *Party* or *Privy* to any *Party*, to or interested in the event of the *Proceeding*;

233.2 Direct Answers. Where the cross interrogatories are sent directly to the *Deponent*, he shall answer them personally in handwriting or typewriting without consultation with or advice from any person and verify them before any person authorized to administer oaths. Should he refuse or fail to do so within ten days, his *Verified Statement* will not be received in *Evidence*;

233.3 Subpoena. Except where the cross interrogatories are sent directly to the *Deponent*, the *Party* making same shall obtain from *The Agency* and forward with the cross interrogatories a *Subpoena* requiring the attendance of the *Deponent* before the *Officer* to whom sent at time and place named therein, which shall be served and returned as provided in Rule 227;

233.4 Answers Before an Officer. Where the cross interrogatories are forwarded to an *Officer* authorized to administer oaths as provided in Sub-Rule 233.1, the *Officer* taking the same after duly swearing the *Deponent*, shall read to him seriatim, one cross interrogatory at a time and cause the same and the answer thereto to be recorded in triplicate before the succeeding interrogatory is asked. No one except the *Deponent*, the *Officer* and the Court Reporter or stenographer recording and transcribing it shall be present during the interrogation.

(CAB 20 (f); SEC VIII (g); ICC 59 (b))

233.5 Attestation and Return. The *Officer* before whom cross interrogatories are verified (Sub-Rule 233.2) or answered (Sub-Rule 233.4) shall (1) certify under his official signature and seal that the *Deponent* was duly sworn by him, that the cross interrogatories and answers are a true record of the *Deponent's Testimony*, that no one except *Deponent*, the *Officer* and the ste-

nographer were present during the taking, and that neither he nor the stenographer, to his knowledge, is a *Party*, *Privy* to a *Party*, or interested in the event of the *Proceedings*, and (2) promptly send by registered mail the original copy of the *Deposition* and *Exhibits* with his *Attestation* to the *Secretary of The Agency*, one copy to the *Counsel* who submitted the cross interrogatories and another copy to the *Deponent*;

233.6 Notice. The *Party* submitting the cross interrogatories at or before the date of transmitting them to the *Officer* (Sub-Rule 233.1) shall notify all *Parties* of the name and address of the *Officer* before whom they are to be taken, and any *Party* upon payment of the fees therefor shall be entitled to receive a copy of the *Testimony* and *Exhibits* of the *Deponent* at the same time the original is forwarded to *The Agency*.

233.7 Fees and Expenses. All fees and expenses of the *Witness* (Rule 223) of the *Officer* taking the *Deposition* and of the stenographer or *Court Reporter* recording it (except those described in Sub-Rule 233.6) shall be arranged for, advanced and paid by the *Party* submitting the cross interrogatories.

RULE 234—DEPOSITIONS

Except as otherwise provided, in an order made pursuant to Sub-Rule 234.4, any *Party* may take the *Testimony* of any person, including a *Party*, by *Deposition* upon oral examination or written interrogatories for the purpose of discovery or for use as *Evidence* in the *Proceeding* or for both purposes, except that leave, granted with or without notice, must be obtained if notice of the taking is served by a *Proponent* within thirty days after the filing of a *Complaint*, *Application*, or *Petition*. The attendance of witnesses may be compelled by the use of a *Subpoena* as provided in Rule 222. *Depositions* shall be taken only in accordance with this Rule and Rule 233.

(Identical with CR 26a. See ICA 12 (4) (6), 205 (d), 316 (a), 417 (a); ICC 57 (a) (c), 58; CAB 302.20 (a); FPC 1.24 (a) (b) (c); FTC XIX; M. C. 201.171, 201.172, 201.180)

234.1 Scope. Unless otherwise ordered as provided in Sub-Rule 234.4, the *Deponent* may be examined regarding any matter not *Privileged*, which is relevant to the subject matter involved in the *Proceeding*, whether it relates to the claim or defense of the examining *Party* or of any other *Party* including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of *Relevant Facts*. It is not ground for objection that the *Testimony* will be inadmissible if it appears reasonably calculated to lead to the discovery of *Admissible Evidence*.

(CR 26 (b); FPC 1.24 (g))

234.2 Officer Before Whom Taken. Within the United States or within a territory or insular possession subject to the dominion of the United States, *Depositions* shall 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* shall be taken before a Secretary of an Embassy or Legation, Consul General, Vice Consul or Consular Agent of the United States, or a person designated by *The Agency*, or agreed upon by the *Parties* by *Stipulation* in writing filed with *The Agency*. Except by *Stipulation*, no *Deposition* shall be taken before a *Person* who is a *Party* or the *Privy* of a *Party*, or a *Privy* of any *Counsel* of a *Party*, or who is financially interested in the *Proceeding*.

(CR 29, ICA 12 (4); ICC 57 (b); FCC 1.822 (a); FPC 1.24; FTC XI (9))

234.3 Notice or Agreement to Take. A *Party* desiring the *Deposition* of any person upon oral examination shall give reasonable notice in writing to *The Agency* and all *Parties*. The notice shall state the time and place for taking the *Deposition*, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a *Party* upon whom the notice is served, the *Hearing Officer* may for cause shown, enlarge or shorten the time. If the *Parties* so *Stipulate* in writing, *Depositions* may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other *Depositions*;

(CR 30 (a), 29 ICA 12 (4); ICC 58 (a); FCC 1.821 (a); FPC 1.24 (b); FTC XIX; M. C. 201.171; SEC VIII (a))

234.4 Protection of Parties and Deponents. After notice is served for taking a *Deposition* by oral examination, upon motion reasonably made by any *Party* or by the person to be examined and upon notice and for good cause shown, *The Agency* may make an order that the *Deposition* shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the *Parties* to the action and their officers or Counsel, or that after being sealed, the *Deposition* shall be opened only by order of *The Agency*, or that business secrets or secret processes, developments, or research need not be disclosed, or that the *Parties* shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by *The Agency*; or *The Agency* may make any other order which justice requires to protect the *Party* or *Witness* from annoyance, embarrassment, or oppression. 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 Agency* or the District Court of the United States in the district where the *Deposition* is being taken, 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 above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of *The Agency*. Upon demand of the objecting *Party* or *Deponent*, the taking of the *Deposition* shall be suspended for the time necessary to make a *Motion* for an order. In granting or refusing such an order, the District Court may impose upon either *Party* or upon the *Witness* the requirement to pay such costs or expenses as the Court may deem reasonable.

(CR 30 (b) (d); FCC 1.821 (b); FPC 1.24 (b))

234.5 Examination and Cross Examination. Examination and cross examination shall proceed as provided in Rules 225 and 226 except where the *Deposition* is taken pursuant to Sub-Rule 232.8, in which latter case the cross examination will begin first unless the *Party* who offered the *Verified Statement* desires to interrogate the *Deponent* further upon direct. In lieu of participating in the oral examination, any *Party* served with notice of taking a *Deposition* may transmit written cross interrogatories to the officer who, without first disclosing them to any person, and after the *Direct Testimony* is complete shall propound them seriatim to the *Deponent* and record or cause the answers to be recorded verbatim.

(CR 26 (c), 30 (c); ICC 59 (b); FPC 1.24 (9); FTC XLX; M. C. 201.180)

234.6 Recordation. The officer before whom the *Deposition* is to be taken, shall put the *Witness* on oath and shall personally or by someone acting under his direction and in his presence, record the *Testimony* by typewriter directly or by transcription from stenographic notes, wire or record recorders, which record shall separately and consecutively number each interrogatory. *Objections* to the notice, qualifications of the officer taking the *Deposition*, or to the manner of taking it, or to the *Evidence* presented or to the conduct of the officer, or of any *Party*, shall be noted by the officer upon the *Deposition*. All objections by any *Party* not so made are waived. The *Deposition* shall be captioned and pages as provided in Sub-Rule 232.1 for *Verified Statements*.

(CR 30 (c); ICC 60; CAB 20 (b); FCC 1.822 (b); FPC 1.24 (e); M. C. 201.173; SEC VIII (b) (d) (e))

234.7 Attestation and Return. 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*. He shall then securely seal the *Deposition* in an envelope indorsed with the title of the *Proceeding* and marked "*Deposition of (here insert name of Witness)*" and shall promptly send it by registered mail to the *Secretary of The Agency* for filing. The *Party* taking the *Deposition* shall give prompt notice of its filing to all other *Parties*. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the *Deposition* to any *Party* or to the *Deponent*.

(CR 30 (b); ICC 63, 64, 65; FCC 1.824, 1.826; M. C. 201.175; M. C. 201.117; Deponent's signature required by CR 30 (e); ICC 62; FCO 1.823; M. C. 201.174)

234.8 Use and Effect. Subject to rulings by the *Hearing Officer* upon objections a *Deposition* taken and filed as provided in this Rule and its Sub-Rules shall be received but will not become a part of the Record in the *Proceeding* until received as provided in Article 26. A *Party* does not make a *Party*, or the *Privy* of a *Party*, or any hostile *Witness* his *Witness* by taking his *Deposition*. Any *Party* may rebut any *Relevant Evidence* contained in a *Deposition* whether introduced by him or any other *Party*.

(CR 26 (d) (f); ICC 67; CAB 20 (h))

234.9 Fees of Officers and Deponents. Deponents whose *Depositions* are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the District Courts of the United States, which fees shall be paid by the *Party* at whose instance the *Depositions* are taken.

(ICA 12 (7); ICC 57 (d); FPC 1.24)

RULE 235—ORAL HEARING

Whenever, because of the importance of the *Proceeding* to the public interest, or to the nature or complexity of the issues, or the desirability of observing the demeanor or conduct of *Witnesses* with respect to conflicting *Testimony*, or to guard against error or injustice, the *Hearing Officer* or *The Agency* finds that a *Proceeding* should be heard orally in whole or in part, either on its own initiative or upon the motion of any *Party*, it will be so ordered.

235.1 Motion. Any *Motion* for an *Oral Hearing* shall be promptly *Filed* and *Served* and shall set forth concisely, specifically and clearly the grounds upon which it is based.

235.2 Reply. Any *Party* within ten days thereafter, may *File* and *Serve* a *Reply* to such a *Motion* setting forth concisely, specifically and clearly the grounds of opposition to such *Motion*. No further *Pleadings* will be received.

235.3 Order. The order directing an *Oral Hearing* may (1) specify or limit the matters, or *Witnesses* to be orally heard, (2) prescribe special *Rules of Procedure* to govern such *Hearings*, (3) require that *Request for Findings* be filed or *Oral Arguments* be made at the conclusion of the *Testimony*, and (4) require that the *Initial Decision* of the *Hearing Officer* be rendered orally on the *Record* at the conclusion of the *Oral Hearing*, or on a specified day immediately thereafter.

(CAB 302.213, 302.408; FPC 1.20 (a), 1.22 (a); FTC XV, ICC 53 (a) (b); M. C. 201.112; SEC V (a) (b))

235.4 Assignment. *The Agency* at or after the order described in Sub-Rule 235.3, will assign a time and place for such *Oral Hearing* giving due regard to the convenience and necessity of the *Parties* so far as consistent with the proper, efficient and expeditious dispositions of its duties. Notice of such *Hearing* will be posted in the office of the

Secretary of The Agency and served upon the *Parties*.

