dispatch. This requirement may be reduced to a minimum of 2½ hours by the substitution of one additional takeoff and landing for an hour of flight. This requirement may be satisfied by observation of 5 hours of simulator training or each airplane group in one of the simulators approved under § 121.407 for the group. However, if this requirement is met by the use of a simulator, no reduction in hours is permitted.

(d) No domestic or flag air carrier may use any person, nor may any person serve as an aircraft dispatcher to dispatch airplanes in operations under this part unless the air carrier has determined that he is familiar with all essential operating procedures for that segment of the operation over which he exercises dispatch jurisdiction. However, a dispatcher who is qualified to dispatch airplanes through one segment of an operation may dispatch airplanes through other segments of the operation after coordinating with dispatchers who are qualified to dispatch airplanes through those other segments.

(e) For the purposes of this section, the airplane groups, terms, and definitions in § 121.400 apply.

(Secs. 313(a), 601, 602, 604, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1422, 1424; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on March 10, 1972.

J. H. SHAFFER,
Administrator.

[FR Doc.72-4055 Filed 3-16-72;8:50 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

Miscellaneous Amendments

The Commission announces the following amendments to Chapter I of Title 16 of the Code of Federal Regulations. These amendments are effective 15 days after publication in the FEDERAL REGISTER and will govern all proceedings initiated on or after the aforesaid effective date and the remaining procedures in all proceedings pending on the aforesaid effective date.

Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals; Summary Decisions

Section 3.23 is amended to read as follows:

§ 3.23 Interlocutory appeals.

Rulings of the hearing examiner on motions may not be appealed to the Commission prior to appeal from the initial decision except in the following circumstances:

(a) *Appeals without a determination by the hearing examiner.* The Commission may, in its discretion, entertain interlocutory appeals where a ruling of the hearing examiner: (1) Requires the disclosure of Commission records or the appearance of an official or employee of the Commission pursuant to § 3.36; (2) requires the appearance of other Government officials pursuant to § 3.37; (3) suspends an attorney from participation in a particular proceeding pursuant to § 3.42(d); or (4) grants or denies an application for intervention pursuant to the provisions of § 3.14. Appeal from such a ruling may be sought by filing with the Commission an application for review, not to exceed fifteen (15) pages, within five (5) days after notice of the hearing examiner's ruling. Answer thereto may be filed within five (5) days after service of the application for review. The application for review should specify the person or party taking the appeal; should designate the ruling or part thereof from which appeal is being taken; and should specify under which provisions hereof review is being sought. The Commission upon its own motion may enter an order staying the return date of an order issued by the hearing examiner pursuant to § 3.36 or § 3.37 or placing the matter on the Commission's docket for review. Any order placing the matter on the Commission's docket for review will set forth the scope of the review and the issues which will be considered and will make provision for the filing of briefs if deemed appropriate by the Commission.

(b) *Appeals upon a determination by the hearing examiner.* Except as hereinbefore provided in paragraph (a) of this section applications for review of a ruling by the hearing examiner may be allowed only upon request made to the examiner and a determination by the examiner in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy. Applications for review in writing may be filed, not to exceed fifteen (15) pages, within five (5) days after notice of the hearing examiner's determination. Answer thereto may be filed within five (5) days after service of the application for review. The Commission may thereupon, in its discretion, permit an appeal. Commission review, if permitted, will be confined to the application for review and answer thereto, without oral argument or further briefs, unless otherwise ordered by the Commission.

(c) *Proceedings not stayed.* Application for review and appeal hereunder shall not stay proceedings before the hearing examiner unless the examiner or the Commission shall so order.

Subpart D—Discovery; Compulsory Process

1. Section 3.31 is amended to read as follows:

§ 3.31 Admissions.

(a) At any time after thirty (30) days after issuance of complaint, or after publication of notice of an adjudicative hearing in a rule making proceeding under § 3.13, any party may serve on any other party a written request for admission of the truth of any matters relevant to the pending proceeding set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or are known to be, and in the request are stated as being, in the possession of the other party. Each matter of which an admission is requested shall be separately set forth. A copy of the request shall be filed with the Secretary.

(b) The matter is admitted unless, within ten (10) days after service of the request, or within such shorter or longer time as the hearing examiner may allow, the party to whom the request is directed serves upon the party requesting the admission, with a copy filed with the Secretary, a sworn written answer or objection addressed to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known to, or readily obtainable by, him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may deny the matter or set forth reasons why he cannot admit or deny it.