(CAB 302.24; FTC 1.803 (a) (b) (c); FTO XI; ICC 55 (a); M. C. 201.113; SEC III (b))

235.5 Change in Assignment. Upon its own motion, or for good cause shown, upon request of a *Party*, *The Agency* or *Hearing Officer* may change the time or place or continue or adjourn any *Oral Hearing*.

(ICC 55 (a); CAB 302.24; FCC 1.803 (a) (b) (c); FTC XI; M. C. 201.113; SEC III (b))

235.6 Notice of Change of Assignment. *The Agency* may confine the service of notice to a change of time or place assigned for *Hearing* (other than by publication or posting) or of any adjourned further or supplemental *Hearing* to *Complainants*, *Applicants*, *Petitioners*, *Defendants*, *Respondents*, and to such of the *Intervenors* only who have indicated to *The Agency* a desire to be notified at their own expense if telegraphic notice becomes necessary of any such changes, except that where an adjournment is made on the *Record*, no notice will be given.

(ICC 89 (b); FTC XV)

235.7 Recordation. The *Testimony* of *Witnesses* at *Oral Hearings* will be stenographically reported by the *Official Reporter of The Agency* under the direction of the *Hearing Officer*. A transcript thereof will be a part of the *Record* (Rule 209). Each question in said transcript will be separately and consecutively numbered. Corrections therein can be made as provided in Sub-Rule 209.2 and copies thereof obtained as provided in Sub-Rule 209.3.

(ICC 90 (a) (b) (c); FPC 1.20 (k); FTO XV; M. C. 201.135; SEC V (c))

RULE 236—EVIDENCE IN ANOTHER PROCEEDING

Evidence Competent under Rules 230 to 235 hereof and *Material* under Rule 250 given in another *Proceeding* or in any *Proceeding* in any court or *Authority* in the exercise of judicial or quasi-judicial powers will be received in *Evidence* only under the conditions prescribed in the Sub-Rules hereof:

(ICC 82)

236.1 Stipulation. Such *Evidence* may be received by *Stipulation*. (Rule 211)

236.2 Unavailability of Witness. Such *Evidence* will be received if the *Hearing Officer* finds that the *Person* who gave the *Evidence* is *Unavailable As A Witness* in the *Proceeding*.

(ICC 82 (c))

236.3 Identity of Parties and Issues. Such *Evidence* will be received if the *Hearing Officer* finds that the *Party Adversary* to the *Party* offering the *Evidence*, was a *Party* to the proceeding in which it was given; that the *Evidence* offered is for a purpose substantially identical with the purpose for which the *Evidence* was given; and that such *Party* had the opportunity to cross examine the *Witness* who gave the *Evidence*.

236.4 *Copy.* Such Evidence, if receivable under Sub-Rules 236.1 to 236.3 inclusive, will be limited to *Material* matter contained therein and all extraneous matter will be omitted. The Party offering the Evidence shall make available for inspection at a time and place fixed by the Hearing Officer a copy of the entire Evidence of the Witness, and if required by the Hearing Officer, with or without motion, include any or all of the omitted Evidence.

(ICC 82 (a) (b) (c))

236.5 *Authentication.* The copy of the Evidence, if receivable under Sub-Rules 236.1 to 236.4 inclusive, if the same be taken from the files of *The Agency*, may be proved as provided by Rule 241 and in all other cases as provided in Rule 262.

236.6 *Incorporation By Reference.* Except as may be directed by an order of *The Agency*, no such Evidence may be incorporated into the Record by reference.

(ICC 82 (d))

ARTICLE 24—DOCUMENTARY AND AUTOPTIC EVIDENCE

RULE 240—COMPETENCY

Where the existence, condition, form, execution or the contents, terms, or provisions of a Document or the existence or condition of an Object is a *Material Fact*, such Document or Object, subject to the Rules of this Article 24, will be received in evidence.

240.1 *Extraneous Matter.* Only *Material* matter contained in a Document will be received. Such matter must be separately offered as an Exhibit, but the entire Document be made available for inspection at the time and place fixed by the Hearing Officer.

(ICC 80; CAB 24 (h); FCC 1.874; FPC 1.26 (c); FTC XVIII; M. C. 201.127)

240.2 *Primary Evidence.* Except as otherwise provided in this Article 24, whenever the existence, condition, form or execution of a Document is a *Material Fact*, or the contents, terms or provisions thereof is a *Fact in Issue*, the executed original or an executed duplicate original of the Document itself, accompanied by such Proof of its lawful execution as may be required by law, must be produced.

240.3 *Secondary Evidence.* Where a term or provision of a Document is a *Material Fact*, but not a *Fact in Issue* or wherever in any case the Party offering the Document is unable in the utmost good faith and by due diligence to produce an original thereof, as provided in Sub-Rule 240.2, he may offer *Secondary Evidence* thereof.

240.4 *Foreign Language.* A Document written in any language other than English and any Copies thereof Filed and Served, shall be accompanied by an English translation thereof, the original or filed Copy of which shall be verified under oath by the translator.

(FCC 1.875; M. C. 201.9)

RULE 241—DOCUMENT IN AGENCY'S FILE

A Copy of any Document of which *The Agency* does not take *Official Notice* which is open to public inspection in the files of *The Agency*, if the matter therein be admissible under the Rules of Evidence (Article 25) may be proved by the Testimony of a person who made such Copy or who has compared it with the original Document.

(ICC 81; FCC 1.878; FPC 1.26 (2); M. C. 201.132)

241.1 *Records in Other Proceedings.* A Copy of any portion of a record (Pleadings, Testimony, Documents, or Objects) in another Proceeding before *The Agency*, if the matter therein be admissible under the Rules of Evidence (Article 25) may be proved by the Testimony of the Person who made the Copy or who has compared it with such record. Incorporation by reference will not be permitted.

(ICC 82; CAB 24 (i); FPC 1.26 (3); M. C. 201.131)

RULE 242—DOCUMENTS ON FILE WITH ANOTHER AGENCY OR GOVERNMENT

A Document on file with, or record entry of another Agency, or a Foreign State or Government, of which *The Agency* does not take *Official Notice* or the lack of record of same, if the matter therein be Admissible under These Rules, may be proved as follows:

242.1 *Official Publication.* If the Document purports to be an *Official Publication* of such Agency, it, without further Proof, will be taken as *prima facie* evidence that it is a true Copy thereof.

242.2 *Attested Copy.* By a Copy of such Document or record entry attested by an Officer of such Agency purporting to have legal custody of the original thereof.

242.3 *Foreign Government.* By a Copy of a Document or record of entry of a Foreign State or Government certified by an Officer of such Government who purports to have legal custody of the original thereof which latter fact is authenticated by the certificate under seal made by a Secretary of the Embassy or Legation, Consul General, Consul, Vice Consul, or any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept that the Copy has been certified by the lawful custodian thereof.

(28 USCA 1741)

242.4 *Lack of Record.* By 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 his office contain no such record or entry.

(CR 44 (b))

242.5 *Other Proof.* By any other method of Proof authorized by the Federal Rules of Civil Procedure.

(CR 44; ICC 78; FCC 1.879; 1.880)

RULE 243—LITERARY PUBLICATIONS

A *Literary Publication* containing a statement of a *Material Fact* is *Competent* if *The Agency* or the Hearing Officer finds by *Official Notice* or from other Proof that:

243.1 *General Information.* Such Fact is one of public information, history, general literature, science, art or a public event and the Publication is generally recognized as a reliable source thereof or the author is recognized as an expert in the field, or

243.2 *Statistical Information.* Such Fact is one of statistics within a particular field of professional, business, educational, social or political endeavor or activity generally used and relied upon by persons engaged therein, or

243.3 *Technical Information.* Such Fact is one peculiar to the field within which *The Agency* functions and with respect to which it is deemed to be expert.

RULE 244—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, is *Competent Evidence* thereof if made in regular course of any Business and if it was the regular course of such Business to make such memorandum or record at the time of such act, transaction, occurrence, or event, or within a reasonable time thereafter.

(28 USCA 1732)

244.1 *Photographic Copies.* If any Business which has kept any such Writing or record as provided in this Rule 244 and in the regular course of Business has caused any or all of the same to be accurately recorded, copied or reproduced by photographic or photostatic process, such reproduction when satisfactorily identified is as *Competent* as the original itself, which also if in existence may also be introduced either in lieu of or in addition to such photographic reproduction.

(28 USCA 1732 as amended August 28, 1951)

RULE 245—PRIVATE DOCUMENTS

Private Documents, the existence, condition, form, execution, terms or provisions of which are admissible under Article 25 hereof, may be proved by *Primary Evidence* or *Secondary Evidence* as provided in Sub-Rules 240.2 and 240.3.

RULE 246—VOLUMINOUS EVIDENCE

Where the results of voluminous *Material Facts* contained in Writings or of an examination of many Writings, books, papers or records are to be proved, a Witness who examined or compiled them or supervised their examination or compilation may testify as to such results under the following conditions:

(20 Wall. 125; 86 SC 91; 67 SE 1069)

246.1 *Inspection.* If the existence, condition, form or execution thereof be a *Material Fact*, any Party by timely motion shall be entitled to examine, inspect and copy any of the original documents at such time and place and

under such reasonable conditions as the *Hearing Officer* shall fix or the *Parties* agree upon by *Stipulation*.

(80 F. 32)

246.2 Abstracts. In any *Proceeding* in which an *Amount* is offered to be proved under this Rule 246, the *Party* offering the *Witness* may, and upon demand of any *Party* or the *Hearing Officer* shall concisely abstract the *Documents* or entries in which the details thereof appear and, if required by the *Hearing Officer*, with or without motion, such abstract or any specified parts thereof, shall be made an *Exhibit* if it appears that said details do not support or are in any way inconsistent or contrary to the *Testimony* of the *Witness*.

(ICC 83)

246.3 Working Papers. A *Party* offering a *Witness* under this Rule 246, at the time the *Testimony* is offered, may *File* and *Serve* upon the *Parties* copies of all or part of *Working Papers* used by the *Witness* in summarizing the *Documents* and in such event for good cause the *Hearing Officer* may direct that same be incorporated into the *Record* as an *Exhibit*. All such *Working Papers*, copies of which are not so furnished, shall be made available for examination, inspection or copying by any *Party* at reasonable times and notice at the office of the *Witness*, or the *Hearing Officer*, with or without motion, may direct that all or specified parts of said *Working Papers* be produced at such time and place as he shall designate for examination, inspection and copying by any *Party*.

RULE 247—SURVEYS

Whenever a *Material Fact* respecting the *Amount*, time, cost, market, life, age, nature, class, characteristics, conditions, methods, practices, facilities, *Operations*, *Service*, *Traffic*, *Business*, or *Articles of Commerce* is obtained from a number of different *Persons*, a summary analysis or compilation of their written answers to a uniform questionnaire calling for such information is *Competent* under the following conditions:

247.1 Proof. Such summary analysis or compilation must be offered by a *Witness* qualified as an expert in the particular field of inquiry who conducted or supervised the survey and made or supervised the summary analysis or compilation of the answers to the questionnaires.

247.2 Signature. The answers to each questionnaire must be signed by the person returning same.

247.3 Instructions. Uniform, clear, unequivocal written instructions or supplements thereto for answering the questionnaire must accompany it.

247.4 Questions. The questions must be concise, clear, direct, unequivocal and non-leading.

247.5 Answers. The answers must be direct, responsive and without the expression of opinion, comment or arguments.

247.6 Abstracts. The *Party* offering the *Witness* under Rule 247 may, and

upon the demand of any *Party* or the *Hearing Officer* shall make available for inspection at reasonable times and places, which if not agreed to by the *Parties* will be fixed by the *Hearing Officer*, a concise abstract of the answers to the questionnaire separately for each person answering showing his name, occupation, relation to any *Party* and his home or business address, and the *Hearing Officer*, with or without motion, may require such abstract or specified parts thereof to be *Filed* and *Served* as an *Exhibit* if it appears that the information therein does not support or in any way is inconsistent or contrary to the *Testimony* of the *Witness*.

247.7 Inspection. Any *Party*, by timely motion, shall be entitled to examine, inspect the original of any of the questionnaires or answers thereto, together with all *Working Papers* used by the *Witness* in making his analysis, summary or compilation thereof, at such time and place and under such reasonable conditions as the *Hearing Officer* shall fix or the *Parties* agree upon *Stipulation*.

247.8 Cross - Examination. A *ny Party* may cross examine any person answering the questionnaire with respect to any answers made by him either by cross interrogatories (Rule 233). *Deposition* (Rule 234) or directed by the *Hearing Officer* at an *Oral Hearing* (Rule 235) but the *Hearing Officer*, with or without motion, will limit the number of the persons who may be so cross examined where so required under the *Cumulative Evidence Rule* (Rule 259).

RULE 248—AUTOPTIC EVIDENCE

Where the existence, body, form, shape, size, dimensions, nature, characteristics or condition of an *Object* is a *Material Fact*, such *Object* or *Secondary Proof* thereof is *Competent* under the following conditions:

(232 F. 613, 616)

248.1 Exhibit. Where the *Object* is identified by other *Competent Evidence* and is moveable, not too large, bulky, unwieldy or cumbersome, it may be made an *Exhibit*, otherwise, and as directed by the *Hearing Officer*, it may be presented at a time and place fixed by him for inspection and examination by the *Hearing Officer* and the *Parties* in which case *Secondary Proof* thereof may be offered by any *Party*.

248.2 Motion Pictures or Recordings. Upon motion, proper identification and for good cause, the *Hearing Officer* may permit motion pictures to be exhibited, with or without accompanying recorded speech, or other sounds recorded by phonograph, dictograph or similar devices, or means to be reproduced, and in such case *Secondary Proof* thereof may be offered by any *Party*.

(71 ALR 1.5, 12 ALR 352, 361; 275 NW 620)

248.3 Secondary Proof. In any case in which *Autoptic Evidence* is admissible under This Rule 248 or the foregoing Sub-Rules, *Secondary Proof* thereof is *Competent* by (but not exclusively) photographs, maps, plats, diagrams,

sketches, X-Ray, skiagraphs, radio-graphs, models, casts, fingerprints, or by *Testimonial* description.

(FCC 1.877)

248.4 Handwriting. The admitted or proved handwriting of a person or any exact photographic reproduction thereof, is *Competent* for the purposes of comparison, to determine genuineness of other handwriting attributed to such person.

(USCA Title 28, Cap 115, SEC. 1731)

RULE 249—EXHIBITS

All *Competent Documents* and *Objects* under this Article 24 and *Verified Statements* (Rule 232), *Depositions* (Rule 233 and 234), and *Testimony* reduced to writing or tabular form (Sub-Rule 230.5) and *Evidence* in another *Proceeding* (Rule 236) will be received in *Evidence* as *Exhibits* under the following conditions:

249.1 Formal Requisites. Except in the case of original *Documents*, or as otherwise directed by the *Hearing Officer*, all *Exhibits* shall be printed on sheets 8½ inches from side to side and 11 inches from top to bottom and all other *Exhibits* on the same size sheet or a multiple thereof. In all other respects, *Exhibits* shall as far as possible conform to the requirements prescribed for *Procedural Instruments*. (Rule 101)

(ICC 84; FPC 1.26 (4); FTC XII)

249.2 Identification. All *Documents* produced by each *Witness* shall be assembled, bound together as a single *Exhibit* and consecutively paged beginning with Page 1. The title page shall show the correct style of *The Proceeding*, the name of the *Party* by whom tendered, the name of the *Witness*, a concise statement of the *Material Facts* to which the *Exhibit* relates, and an index which shall separately list each *Material Fact* discussed and the page number where discussed. Any *Exhibit* material offered by the *Deponent* of a *Verified Statement* or *Deposition* shall be made a part of the same *Exhibit* as such *Statement* or *Deposition* and any cross references shall be by page number. The *Exhibits* of each *Party* shall be consecutively numbered on the title page before filing or service.

(I. C. C. 84 (a); FTC XII)

249.3 Documentation. A statement in the textual part of a *Verified Statement* and in all tables of or references to *Charges*, *Amounts*, *costs*, *prices* of any *Material Fact* based upon anything except the personal knowledge of the *Witness*, shall be *Documented* by footnotes on the page or pages where the same appears, specifying the *Tariff*, *schedule*, or other authority or source of the information.

(I. C. C. 84 (b))

249.4 Copies. Unless for good cause shown, the *Hearing Officer* shall otherwise direct the original and three (3) exact *Copies* of each *Exhibit* shall be filed with *The Agency* and an exact *Copy* simultaneously served on each *Party*.

(I. C. C. 84 (c) (d); C. A. B. 24 (f); F. C. C. 1.876; F. P. C. 1.26 (5))

249.5 Retention of Exhibits. After an Exhibit has been filed and received in Evidence, it may not be withdrawn except by consent of the Parties and approval in Writing or upon the Record by the Hearing Officer. An Exhibit may be withdrawn by the Party who offers it at any time before it is received in Evidence. Unless the Hearing Officer, for good cause otherwise directs, an original or duplicate original executed instrument tendered for examination may be withdrawn if the Party offering it tenders an exact Copy thereof, or if so directed by the Hearing Officer, a photographic reproduction thereof.

(C. A. B. 302.7, 24 (g))

249.6 Late Filed Exhibits. Except for good cause and by an express order or direction of the Hearing Officer, or as provided in this Sub-Rule, neither the Hearing Officer nor The Agency will receive in Evidence any Exhibit or Document not filed and received in Evidence prior to the Close of the Production of Proof. In the event such an express order or direction be made, any Party by Motion filed within ten (10) days thereafter, for good cause, will be permitted to cross examine with respect to, or Rebut an Exhibit so permitted at such time and place and by such method of Proof as the Hearing Officer or The Agency shall direct. Before the Close of the Production of Proof, the Hearing Officer may, with or without Motion, but with consent of the Parties, direct a Party to furnish specific additional Documentary Evidence supplementary of the existing Record within a stated period of time.

(I. C. C. 86; C. A. B. 302.7; M. C. 201.133)

ARTICLE 25—ADMISSIBILITY OF EVIDENCE

RULE 250—MATERIALITY

Competent Evidence (Articles 22, 23 and 24) of a Material Fact Admissible under any provisions of this Article 25 or, unless expressly excluded by a provision of this Article, under the rules of Evidence governing Proceedings in matters not involving trial by jury in the courts of the United States, will be admitted in the Proceeding.

(I. C. C. 75; A. P. A. 7 (c); F. C. C. 1.871; F. P. C. 1.26; M. C. 201.121)

RULE 251—DIRECT EVIDENCE

Competent Evidence, which if true, directly without any inference or presumption, conclusively proves the existence or non-existence of a Fact in Issue, is Admissible.

RULE 252—CIRCUMSTANTIAL EVIDENCE

Competent Evidence of the existence or non-existence of a Fact, which if true, directly, certainly and without speculation, conjecture, qualification or exception, when taken together with other Evidence, renders probable the existence or non-existence of a Fact in Issue, is Admissible.

(73 A. 231, 33 A. 998; 59 N. H. 332, 338; 219 F. 619; 150 U. S. 57; 251 F. 25; 92 N. E. 774; 92 U. S. 281)

252.1 Predicative Facts. A Fact necessary to prove the predicate of a Pre-

sumption or to introduce, establish the identity, fix the time or place of, show the genuineness, relationship, cause or Relevancy of, or opportunity for the occurrence, existence, condition of a Material Fact is Admissible.

(27 N. E. 339; 695 S. E. 24; 117 N. W. 338; 82 A. 218; 143 F. 729)

252.2 Explanatory Facts. A Fact which explains, supplies a motive or constitutes preparation for, shows conduct apparently influenced by or in consequence of, or supports or rebuts an inference suggested by a Material Fact, is Admissible.

(16 How. 614; 117 U. S. 591; 22 P. 232; 246 F. 936; 111 U. S. 216)

RULE 253—RES GESTAE

Every Fact which is a part of the same transaction as a Fact in Issue is a Material Fact, Competent Evidence of which is Admissible.

(13 Wall. 3; 95 N. Y. 274)

253.1 Attendant Circumstances. Accompanying Facts showing the nature, condition, appearance, purpose, occasion or object of a Fact in Issue, are Material Facts which will be received in Evidence.

(56 N. Y. 95, 102; 79 N. Y. 546)

253.2 Conspiracies. Everything said, done, or written by any conspirator in the execution or furtherance of the common purpose is Admissible against all conspirators where the conspiracy, or its effects, consequences or results, is a Material Fact.

(65 P. 964; 113 F. 49)

253.3 Spontaneous Reactions. A spontaneous reaction, act or statement, reasonably appearing to have been evoked or prompted by the occurrence of a Material Fact, which it narrates, describes, qualifies, characterizes or explains, is Admissible if made while the reactor was (1) Perceiving such Material Fact or immediately thereafter, or (2) was under the stress of a nervous excitement caused by such Perception.

(116 U. S. 161; 100 F. 738)

RULE 254—SIMILAR FACTS

Evidence of a Fact similar to or resembling but not connected with a Material Fact, will not be received as Evidence of the existence or non-existence of such Material Fact, except as provided in the following Sub-Rules:

(C. A. B. 302.216)

254.1 Causation. Where the issue is as to the cause of a Material condition or occurrence, Evidence that similar occurrences or conditions under identical circumstances have been produced by a particular cause, is Admissible.

(177 F. 109)

254.2 Knowledge or Intent. Where the existence or nonexistence of intention, knowledge, good or bad faith, mental or physical state or feeling is Material, Evidence of similar Facts under like circumstances is Admissible.

(80 N. Y. 373; 132 Mass. 316; 56 F. 2d 700)

254.3 Course of Conduct. Evidence of the existence of a course of conduct or dealing of a Person is Admissible to show that a Material act was done in accordance therewith.