(c) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains his burden of showing that the objection is justified, the hearing examiner shall order that an answer be served. If the hearing examiner determines that an answer does not comply with the requirements of this rule, he may order either that the matter is admitted or that an amended answer be served. The hearing examiner may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to trial.

(d) Any matter admitted under this rule is conclusively established unless the hearing examiner on motion permits

withdrawal or amendment of the admission. The hearing examiner may permit withdrawal or amendment when the presentation of the merits of the proceeding will be subserved thereby and the party who obtained the admission fails to satisfy the hearing examiner that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

§ 3.32 [Rescinded]

2. Section 3.32 is rescinded in its entirety. This section is reserved for future use.

3. Section 3.35 is amended to read as follows:

§ 3.35 Rulings on applications for compulsory process.

Applications for orders requiring the taking of depositions pursuant to the provisions of § 3.33, and applications for the issuance of subpoenas pursuant to the provisions of § 3.34 (other than as provided in §§ 3.36 and 3.37) may be made ex parte, and, if so made, such applications and rulings thereon shall remain ex parte unless otherwise ordered by the hearing examiner or the Commission. Such applications shall be ruled upon by the hearing examiner or, in the event the hearing examiner is not available, by the Director of Hearing Examiners or such other hearing examiner as the Director may designate.

4. Section 3.36 is amended to read as follows:

§ 3.36 Form of and rulings on applications for subpoenas for records of the Commission and for appearance of Commission employees.

(a) *Form.* An application for issuance of a subpoena requiring the production of documents, papers, books, physical exhibits, or other material in the records of the Federal Trade Commission, or for the issuance of a subpoena requiring the appearance of an official or employee of the Commission, shall be made in the form of a written motion filed in accordance with the provisions of § 3.22(a). No application for records, files, papers or information pursuant to § 4.11 of this chapter or the Freedom of Information Act may be filed with the hearing examiner.

(b) *Content.* The motion shall specify as exactly as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the Commission official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony, and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony is not available from other sources by voluntary methods or pursuant to §§ 3.33–3.34.

(c) *Rulings.* Such applications (in the form of written motions) shall be ruled upon by the hearing examiner or, in the event the hearing examiner is not available, by the Director of Hearing Examiners or such other hearing examiner as the Director may designate. To the extent that the motion is granted, the hearing examiner shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the Commission official or employee as may appear necessary and appropriate for the protection of the public interest.

5. Section 3.37(b) is amended to read as follows:

§ 3.37 Applications for appearance of other government officials.

* * * * *

(b) *Content and disposition.* The motion shall contain a statement of the necessity for and the relevancy of the expected testimony or the specified material and shall be ruled upon by the hearing examiner.

6. Section 3.38, reading as follows, is added:

§ 3.38 Consequences of failure to comply with orders.

(a) If a party or an officer or agent of a party fails to comply with an order including, but not limited to, an order for the taking of a deposition or the production of documents, an order issued pursuant to a request for admissions, an order to comply with a subpoena, or to comply with an order of the hearing examiner or the Commission issued as, or in accordance with, a ruling upon a motion concerning such an order or subpoena or upon an appeal from such a ruling, the hearing examiner or the Commission, or both, for the purpose of permitting resolution of relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action in regard thereto as is just, including but not limited to the following:

(1) Infer that the admission, testimony, documents or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the proceeding the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer, or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the party, or both.

(b) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in an initial decision of the hearing examiner or an order or opinion of the Commission. It shall be the duty of parties to seek and hearing examiners to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence. If in the hearing examiner's opinion such relief would not be sufficient, he should certify to the Commission a request that court enforcement of the subpoena or deposition be sought.

Subpart E—Hearings

1. Section 3.41(b) is revised to read as follows:

§ 3.41 General rules.

* * * * *

(b) *Expedition.* Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place and shall continue, except for brief intervals of the sort normally involved in judicial proceedings, without suspension until concluded. Consistent with the requirements of expedition, the hearing examiner may order hearings at more than one place and may grant a reasonable recess at the end of a case-in-chief for the purpose of discovery deferred during the prehearing procedure where the examiner determines that such recess will materially expedite the ultimate disposition of the proceeding.

* * * * *

2. Paragraphs (c) and (d) of § 3.42 are revised to read as follows:

§ 3.42 Presiding officials.

* * * * *

(c) *Powers and duties.* Hearing examiners shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. They shall have all powers necessary to that end, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas;

(3) To take or to cause depositions to be taken;

(4) To rule upon offers of proof and receive evidence;

(5) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(6) To hold conferences for settlement, simplification of the issues, or any other proper purpose;

(7) To consider and rule upon, as justice may require, all procedural and other motions appropriate in an adjudicative proceeding, including motions to open defaults;

(8) To make and file initial decisions;

(9) To certify questions to the Commission for its determination; and

(10) To take any action authorized by the rules in this part or in conformance with the provisions of the Administrative Procedure Act as restated and incorporated in title 5, U.S.C.