(145 F. 829)

254.4 Habit or Custom. Evidence of a course of behavior regularly repeated in like circumstances of a person or a group of persons is Admissible to prove that his or their behavior or a specified occasion conformed to the habit or custom.

(A. L. I. 307; 117 U. S. 591)

254.5 Experiments. Evidence of the result of an experiment in which the essential conditions of a Material Fact are precisely duplicated, is Admissible.

(10 How. 419; 241 F. 575)

RULE 255—INDIRECT EVIDENCE

Evidence of a Fact not Perceived by, or of an Opinion or the grounds therefor not held by the Witness, or of a Document or Object other than by the Document or Object itself, will not be received in Evidence except (1) as otherwise expressly provided in Rules 254 to 258 inclusive, or (2) where Secondary Proof is Competent under the provisions of Article 24, or (3) as expressly provided in one of the following Sub-Rules:

255.1 Direct Hearsay. A statement or Conduct amounting to or intended as a Statement of a Material Fact made by a person who claimed to have Perceived such Fact, is Admissible if such person is (1) Unavailable As A Witness, or (2) is present and subject to cross examination.

(A. L. I. Rule 503)

255.2 Mental or Physical Condition. A statement, reaction or conduct made in good faith by a person Unavailable As A Witness of such person's then existing state of mind, emotion or physical condition remembered or believed to have been produced by a Material Fact of which such person then had personal knowledge, is Admissible.

RULE 256—ADMISSIONS

Subject to the limitations of the Sub-Rules of this Rule 255, a voluntary, unequivocal, certain, non-conjectural statement, oral or written, or Conduct intended as or amounting to such a statement, by an Adversary Party, or his Privy, of a Material Fact, will be received in Evidence against such Adversary Party, but not in his favor or behalf.

(76 N. E. 551; 139 S. W. 292; 195 F. 715; 148 F. 399, 412; 219 F. 551)

256.1 Authorized or Adopted. Such a statement or Conduct of a third person is Admissible if such person was authorized by such Party to make statements for him concerning the subject matter of the statement or conduct, manifested his adoption or approval or belief in the truth thereof.

(A. L. I. 507)

256.2 Vicarious Admissions. Such a statement or Conduct by a third person is Admissible against such Adversary Party if the Hearing Officer finds that

(1) it was within the scope of and during the Agency or employment of such third person by such Adversary Party, or (2) such statement or Conduct relates to the plan or subject matter of during and before complete execution of a conspiracy in which such third person and such Adversary Party were participants, or (3) such statement or Conduct tends to establish a legal liability of such third person the existence of which is a Material Fact.

(A. L. I. 508; 3 Wall. 114; 250 F. 747; 179 U. S. 494; 72 N. Y. 70)

256.3 Acquiescence. Such a statement made in the presence or hearing of the Adversary Party, or in a Writing communicated to him, is Admissible against him only where the Hearing Officer finds that the nature of the statement and the circumstances under which it was made, heard, or communicated are such as to render a reply, natural or proper if he did not acquiesce therein.

(145 F. 664; 213 F. 763)

256.4 Compromises. A statement made by a Party with an express or implied qualification that it shall be without prejudice or offers or statements made during negotiations for a compromise of a claimed right or liability will not be received in Evidence.

(101 U. S. 263)

256.5 Entire Statement. In any case in which such statement or Conduct is Admissible under any of the provisions of this Rule 256 or its Sub-Rules, the entire statement or Conduct will also be received upon the offer of any Party or upon the direction of the Hearing Officer.

(88 A. 702, 119 F. 154)

RULE 257—DECLARATIONS

A Declaration not expressly Admissible by another Rule of this Article or of Article 24 made by a person who is not a Party or the Privy of a Party, will be received in Evidence only under the conditions set out in the Sub-Rules hereof:

257.1 Regular Course of Business. A Declaration of a Material Fact other than a Fact in Issue, made by a person shown to have knowledge thereof and to be without motive to misrepresent, made in the regular course of any Business when it was the regular course of such Business to make such Declarations will be received in Evidence.

257.2 Against Interest. A Declaration of a Material Fact made by a person shown to have knowledge thereof and to be without motive to misrepresent, is Admissible where the Hearing Officer finds to have been so far contrary to the declarant's pecuniary or proprietary interest, or so far subjected him to civil or criminal liability, or so far rendered invalid a claim by him against another or created such a risk of making him an object of hatred, ridicule or social disapproval in the community, that a reasonable man in his position would not have made the Declaration unless he believed it to be true.

(A. L. I. 509, 212 F. 278)

RULE 258—OPINION TESTIMONY

Except as expressly permitted under other Rules of Article 23, 24 and 25, the Opinion or Conclusion of a Witness with respect to a Material Fact, will be received in Evidence, only under the following conditions:

(111 U. S. 612; 88 F. 243, 249) *

258.1 Testimony in Terms of Opinion. In testifying to what he has Perceived, a Witness may give his Testimony in terms which include inferences and may state all Relevant inferences not embracing a conclusion as to a Fact in Issue, unless the Hearing Officer finds, with or without motion, either (1) that to draw such inferences requires a special knowledge, skill, experience or training which the Witness has not been shown to possess, or (2) that the Witness can readily and with equal accuracy and adequacy communicate what he has Perceived without testifying in terms of inferences of stating inferences and his use of inferences in testifying will be likely to mislead to the prejudice of the objecting Party.

(A. L. I. 401; 190 U. S. 548; 59 F. 75; 147 F. 140)

258.2 An Expert Witness. A Witness whom the Hearing Officer finds has special knowledge, skill, experience or training requisite to perceive, know or understand a Material Fact which requires special knowledge, skill, experience or training, will be permitted to testify as to his opinion respecting such Material Fact, other than a Fact in Issue, and the reasons or grounds upon which such Opinion is based.

(A. L. I. 402; 165 U. S. 373)

RULE 259—UNNECESSARY EVIDENCE

The public interest requires, and it is the duty of the Hearing Officer, of the Parties and of all Practitioners as officers of The Agency, to cooperate in every reasonable way to expedite the Proceeding by excluding and refraining from offering unnecessary, repetitious or cumulative Evidence.

259.1 Uncontroverted Fact. Except with respect to a Fact in Issue, Evidence of a Material Fact which is admitted of Record by the Parties, will not be received. Where a Fact in Issue is not disputed, Evidence of such Fact will not be received beyond that which, if true, is sufficient to prove such Fact, unless the Hearing Officer finds for reasons stated on the Record, that the public interest requires additional Evidence thereof.

259.2 Cumulative Evidence. After Evidence has been received which, if true, would prove the existence or non-existence of a Material Fact, no further Evidence will be received from the same

*The general rule that facts, and not conclusions, should be stated, is a wise and salutary one, and cannot be too strictly followed. It tends to prevent fraud and perjury, and is one of the strongest safeguards of personal liberty and private rights. Whenever it is doubtful whether a case falls under the rule, or under one of its exceptions, the wise course is to place it under the rule.

Party or any other Party having substantially the same interest in the Proceeding, with respect to the existence or non-existence of such Fact, unless the weight or credibility of such original Evidence is challenged by an Adversary Party.

259.3 Challenge. Upon the introduction of such original Evidence, the Party offering the same, may, and if directed by the Hearing Officer, shall state whether or not he has other Witnesses who will testify to substantially the same Fact or to substantially similar Facts which are Relevant to the same Fact in Issue in which case any Adversary Party may specifically and in detail challenge the statement as to the existence of such Evidence, the weight to be given it or the credibility of the Witness or Documentary Evidence which is tendered.

259.4 Corroboration After Challenge. Where such original Evidence is so challenged, the Party offering the same, may introduce Evidence confined to Facts which tend to corroborate such Evidence or to establish the credibility thereof insofar as the same is so specifically challenged.

259.5 Number of Witnesses. Where the Hearing Officer finds that the existence or non-existence of a Fact in Issue may be inferred from specific Relevant, but collateral Facts identical or similar in nature to one another, he, with or without motion, shall limit the number of Witnesses as to such collateral Facts to such a number as will be sufficient, if believed, to warrant or rebut the drawing of such an inference, unless the Parties Stipulate that one Witness shall be produced and examined in support and one in rebuttal of such Fact in Issue and that each Party has available other Witnesses whose Testimony on both direct and cross-examination would be substantially to the same effect as that of the single Witness introduced by him.

ARTICLE 26—RECEPTION OF EVIDENCE

RULE 260—OFFER OF EVIDENCE

An offer of Evidence may be made by a Party at the time and in the manner provided in Articles 20, 22 and 23, by either (1) interrogation of a Witness at an Oral Hearing upon direct, cross, re-direct or recross examination; (2) Filing and Service of the Verified Statement of a Witness; (3) Filing and Service of a Deposition of a Witness, or (4) Filing and Service of Documentary Evidence which is not required under these Rules to be verified by a Witness. Evidence introduced by a Hearing Officer by interrogation of Witnesses or by directing the Filing and Service of Documentary Evidence will be received without formal offer.

(F. P. C. 1.20 (J); M. C. 201.124)

260.1 Depositions. Where all of the questions and answers of a Witness upon Deposition are offered, the offer may be made by designating the name and address of the Witness, the time and place where, and the Officer before whom taken. In all other cases, the offer must be made by Filing and Service of each

question and answer, numbered as in the original document, and the number and title of any *Exhibits* thereto. In such latter case any other *Party* within five days thereafter, if no *Oral Hearing* is held, otherwise at such *Oral Hearing* may either (1) offer the entire *Deposition*, or (2) by *Filing* and *Service* of specified questions and answers or *Exhibits* identified as above provided.

(I. C. C. 67; F. C. C. 1.825, 1.873, 1.826; F. P. C. 1.24 (h); M. C. 201.134)

RULE 261—OBJECTIONS

Objections to the receipt in *Evidence of Testimony* or *Documentary* or *Autoptic Evidence*, shall be made at the time and manner as specified in the Sub-Rules hereof and unless so made, will be considered as waived unless the *Hearing Officer* or *The Agency* of his or its own motion, rejects the *Evidence* as inadmissible under these Rules.

(I. C. C. 87; C. R. 46; C. A. B. 20 (c) (d); F. C. C. 8.25 (b); F. T. C. XVIII; S. E. C. VIII (c))

261.1 *Form*. The ground of an objection shall be specific with citation of the Rule hereof under which it is claimed that the *Evidence* is inadmissible without argument or citation of other authority and unless so made, will be disregarded.

(C. A. B. 20 (c) (d); S. E. C. VIII (c))

261.2 *Reply*. The *Party* offering the *Evidence* may, and if called upon by the *Hearing Officer*, shall without argument, or debate, state the ground and cite the Rule hereof under which it is claimed that the *Evidence* is *Admissible*. If the objection be made at an *Oral Hearing*, such reply shall be immediately made on the *Record* following the objection, otherwise, it shall be made in writing within five (5) days after the objection or motion is *Filed* and *Served* as provided herein.

261.3 *Verified Statements*. Objections by an *Adversary Party* to *Evidence* contained in a *Verified Statement* shall specify the particular numbered question or paragraph to which it relates or the particular sentence, or clause thereof if it does not relate to the entire paragraph. Such objection shall be made at the time such *Adversary Party* is required to produce his *Proof* in answer or *Rebuttal* of such *Verified Statement*. The interrogation of the *Witness* by cross interrogatories or by *Deposition* will not waive the right to object to statements in such *Verified Statements* but if such objection is sustained, both the *Evidence* in the *Verified Statement* and in the cross-interrogatories or the answers thereto or cross questions and answers thereto in *Depositions* respecting such *Evidence*, shall be excluded.

261.4 *Depositions*. All objections to the taking of a *Deposition* or to the notice thereof or to the qualifications of the officer taking the same or to the manner of taking it or to the conduct of any *Party* at the taking or to errors of any kind which might be obviated, removed or cured, if promptly presented, or to a question or an answer are waived unless reasonable objection thereto is

made at the time such error occurs. Such objections will be noted by the officer upon the *Deposition*. Objections to questions or answers in cross interrogatories may be made by the *Adversary Party*, either at the time the same are taken, in which case they shall be noted on the record by the officer taking the *Deposition*, or at the time such *Adversary Party* is required to produce *Proof* under the Rules hereof in answer or *Rebuttal* of the *Evidence* contained therein.

(I. C. C. 61; F. C. C. 1.825 (a) (b) (c); C. R. 32)

261.5 *Oral Testimony*. Objection to a question or answer given by a *Witness* at an *Oral Hearing*, shall be made at the time such question is asked, if the objection be to the question or at the time such answer is given if the objection be to the answer.

261.6 *Documentary or Autoptic Evidence*. Where *Documentary* or *Autoptic Evidence* is offered at an *Oral Hearing*, objection thereto may be made after the *Adversary Party* has had the opportunity of inspection and cross examination and at such time as the *Hearing Officer* shall call for objections thereto. Objections to *Documentary* or *Autoptic Evidence* offered in connection with *Verified Statements*, answers to cross interrogatories or *Depositions*, shall be made at the time that objections are required to be made to statements or questions and answers contained therein under the Sub-Rules of this Rule.

261.7 *Motion to Strike*. Any *Party* may move to strike as inadmissible any *Evidence* on any ground upon which an objection to the *Evidence* might have been seasonably made if the *Hearing Officer* finds either (1) that the ground of inadmissibility of the *Evidence* was offered or received, or (2) that for any other reason the movant in the exercise of due diligence was unable to make or was prevented from making seasonable objection thereto. In any event, such motion will be entertained only if promptly made with service of notice after the discovery of the claimed ground of inadmissibility.

261.8 *Continuing Objections*. Unless otherwise directed by the *Hearing Officer* an objection to a question which has been overruled will be deemed to be made to all succeeding questions of the same or different *Witnesses* and to have been overruled and such objection shall not be repeated.

RULE 262—RULINGS

The *Hearing Officer* will promptly rule upon both all objections to, or *Motions to Strike Evidence* at the time the same are made. Where such objection or motion is not made or required to be made at an *Oral Hearing* under these Rules, such ruling will be made within two (2) days and notice of such ruling given to all *Parties*. Such ruling shall cite the applicable Rule or Rules hereof upon the authority of which it is made. No interlocutory appeal from the *Ruling* of the *Hearing Officer* will be permitted. *The Agency* if proper *Exception* be taken

thereto (Rule 265), will consider the objection upon petition for review.

(C. A. B. 24 (d); F. P. C. 1.26 (b), 1.28 (a), 2.20; F. T. C. XVIII; M. C. 201.126; S. E. C. X (h))

RULE 263—OFFER OF PROOF

A *Party* who has offered *Evidence* which has been rejected or excluded by *Ruling* of the *Hearing Officer*, may make an *Offer of Proof* consisting of a concise statement of the substance of the *Evidence* which would be adduced by oral *Testimony* or if the excluded *Evidence* consists of *Documentary* or *Autoptic Evidence*, the *Documents* or *Objects* properly marked for identification as offered and excluded, will accompany but not be made a part of the *Record* unless and until such *Ruling* is modified, revised or set aside. Such *Offer* at an *Oral Hearing* shall be made immediately following the announcement of the *Ruling* of the *Hearing Officer*. In other cases it shall be made in writing, *Filed* and *Served* within five days after the *Ruling* of the *Hearing Officer* has been served as provided in Rule 262.

(C. A. B. 24 (e); F. P. C. 1.28 (b); I. C. C. 84 (e))

RULE 264—EXCEPTIONS TO RULING ON ADMISSIBILITY

Within twenty days after the *Close* of the *Production of Proof* (Rules 204 and 205) any *Party* may file and serve an *Exception* to the *Ruling* of the *Hearing Officer* sustaining or overruling an objection to the receipt of or a motion to strike *Evidence* under the following Sub-Rules:

264.1 *Single Pleading*. If the *Party* takes *Exception* to more than one such *Ruling*, all shall be included in the same *Pleading*.

264.2 *Specification*. Such *Exception* shall refer specifically to the particular place in or *Document* of the *Record* in which such *Ruling* appears including, in the case of continuing objections, questions of like import permitted to be answered.

264.3 *Citation*. Such *Exception* shall not be argumentative but may contain, without comment, citation to authority deemed to support the *Exception*.

264.4 *Replies*. Reply to *Exceptions* will be permitted if and only if the *Hearing Officer* of his own motion shall be so direct, and if so permitted, shall be confined to a citation of authority deemed to support the *Ruling*, but without argument.

264.5 *Disposition of Exceptions*. The *Hearing Officer's* denial of the *Exceptions* within reasons thereof, will be made in the *Initial Decision*. If the *Exception* in whole or in part be sustained by the *Hearing Officer*, his action thereon will be taken pursuant to Rule 265.

264.6 *Waiver*. Failure of a *Party* to file an *Exception* to a *Ruling* of the *Hearing Officer* respecting the *Admissibility* of *Evidence*, will constitute a waiver of all objections to such *Ruling*.

RULE 265—REOPENING RECORD

After the Close of the Production of Proof but before the Initial Decision (Rules 204 and 205) the Hearing Officer, with or without motion, may reopen the Record to permit the Production of further Proof in such manner and at such times and places and limited to such Facts or matters, as he shall fix under the following conditions:

265.1 *Correction of Error.* Where such action is necessary to correct or avoid the consequences of an error in admitting or excluding Evidence.

265.2 *New Evidence.* To permit the introduction of new and non-cumulative Evidence which a Party in the exercise of due diligence was unable to or prevented from seasonably adducing.

(S. E. C. XII (d))

265.3 *Changed Conditions.* Where the Facts or law have so changed that the public interest or fairness and justice require that additional Evidence be taken.

(F. P. C. 1.33 (1) (2))

265.4 *Reply.* If the Hearing Officer so directs, but not otherwise, and upon such terms, conditions and times as he shall fix, the Parties may be permitted to reply to any Motion to reopen the Record made under this Rule.

265.5 *Appeal.* No interlocutory appeal from any action taken by the Hearing Officer under this Rule will be permitted.

ARTICLE 27—ARGUMENTATION

RULE 270—WHEN BRIEFS OR MEMORANDUMS ARE ALLOWABLE

Except, as may, for good cause, be otherwise Directed:

270.1 *Memorandums.* A written Memorandum in support of a Motion or a Reply to a Motion may be Filed and Served with such Motion or Reply.

270.2 *Briefs in Oral Hearings.* In Proceedings which are Orally Heard (Rule 235) Briefs of Parties may be Filed and Served within 20 days after the transcript of the evidence is filed by the Official Reporter and all Reply Briefs within 20 days thereafter.

270.3 *Briefs In Other Proceedings.* In all other Proceedings Briefs of all Parties may be Filed and Served within 20 days after the Close of the Production of Proof and Reply Briefs within 20 days thereafter.

270.4 *Briefs Upon Review.* The Brief of the Party petitioning for Review or for Reconsideration may be Filed and Served with the Petition and Briefs of any Parties opposing the granting of the Petition with their Reply.

270.5 *Multiple Briefs Not Permitted.* Only a single Brief or Memorandum may be filed upon behalf of all Parties aligned on a single side. (Rule 195.)

RULE 271—REQUISITES OF MEMORANDUMS

Except as may be otherwise Directed, each Supporting or Reply Memorandum shall conform to Rule 101, shall state upon the cover or title page its nature,

upon whose behalf and by what Practitioners it is Filed and the date when it was required to be Filed, shall not consist of more than ten pages including cover and shall be arranged as follows:

271.1 *Supporting Memorandums* shall contain in the following order, a concise statement or: (1) the Motion Exception or Objection to which directed; (2) the circumstances under which the same arose, (3) the issue presented and (4) written argument documented by appropriate citation of authority or of evidence relief upon:

271.2 *Reply Memorandums* shall specifically admit, adopt or deny or correct statements of the Supporting Memorandum in respect to the Motion, Exception or Objection, the circumstances under which the same arose and may contain written argument documented by appropriate citation of authority or of evidence relied upon.

RULE 272—REQUISITES OF BRIEFS

Except as otherwise Directed each Brief or Reply Brief shall conform to Rule 101, shall state upon its cover or title page its nature, upon whose behalf and by what Practitioners it is Filed and the date upon which it was required to be Filed, shall consist of not more than 50 pages, including cover, but excluding the Abstract (Rule 274), and shall contain in the following order:

(1) If of more than ten pages in length, a Table of Contents together with a separate Table of Authorities alphabetically arranged, each with appropriate reference to the pages of the Brief;

(2) A Statement of Facts except insofar as the Statement of an Adversary's Brief or of a Report are accepted and adopted (Rule 273);

(3) Specification of Issues or Errors, Points and Authorities (Rule 295);

(4) Requested Findings (Rule 296);

(5) Written Argument (Rule 297); and

(6) Abstract of the Evidence (which may be printed as a separate volume) except insofar as the Brief of an Adversary is adopted (Rule 294).

(I. C. C. 91 (a), (b); F. P. C. 1.29, 1.29 (d), 1.31 (e); F. T. C. XXIII, XXXIII, M. C. 201.156 Sec. XI)

RULE 273—STATEMENT OF FACTS

Proponents Opening Brief shall contain a fair, complete, non-argumentative and concise statement of the Material Facts shown by the Proof of all Parties arranged in the topical order of the Issues as defined by the Hearing Officer (Rule 213). If the Brief contains or is accompanied by an Abstract (Rule 274), citations may be made to the appropriate paragraphs thereof, otherwise they shall be to the page of the Record where the fact stated is found. Paragraphs of the Statement of Facts shall be numbered as provided in Rule 101.2 and topically indexed in the Table of Contents. (Rule 292.)

(I. C. C. 91 (d), F. T. C. XXIII C (2), F. P. C. 1.29 (c)).