(d) *Suspension of attorneys by hearing examiner.* The hearing examiner shall have the authority, for good cause stated on the record, to suspend or bar from participation in a

particular proceeding any attorney who shall refuse to comply with his directions, or who shall be guilty of disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of such proceeding. Any attorney so suspended or barred may appeal to the Commission in accordance with the provisions of § 3.23(a). The appeal shall not operate to suspend the hearing unless otherwise ordered by the hearing examiner or the Commission; in the event the hearing is not suspended, the attorney may continue to participate therein pending disposition of the appeal.

* * * * *

Subpart G—Reports of Compliance

Section 3.61(a) is revised to read as follows:

§ 3.61 Reports of compliance.

(a) In every proceeding in which the Commission has issued an order, pursuant to the provisions of section 5 of the Federal Trade Commission Act or section 11 of the Clayton Act, as amended, and except as otherwise specifically provided in any such order, each respondent named in such order shall file with the Commission, within sixty (60) days after service thereof, or within such other time as may be provided by the order or the rules in this chapter, a report in writing, signed by the respondent, setting forth in detail the manner and form of his compliance with the order, and shall thereafter file with the Commission such further signed, written reports of compliance as it may require. Reports of compliance shall be under oath if so requested. Where the order prohibits the use of a false advertisement of a food, drug, device, or cosmetic which may be injurious to health because of results from its use under the conditions prescribed in the advertisement, or under such conditions as are customary or usual, or if the use of such advertisement is with intent to defraud or mislead, or where the order was issued under the Flammable Fabrics Act, or in any other case where the circumstances so warrant, the order may provide for an interim report stating whether and how respondents intend to comply to be filed within ten (10) days after service of the order. When court review of an order of the Commission is pending, the respondent shall file only such reports of compliance as the court may require. Thereafter, the time for filing report of compliance shall begin to run de novo from the final judicial determination, except that if no petition for certiorari has been filed following affirmance of the order of the Commission by a court of appeals, the compliance report shall be due the day following the date on which the time expires for the filing of such petition. The Commission will review such reports of compliance and may advise each respondent whether the actions set forth therein evidence compliance with the Commission's order. The Commission may, however, institute proceedings, including certification of facts to the Attorney General pursuant to the provisions of section 5(1) of the Federal Trade Commission Act (15 U.S.C. 45(1)) and section 11(1) of the Clayton Act, as amended (15 U.S.C. 21(1)), to enforce compliance with an order, without advising a respondent whether the actions set forth in a report of compliance evidence compliance with the Commission's order or without prior notice of any kind to a respondent.

* * * * *

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46)

By direction of the Commission dated March 13, 1972.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.72-4076 Filed 3-16-72;8:46 am]

[Docket No. C-2144]

PART 13—PROHIBITED TRADE PRACTICES

Burlington Industries, Inc.

Subpart—Importing, selling, or transporting flammable wear: § 13.1060 *Importing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) [Cease and desist order, Burlington Industries, Inc., Greensboro, N.C., Docket No. C-2144, Feb. 10, 1972]

In the Matter of Burlington Industries, Inc., a Corporation

Consent order requiring a Greensboro, N.C., manufacturer and distributor of textile fiber products, including cotton organdy fabrics, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That the respondent Burlington Industries, Inc., a corporation, and its officers and respondent's representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting, or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce", "product", "fabric", and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondent notify all of its customers who have purchased or to whom have been delivered the fabric which gave rise to the complaint, of the flammable nature of said fabric, and effect the recall of said fabric from such customers.

It is further ordered, That the respondent herein either process the fabric which gave rise to the complaint so as to bring it into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabric.

It is further ordered, That the respondent herein shall, within ten (10) days after service upon it of this order, file with the Commission a special report in writting setting forth the respondent's intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the fabric which gave rise to the complaint, (2) the amount of said fabric in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said fabric and effect the recall of said fabric from customers, and of the results thereof, (4) any disposition of said fabric since May 16, 1970, and (5) any action taken or proposed to be taken to bring said fabric into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabric and the results of such action. Such report shall further inform the Commission as to whether or not respondent has in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of 2 ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Upon request of the Commission respondent shall submit samples of not less than 1 square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Issued: February 10, 1972.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.72-4064 Filed 3-16-72;8:46 am]