273.1 *Reply Briefs.* A Reply Brief shall accept and adopt the Statements of Facts in the Opening Brief to the

extent that they are true and correct, but may specifically, concisely and non-argumentatively correct errors or omissions therein. In cases where Counsel certifies that the Statement of Facts in the Opening Brief is garbled, incomplete, unfair or contrary to the Record he may restate the Facts in the manner prescribed in Rule 273.

273.2 *Noncompliance.* Briefs which deliberately and prejudicially violate Rule 273 or 273.1 will be stricken and disregarded.

273.3 *Illustrations.* Where relative services, distances, routes or locations are Material to the Issue, the Proponent's Brief shall include a photograph, sketch, chart or map which accurately and fairly depicts the relative situations. To the extent that it is unfair or inaccurate the Reply Brief may modify or redraft the same. In either case appropriate reference shall be made to the evidence upon which the drawing is based.

(I. C. C. 91 (c))

273.4 *Exhibits.* The ultimate Material Fact which an exhibit purports to Prove and not the exhibit itself shall be included in the Statement of Facts.

(I. C. C. 91 (b))

273.5 *Case Stated.* Except insofar as there is a bona fide disagreement as to its accuracy, completeness and fairness the Statement of Facts of the Opening Brief will be treated as an agreed Statement of Facts and binding on all Parties; provided that for good cause shown any Party thereafter at any stage of the Proceeding may be permitted to File and Serve a written supplementation or correction thereof.

RULE 274—ABSTRACT

A Proponent's Opening Brief may, and where so Directed, shall contain or be accompanied by an Abstract which shall fairly, fully but non-cumulatively condense in narrative form all Material Pleadings, Testimony, Exhibits, Stipulations, Directions and Rulings, without argument, comment, coloring or emphasis. Such Abstract shall be arranged topically under the Issues as defined (Rule 193) and shall be paragraphed and numbered in such manner as to identify the Issue or subdivision thereof to which the matter relates. Supporting citations shall be made to the Record, transcript and exhibits (number and page).

(I. C. C. 91 (d), F. P. C. 1.29 (c))

274.1 *Exhibits.* Except where and then only to the extent necessary to explain their contents or method of construction, Exhibits shall not be reproduced in the Abstract but shall be summarized in such a manner as to clearly and succinctly show their import.

274.2 *Challenge.* A Reply Brief may challenge the Abstract upon the ground that specified paragraphs are incomplete, inaccurate, colored or false, and in such cases restate the contents of such paragraphs accurately and fairly.

274.3 *Use.* Except to the extent which an Abstract is justifiably chal-

lenged it will be treated as a full, accurate and true statement of the *Record*.

RULE 275—SPECIFICATION OF ISSUES, ERROR, POINTS AND AUTHORITIES

A *Brief* of more than 10 pages, upon a separate page shall succinctly set forth its position with respect to each of the *Defined Issues* or if the *Brief* be upon *Appeal* or *Reconsideration* of each *Assignment of Error*. Each such *Issue* or *Assignment* shall set forth the principle of general or administrative law relied upon to sustain same, with appropriate citation to the number and precise page (or numbered section or paragraph) of each authority relied upon as establishing such principle.

RULE 276—REQUESTED FINDINGS AND CONCLUSIONS

Every *Brief* shall set forth upon a separate page in serially numbered paragraphs, a clear, concise, nonargumentative and non-redundant statement of each *Finding* and *Conclusion* which the *Party* for whom the *Brief* is *Filed* desires to be made, with appropriate cross reference (by paragraphs number only) to the *Statement of Facts* (Rule 273) and specification of *Points and Authorities* (Rule 275) which warrant or require such *Finding* or *Conclusion*.

(A. P. A. 8 (b) (1); I. C. C. 91 (e); C. A. B. 302.26; F. C. C. 1.850; F. T. C. XXI; M. C. 201.191; S. E. C. IX (f))

276.1 *Waiver*. All contentions of a *Party* not specifically and clearly covered in his *Requested Findings* and *Conclusions* are waived.

RULE 277—WRITTEN ARGUMENT

The written argument shall be concise, non-redundant, specifically directed to a single *Requested Finding* or *Conclusion*, and confined to the discussion of *Material Facts* and applicable principles of law or of administrative discretion or procedure.

(F. T. C. XXII (4); S. E. C. XI (b))

277.1 *Tabular Matter*. Tabulations or compilations of *Amounts* shall not be included in the text but may be shown in appropriate footnotes.

277.2 *Citation to Proof*. Statements of *Material Facts* which are set out in the *Statement of Facts* (Rule 273) and are undisputed need not be documented. References to *Proof of Material Facts* which are in dispute shall be to the paragraph section of the *Abstract*, if any, otherwise to the page of the *Record*. Quotations of *Testimony* or from *Exhibits* shall be indented and if more than 5 lines in length shown in foot notes.

277.3 *Citation of Authority*. References to authorities relied upon shall be shown in foot notes. Quotations from authorities shall be indented and if more than 5 lines in length shall be shown in foot notes.

RULE 278—ORAL ARGUMENT

Oral Argument will be granted or Directed under the following Rules:

(F. C. C. Section 409 (b); M. C. 201.211; S. E. C. XII (a))

278.1 *At Oral Hearing*. *Oral Argument* will be heard before the *Hearing Officer* when *Directed* or when requested by any *Party* on or before the first day of such *Oral Hearing*.

(I. C. C. 88; C. A. B. 302.25 (a) (b); F. P. C. 1.29 (b), 1.31 (2); F. T. C. XXI; M. C. 201.130)

278.2 *In Other Proceedings*. In *Proceedings* where there is no *Oral Hearing* *Oral Argument* before the *Hearing Officer*, in his discretion, may be held at a time and place fixed by him, either upon his *Direction* or upon *Motion* of any *Party Filed and Served* within 10 days after the *Close of Proof*.

278.3 *Before The Agency*. *Oral Argument* before *The Agency* or an appellate Division thereof in its discretion, may be directed upon its own initiative or upon request therefor included in the *Exceptions* or *Petitions for Reconsideration* or in the *Brief* of any *Appellee* or *Party* opposing *Reconsideration*.

(I. C. C. 98 (a); C. A. B. 302.32 (a); F. C. C. 8.54 (c) (d); F. P. C. 1.31 (d); F. T. C. XXIV)

278.4 *Upon Reconsideration*. Requests for *Oral Argument* upon *Reconsideration* are not permitted. *The Agency*, however, in its discretion and upon its own initiative may *Direct Oral Argument* in such cases.

278.5 *Opening and Closing*. The duty and right to open and close an *Oral Argument*, if held prior to the *Initial Decision* rests on and in the *Party* who has the *Burden of Proof* (Rule 191); and if held upon *Appeal* or *Reconsideration* upon and in the *Party* who seeks such *Appeal* or *Reconsideration*.

278.6 *Number of Arguments*. Except as otherwise *Directed*, there will be but one *Opening* argument, one reply argument by each *Adverse Side* (Rule 195) and one closing argument.

278.7 *Designation of Counsel*. The *Parties* on each *Side* (Rule 195) shall agree upon Counsel to make the argument for that *Side*. If they are unable to do so prior to the time when requests for the allotment of time must be made (Rule 279.1) the *Hearing Officer* *Agency* or *Division* before whom the argument is to be made, upon the request of any *Party* on that *Side*, will designate the Counsel to make the argument for it.

278.8 *Nature and Scope*. Arguments shall be concise, non-redundant, free from personalities and directed to specific *Requests for Findings* or *Conclusions*. The opening argument shall be strictly limited to a reply to arguments of opposing Counsel without undue repetition of the opening argument.

278.9 *Writings*. Written in lieu of oral arguments may be *Filed* and *Served* at or before the beginning of the Argument. Arguments may not be read. Memoranda, charts, exhibits, and objects may be submitted if simultaneously copies of same are *Served* upon all Counsel participating in the argument. Citations of authority, without comment may be *Filed* and *Served* subsequent to the argument.

(C. A. B. 302.32 (b))

RULE 279—ALLOTMENT OF TIME FOR ORAL ARGUMENT

Except as otherwise *Directed* one hour will be allotted to each *Side*, of which not more than 30 minutes may be used for the closing argument. Where the *Parties* have been aligned into three or more *Sides* (Rule 195) the time will be equally divided between *Proponents* and *Opponents* and equitably apportioned among the *Sides* constituting each such group.

279.1 *Requests*. In *Oral Arguments* before the *Hearing Officer* following an *Oral Hearing* (Rule 278.1) requests for time shall be made on the first day of the *Oral Hearing*. In other arguments before the *Hearing Officer* (Rule 278.2) such requests shall be made at such time as shall be provided in the *Direction* for the *Oral Argument*. In *Oral Arguments* before *The Agency* or a *Division* requests for time must be made by telegram or letter at least 10 days prior to the time set for the argument.

(I. C. C. 98 (b); F. C. C. 1.854 (e); S. E. C. XII (b))

279.2 *Notice*. In *Oral Arguments* before *The Agency* or a *Division* at least 5 days notice of the final allotment of time will be given by publication in the *FEDERAL REGISTER*.

ARTICLE 28—ADMINISTRATIVE DECISIONS

RULE 280—SUMMARY DECISIONS

Where, at any time after the period, if any, for the *Filing* of *Answers*, *Replies*, *Interventions* and *Replications* has expired, it appears from the entire *Record* there is no *bona fide* substantial dispute with respect to the *Facts* in *Issue*, the *Hearing Officer*, if prior to his *Initial* or recommended *Initial Decision*, or *The Agency*, if thereafter, upon *Motion* or of his own initiative may summarily decide the *Proceeding*, which *Decision* shall be subject to Rules 282 to 289 of this Article 28.

RULE 281—INITIAL DECISION

A *Proceeding* shall be *Initially Decided* by the *Hearing Officer* to whom it has been referred unless:

(a) The *Parties* waive *Initial Decision* and/or recommended *Initial Decision* by such *Hearing Officer*; or

(b) *The Agency* otherwise directs by special or general *Order*.

(A. P. A. 8 (a); C. A. B. 302.27 (b); F. C. C. 1.85 (a); F. P. C. 1.30 (a), (c), (f), (j), (k); 8.51 (p); F. T. C. XXII; M. C. 201.157; S. E. C. IX (b))

281.1 *By Hearing Officer*. In a *Proceeding* in which an *Oral Hearing* is held or which is orally argued before the *Hearing Officer*, he shall make his *Initial Decision* or recommended *Initial Decision* orally upon the *Record* not later than the first business day following the conclusion of the taking of testimony or of the oral argument. In all other *Proceedings*, the *Initial Decision* or recommended *Initial Decision* shall be *Filed* and *Served* within 30 days after the expiration of the time for the *Filing* of briefs.

281.2 *By The Agency*. Where *The Agency* has presided at the reception of the evidence, it will make the *Initial*

Decision within 60 days after final submission of the cause.

281.3 Recommended Initial Decision. Where a *Proceeding* has been referred to the *Hearing Officer* for a recommended *Initial Decision*, *The Agency*, upon the record, briefs, argument and recommended *Initial Decision*, will make and *File* the *Initial Decision* within 60 days after the expiration of time for *Filing Exceptions, Replies and Replications*.

RULE 282—FORM, CONTENT, SERVICE, AND EFFECTIVENESS

Every *Final, Initial*, or recommended *Initial Decision* shall contain or be contained in or be accompanied by a *Rule or Order* which establishes, amends, supplements, modifies, or rescinds a *Rule* or which grants, denies, limits, or extends a *License* or other *Relief* or which otherwise imposes a *Sanction*.

282.1 Content. Every such *Decision* shall recite in clear, certain and non-legalistic language in the following order: (a) The correct caption of the *Proceeding*; (b) a description of the nature and status of the *Decision*; (c) designation of *Parties and Counsel*; (d) a statement of the nature and background of the *Proceeding*; (e) a statement of the *Facts*, but without recitation of evidence; and all such *Decisions*, except *Summary Decisions* when made by *The Agency, Commissioner, or an Examiner*, etc. shall also contain; (f) separately numbered synoptic headnotes of the points considered and decided; (g) a definition of the *Issues* decided; and (h) in separate sections, numbered respectively to agree with the headnotes, a discussion of each *Issue*, and the principles involved and the determination made thereof and the reasons and precedents for such determination.

(I. C. C. 14 (d); C. R. 53 (e); F. C. C. 8.51 (c); F. P. C. 1.30 (g), (h); F. T. C. XXII; M. C. 201.95)

282.2 Service. A true copy of every *Decision* shall be addressed to each *Counsel* of record and to each *Party* without *Counsel* of record and deposited in the United States mail. In addition, if the *Decision* imposes a *Sanction*, a true copy thereof either (a) will be delivered personally to each *Person* subjected to such *Sanction*, or his agent duly appointed and authorized to receive such *Service* or (b) will be sent by registered United States mail, with receipt demanded, to each said *Person*, or said agent. If the *Decision* establishes, amends, or rescinds a *Rule*, amendment, or rescission will be published in the *Daily Federal Register*.

282.3 Review Upon Agency Initiative. *The Agency* upon its own initiative, may provide, by an order *Filed and Served* at any time before the effective date of an *Initial Decision*, that such *Decision* shall not become final and that it shall be further reviewed, considered and determined by *The Agency*.

(F. C. C. 8.53 (b), (c); I. C. C. 97 (a))

RULE 283—APPEALS

Any *Party* to the *Proceeding* may *Appeal* from an *Initial Decision* or recom-

mended *Initial Decision of the Hearing Officer* by *Filing and Serving*: (a) *Written notice* of such *Appeal* within 10 days after *Service* of such *Initial Decision* (which period will not be enlarged except to prevent manifest injustice or unjust hardship); and (b) *Exceptions* to said *Initial Decision* within 20 days after the *Filing and Service* thereof.

(I. C. C. 96 (a); C. A. B. 302.30; F. C. C. 1.853 (a), (b); F. P. C. 1.31 (a); M. C. 201.97, 201.241)

283.1 Exceptions—Style and Arrangement. *Exceptions* shall be written in clear, concise, non-legalistic non-repetitious statements of fact or of conclusions, without argument. They shall be arranged in the same order and given the same numbers as the paragraphs of the *Initial Decision* to which they respectively relate.

283.2 Exceptions—Content. *Exceptions* must: (a) specify the particular provision in the *Decision* to which exception is taken; (b) point out with particularity the alleged error therein, and (c) submit a revised or correct provision, with appropriate citation to the record or of authority.

283.3 Exceptions—Supporting Argument. The *Exceptions* may be accompanied by a written argument, the parts thereof being arranged and numbered to correspond with the *Exceptions*. The argument and *Exceptions* shall be bound in a single document and shall not exceed 40 pages in length.

283.4 Failure to File Exceptions. Failure within the time provided to *File* a specific *Exception* to a statement, finding, conclusion, or provision in a *Rule or Order* of a *Decision* waives all objections to same. Leave to *File Exceptions* out of time will be granted only upon a showing of good cause and substantial doubt as to the correctness of the *Initial Decision*.

283.5 Replies—Multiple. If *Exceptions* are *Filed* by more than one *Adversary Party*, only one *Reply* may be *Filed*, which may be in *Answer* to any or all of the *Exceptions*. Where the *Parties* have been aligned (Rule 195), only a single *Reply* upon behalf of all *Parties* aligned on a single *Side* will be permitted.

283.6 Replies—Content. A *Reply* shall directly, clearly, non-repetitiously and non-argumentatively deny, qualify, explain, condition, or avoid each *Exception*, in order, and with the same paragraph number. If made to *Exceptions Filed* by two or more *Parties*, the *Exceptions* of the several *Appellants* shall be grouped according to subject matter and a single *Reply* made. A *Party* may join with his *Reply, Cross Exceptions* which shall comply with the requirements of Rules 283.1 and 283.2 hereof.

283.7 Replies—Argument. A *Reply* may be accompanied by written argument in support thereof, with paragraphs numbered as in the *Reply*. The *Reply* and the accompanying argument shall not exceed 20 pages in length, with five pages additional for each separate *Exceptions* in excess of one, and five additional pages if there be a *Cross Appeal*, but in no event shall the *Reply* and argument exceed 50 pages.

238.8 Replication. An *Appellant*, within 10 days after the time for the *Filing and Service of Replies* to his *Exceptions* may *File* a single *Replication* to all of said *Exceptions* of not more than 10 pages in length and limited to controverting: (a) New matter contained in the *Reply* and not treated in *Appellant's Exceptions*, and (b) *Exceptions* of all *Cross-Appellants* when *Cross Appeals* are joined with one or more *Replies*.

283.9 Effect of Appeal. The timely *Filing of Exceptions* to an *Initial Decision* will operate to stay the provisions of a *Rule or Order* to which specific *Exception* is taken. *Filing of Exceptions* out of time upon leave as provided in Rule 283.4 will not affect the finality of the *Decision* or stay or postpone the effective date of the *Order* unless *The Agency* in its discretion otherwise orders.

RULE 284—DECISION UPON APPEAL

The Agency, upon the *Exceptions, Replies, Replications* and oral argument, if any, the recommendation of the *Hearing* or other *Officer*, as provided in the sub-rules hereof, together with such parts of the record as may be necessary to resolve the issues presented by the *Appeal*, will affirm, modify, or reverse the *Initial* or recommended *Initial Decision* of the *Hearing Officer* as to it seems best.

(A. P. A. 8 (a) (b); C. A. B. 302.27, .29, .36; F. C. C. 1.853 (c), 1.855, 1.857; F. P. C. 1.32 (d); F. T. C. XXV; S. E. C. IX (a), (b))

284.1 Recommendation of Hearing Officer. Within 20 days after the time for the *Filing of all Exceptions, Replies and Replications* has elapsed, the *Hearing Officer* shall *File and Serve* specific recommendations as to whether the *Initial Decision* should be amended, corrected, supplemented, revised or reversed, with the reasons for such recommendation, and thereafter shall not participate, consult with or advise further in the handling, consideration, disposition or *Decision* of the *Proceeding*. No exceptions, reply, or comment may be filed by the *Parties* to such recommendation, except as otherwise directed by *The Agency*.

(F. C. C. Act 409 (c); F. C. C. 1.851 (d); F. P. C. 1.30 (f); M. C. 201.99)

284.2 Staff Review. The *Initial Decision* from which an *Appeal* has been taken in any *Proceeding*, shall be referred to the *Board of Review* for its comment and recommendation, as provided in Rule 46.0. This comment and recommendation will be treated as a confidential communication and will not be made public.

RULE 285—EFFECTIVENESS OF FINAL DECISION

Except as otherwise provided in the *Decision* in Rule 306.7 or in the sub-rules hereof, a *Decision* by *The Agency*, either initially or upon appeal, will take effect on the 30th day following the *Service* thereof and shall continue in force for the period specified therein, if any, otherwise until it shall be rescinded, suspended, modified, stayed or set aside by *The Agency* or by a court of competent jurisdiction.

(I. C. A. 15 (2))

285.1 Summary Decisions. Unless otherwise provided therein, a *Summary Decision* in a *Non-Adversary Proceeding* will become effective one day after date thereof.

285.2 Modification of Date or Period. Not later than 10 days prior to the effective date of a *Decision*, any *Party* may *File* and *Serve* a written or telegraphic *Petition* praying the modification of the effective date thereof or of the period of notice or other period or date prescribed therein.

(I. C. C. 101 (c))

285.3 Reply to Petition for Modification. Any *Party* may *Reply* in writing or by telegraph to such a *Petition* for modification of a *Decision* within 5 days after *Service* of such *Petition*.

RULE 286—PETITION FOR RECONSIDERATION

Any *Party* desiring any change other than the modification of a date or period therein, within 30 days after the *Service* of a *Final Decision*, may *File* and *Serve* a *Petition for Reconsideration* thereof, subject to the following subrules.

(I. C. C. 110 (a); F. C. A. Sec. 405; C. A. B. 302.37; F. C. C. 1.892, 1.894; F. P. C. 1.30 (e))

286.1 Final Decision Only. *Petitions* will not be entertained for *Reconsideration* of, or to review, correct, or set aside, intermediate, interlocutory, or temporary orders or directions of *The Agency* or to review, correct or set aside the *Directions* of, or an *Initial Decision* by, a *Hearing Officer*, except where such *Initial Decision* has become the *Final Decision* of *The Agency*.

286.2 To Reopen Record. A *Petition* to reopen the *Record* after submission or *Decision* to permit the reception or introduction of further evidence must describe such evidence and the witnesses or documents by which it will be adduced with particularity, must show that the same is noncumulative and is material to a controlling issue in the *Proceeding*, and also must show good cause for such evidence not having been previously adduced.

(I. C. C. 101 (b))

286.3 Correction of Erroneous Decision. A *Petition* to reverse, vacate, suspend, or modify a *Final Decision* upon the ground that the same was erroneously made must (1) show that the *Decision* directly affects substantially all of the *Carriers* of the particular type or kind involved who operate in one or more of the *Rate Territories* or that it involves issues which are of general transportation importance; (2) specify the statement of fact, premise, conclusion, principle, reason or precedent claimed to be erroneous; (3) specify the error therein, and (4) state the true or correct fact, premise, principle, reason, or precedent. If the whole or any part of the *Decision* is claimed to be unlawful or beyond the power or jurisdiction of *The Agency* to make, the *Petition* shall specify with particularity the statutory provisions relied upon to establish such claim. If the *Petition* is grounded upon the fact that the issues involved are of

general transportation importance, it must bear the written certificate to that effect of at least one member of *The Agency*.

(I. C. C. 101 (d); C. A. B. 302.57; F. C. C. 1.893 (a), (b); F. P. C. 1.34 (b); M. C. 201.231)

286.4 Successive Petitions. A successive *Petition for Reconsideration* by the same *Party* or by a *Party* having substantially the same interest as a prior *Petitioner* will not be entertained unless leave therefor be first obtained. Such leave will be granted only if (a) the errors alleged or the new evidence sought to be introduced were not known and in the exercise of reasonable diligence could not have been known to the *Petitioner* at the time the original *Petition* was *Filed*, or (b) manifest injustice and irreparable injury will result unless the *Petition* be granted.

286.5 Argument. *Petitions for Reconsideration* shall be written in clear, concise and non-legalistic language and restricted to non-repetitious statements of fact or of conclusions, without argument. They may be accompanied by a written argument in support thereof, the introductory paragraph of which shall succinctly state the nature of the relief sought and the basic grounds therefor. The *Petition* including supporting argument shall not exceed 50 pages.

286.6 Findings of Fact. A *Petition for Reconsideration* or correction of a finding of *Fact* in the *Initial Decision* which has been affirmed by *The Agency* upon *Appeal* will not be entertained.

286.7 Stay of Order. A *Petition for Reconsideration* of a *Decision* of a *Division* will postpone the effective date thereof pending the further *Order* of *The Agency*, but a *Petition for Reconsideration* of a *Decision* made by *The Agency sitting en banc* will not operate to stay or postpone the effective date thereof without further *Order* of *The Agency*.

(I. C. A. Sec. 17 (8); M. C. 201.232)

286.8 Replies. Except as otherwise directed by *The Agency*, *Replies* to a *Petition for Reconsideration* will not be entertained unless and until *The Agency* shall have entered an *Order* directing that the *Decision* be reconsidered.

(M. C. 201.234; F. C. C. 1.895)

RULE 287—RECONSIDERATION

Within 60 days after the *Filing* of a *Petition for Reconsideration* *The Agency en banc* will enter an order either denying or granting the *Petition*. Such an order is not subject to a petition for *Reconsideration*. If such order grants *Reconsideration* it will state precisely the questions or *Issues* to be reconsidered and fix a time, not less than 20 days, within which *Replies* to the *Petition for Reconsideration* in so far as they relate to such specified questions or issues may be *Filed* and *Served* by *Parties Adversary* to the petitioner.

287.1 Further Evidence. An order granting *Reconsideration* may direct that the record be opened for the taking

or receipt of new or additional evidence either by verified statement, oral testimony or receipt of authenticated documentary evidence, but in any case *Adversary Parties*, upon demand, will be given the opportunity to cross examine the witnesses tendering the same and to produce rebutting evidence.

287.2 Oral Argument. An order granting *Reconsideration* may direct that the *Proceeding* be set down for oral argument before *The Agency en banc* at a time and place fixed therein.

287.3 Rehearing. An order granting *Reconsideration* may direct that the *Proceeding* be reopened for further hearing either generally or upon specified issues or questions, but, in either case, the evidence adduced at such further hearing will not be subject to an intermediate decision but will be considered along with the other evidence of record in the determination of the *Final Decision* upon *Reconsideration*.

287.4 Decision Upon Reconsideration. *The Agency, en banc* in its *Decision* upon *Reconsideration*, will affirm, modify, vacate or reverse the decision under *Reconsideration* and such *Decision* shall not be subject to a *Petition for Reconsideration*.

RULE 288—RELIEF FROM FINAL DECISION

At any time *The Agency*, upon petition or upon its own initiative for good cause may reopen, alter, modify, set aside, vacate, annul or supplement a *Final Decision* subject to the following subrules:

288.1 Clerical Mistakes. *The Agency*, without notice, will correct clerical mistakes or typographical errors.

288.2 Accident, Mistake or Fraud. *The Agency* will set aside a *Decision* which appears to it to have been made as the result of accident, mistake or fraud and will reopen the *Proceeding* for further hearing and decision.

288.3 Void Decisions. Upon notice *The Agency* will vacate, set aside and annul any *Decision* or any part thereof which appears to it to be void as a matter of law.

288.4 Changed Conditions. *The Agency* may reopen a *Proceeding* in which there has been a *Final Decision* to determine whether or not conditions which led to or warranted such order have changed so that the same is manifestly unjust or is contrary to the public interest.

288.5 Supplementation. *The Agency* may from time to time enter such *Order* or *Orders* supplementing a *Final Decision* as justice shall require.

RULE 289—COMPLIANCE WITH DECISION

When in consequence of *Proceedings* under *The Act* any *Party* by *Order* directed, required, authorized or granted the right or *License* to do or to desist from doing anything such *Party* must notify *The Agency* on or before the date upon which such *Order* or requirement must be complied with, whether or not compliance has been made therewith

and the manner in which such compliance has been made.

(I. C. C. 99; F. C. C. 1.509; F. P. C. 1.35, 33.3, 34.8, 34.20; F. T. C. XXVI; M. C. 201.5)

289.1 Damages. When the Commission finds that damages are due but that the amount cannot be ascertained upon the record before it, the complainant should immediately *File* and *Serve* separate statements for each route showing the date of shipment, date of delivery or tender of delivery, date charges were paid, car initial or name of vessel, car or voyage number, origin, destination, route, commodity, weight, the rate as charged, the charges as paid, the correct rate, the correct charges, the amount of reparation on basis of the Commission's decision, and the name of person paying charges in the first instance and his capacity as consignor, consignee or otherwise, and shall attach to the statement filed with the carriers who respectively collected the charge, the paid freight bills or true copies thereof. Within 30 days thereafter the General Accounting Officer of such collecting carrier must *File* and *Serve* a verification and certification of such shipments.

(I. C. C. 99; M. C. 201.221, .222)

ARTICLE 29—JUDICIAL REMEDIES

RULE 290—ENFORCEMENT SUITS

Whenever it appears that any *Person* subject to the Interstate Commerce Act is violating or failing fully to comply with any provision of said Act or any *Order of The Agency*, *The Agency* may apply to any district court of the United States of competent jurisdiction for enforcement of the provisions of *The Act* or of an *Order of The Agency*.

(I. C. A. Sec. 12 (1); 16 (12); 5 (8); 17 (9); 222 (b); 316 (b); 411 (e); 417; C. A. B. 302.205; F. T. C. V)

290.1 Petitions. Any *Person* having an interest therein may *File* a *Petition* with *The Agency* setting forth such interest; the name and address of the *Person* subject to the jurisdiction of *The Act* who is claimed to be in violation of a provision of *The Act* or of an *Order*; and a concise statement of the *Material Facts* relied upon by the *Petitioner* to show such violation.

290.2 Service. A copy of said *Petition* shall be *Served* upon the *Person* named in said *Petition* as in violation of said provision of *The Act* or of an *Order*.

290.3 Reply. A *Person* named in the *Petition* as being in violation of any provision of *The Act* or any *Order* within 30 days after *Service* of such *Petition* may *Reply* thereto.

290.4 Intervention. Any interested *Person* may, and the General Counsel shall, within 15 days after the *Filing* of said *Petition*, file a *Notice of Intervention* therein and within 30 days after the *Filing* of said *Petition* their respective *Interventions* therein setting forth their positions with respect to said *Petition*.

290.5 Replies to Intervention. Within 20 days after the *Filing* of said *Intervention* any *Party* may *File* a *Reply* thereto.

290.6 Order. Upon the *Petition*, *Replies* thereto, and the *Intervention* and *Replies* thereto, *The Agency*, if it appears that any provision of the Interstate Commerce Act or any of its *Orders* are being violated by the *Respondent*, will *Direct* the General Counsel to apply to the proper court for the judicial enforcement of the same. Otherwise, it will dismiss the *Petition* and discontinue the *Proceeding*. No *Petition* for *Reconsideration* of this *Order* will be entertained.

RULE 291—SUITS FOR JUDICIAL REVIEW

The Administrative Procedure Act (5 USC 1010 (a)) provided that except where *The Agency* action "is by law committed to agency discretion, any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute shall be entitled to judicial review thereof."

291.1 Form of Action. The Judicial Code (28 USC 1336) provides that "except as otherwise provided by act of Congress, the district courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission". The Administrative Procedure Act (5 USC 1009 (b)) provides that in the absence or inadequacy of any special statutory review proceeding "the form of proceeding for judicial review shall be * * * any applicable form of legal action (including action for declaratory judgment or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction". Said section further provides that "agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior adequate and exclusive opportunity for such review is provided by law".

291.2 Venue. The Judicial Code (28 USC 1398) provides "except as otherwise provided by law, any civil action to enforce, suspend or set aside in whole or in part an order of the Interstate Commerce Commission shall be brought only in the judicial district wherein is the residence or principal office of any of the parties bringing such action".

291.3 Process. The Judicial Code (28 USC 2321) provides "* * * in actions to enforce, suspend, enjoin, annul, or set aside in whole or in part any order of the Interstate Commerce Commission other than for the payment of money or the collection of fines, penalties, and forfeitures * * * the orders, writs and process of the district court may run, be served and be returnable anywhere in the United States * * *"

291.4 United States As Party. The Judicial Code (28 USC 2322) provides that all actions to enforce, suspend, enjoin, annul or set aside in whole or in part an order of the Interstate Commerce Commission other than for the payment of money or the collection of fines, penalties, and forfeitures shall be brought by or against the United States.

291.5 Intervenors. The Judicial Code (28 USC 2323) provides that "the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission in which an order or requirement is made may appear (in an action to enforce, suspend, enjoin, annul or set aside an order of the Interstate Commerce Commission other than for the payment of money or the collection of fines, penalties and forfeitures) as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of said party." Said section further provides "communities, associations, corporations, firms and individuals interested in the controversy or question before the Commission * * * may intervene in said action at any time after commencement thereof."

RULE 292—REVIEWABLE ACTS

The Administrative Procedure Act (5 USC 1009 (c)) provides that "every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority."

RULE 293—SCOPE OF JUDICIAL REVIEW

The Administrative Procedure Act (5 USC 1009 (e)) provides "So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 (of the Administrative Procedure Act) or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party,

and due account shall be taken of the rule of prejudicial error."

RULE 294—STAY BY COMMISSION PENDING REVIEW

The Agency upon the written or telegraphic request of a Plaintiff in any suit to judicially review any order, at least 5 days notice of which shall have been given all *Adversary Parties* in the *Proceeding* before the Commission will postpone the effect of such order pending such review where it finds that justice so requires. Within 3 days after *Service* of notice of such request any *Adversary Party* may file written representations as to why the effective date of the order should not be postponed.

RULE 295—STAY OF ORDER BY COURT

The Administrative Procedure Act (5 USC 1009 (d)) provides "Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including

every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings."

295.1 *Interlocutory Injunction*. The Judicial Code (28 USC 2324) provides "the pendency of an action to enjoin, set aside or suspend any order of the Interstate Commerce Commission shall not of itself stay or suspend the operation of the order but the court may restrain or suspend in whole or in part the operation of the order pending the final hearing and determination of the action."

RULE 296—THREE-JUDGE COURT

The Judicial Code (28 USC 2325) provides "an interlocutory or permanent in-

junction restraining the enforcement, operation or execution in whole or in part of any order of the Interstate Commerce Commission shall not be granted unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title" which section provides for the constitution and composition of such court.

RULE 297—DIRECT APPEAL TO THE SUPREME COURT

The Judicial Code (28 USC 1253) provides that "except as otherwise provided by law any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any act of Congress to be heard and determined by a district court of three judges".

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