In view of the foregoing, the proposed regulation is hereby adopted, effective 0901 g.m.t. October 9, 1975, as follows:

Amend Section 71.171 of Part 71 of the Federal Aviation Regulations by deleting the description of the Hagerstown, Md. Control Zone and by substituting the following in lieu thereof:

Within a 5-mile radius of the center, 39°-42'27" N., 77°43'50" W., of Hagerstown Regional Airport, Hagerstown, Md.; within 3 miles each side of the Hagerstown, Md. VOR 239° radial and 059° radial, extending from 8.5 miles southwest of the VOR to 2 miles northeast of the VOR; within 3 miles each side of the Hagerstown, Md. VOR 084° radial, extending from the 5-mile radius zone to the VOR; within 4.5 miles each side of the Hagerstown Regional Airport ILS Runway 27 localizer course, extending from the localizer to 13.5 miles east of the localizer. This control zone is effective from 0600 to 2230 hours, local time, daily.

Amend Section 71.181 of Part 71 of the Federal Aviation Regulations by deleting the description of the Hagerstown, Md. Transition Area and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the center, 39°42'27" N., 77°43'50" W., of Hagerstown Regional Airport, Hagerstown, Md.; within 3.5 miles each side of the Hagerstown, Md. VOR 239° radial and 059° radial, extending from 11 miles southwest of the VOR to 3 miles northeast of the VOR; within 5 miles each side of the Hagerstown Regional Airport ILS Runway 27 localizer course, extending from the localizer to 14.5 miles east of the localizer.

(Sec. 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348), sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Jamaica, N.Y., on August 5, 1975.

L. J. CARDINALI,
Acting Director, Eastern Region.

[FR Doc.75-21081 Filed 8-12-75;8:45 am]

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE

PART 9—PROCEDURES FOR A VOLUNTARY LABELING PROGRAM FOR HOUSEHOLD APPLIANCES AND EQUIPMENT TO EFFECT ENERGY CONSERVATION

Definition of "Manufacturer" and List of Appliances

By notice issued in the FEDERAL REGISTER February 19, 1975 (40 FR 7099), the Department of Commerce announced its intention to amend Part 9 of Title 15, Code of Federal Regulations, providing Procedures for a Voluntary Labeling Program for Household Appliances and Equipment to Effect Energy Conservation.

Two amendments were proposed. The first proposed amendment would revise the definition of the term "manufacturer" to clarify the intention of the Department to include private brand labelers within that term. The second proposed amendment would revise the list of appliances and equipment covered by the Program to include television receivers.

Interested persons were afforded until March 21, 1975, to submit to the Assistant Secretary for Science and Technology written comments or suggestions relative to the proposed amendments. Only one letter of comment was received, and it is available for public inspection at the Department's Central Reference and Records Inspection Facility, Room 7068, Main Commerce Building, 14th Street between Constitution Avenue and E Street N.W., Washington, D.C. 20230. The letter of comment discussed the impracticality of attempting to measure the efficiency of television receivers because of the difficulty of assigning quantitative values to their output (picture and sound) in an objective manner. The letter suggested that television receivers should be in the Program, but should be rated in terms of energy consumption rather than efficiency in the engineering sense. These suggestions are in complete agreement with the present intentions of the Department of Commerce with regard to the labeling of television receivers, so the letter of comment is not considered in opposition to the issuance of the proposed amendments.

In consideration of the foregoing, Part 9 of Title 15, Code of Federal Regulations, is hereby amended as follows:

1. By revising paragraph (b) of § 9.2 to read as follows:

§ 9.2 Definitions.

* * * * *

(b) The term "manufacturer" means any person engaged in the manufacturing or assembling of new appliances or equipment in the United States, or in the importing of such products for sale or resale, or any person whose brand or trademark appears on such products who owns such brand or trademark and has authorized its use on such products, if the brand or trademark of the person actually manufacturing or assembling the products does not appear on the products.

* * * * *

2. By revising the first sentence of § 9.3 to read as follows:

§ 9.3 Appliances and equipment included in program.

The appliances and equipment included in this program are room and central air conditioners, household refrigerators, home freezers, clothes washers, dishwashers, clothes dryers, kitchen ranges and ovens, water heaters, comfort heating equipment, and television receivers.

* * * * *

Effective Date—These amendments shall become effective September 12, 1975.

(Sec. 2, 31 Stat. 1449, as amended, sec. 1, 64 Stat. 371; 15 U.S.C. 272, Reorganization Plan No. 3 of 1946, Part VI; Message From the President of the United States Concerning Energy Resources, April 18, 1973 (119 Cong. Rec. H2886); 15 CFR Part 9)

Issued: August 6, 1975.

BETSY ANCKER-JOHNSON,
Assistant Secretary for Science and Technology.

[FR Doc.75-21077 Filed 8-12-75;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

PROCEDURES AND RULES OF PRACTICE

Trade Regulation Rulemaking Authority

The Commission announces the following rules, which are effective August 13, 1975, to implement further its trade regulation rulemaking authority pursuant to Public Law 93-637. Sections 1.11 and 1.13, which were promulgated on April 4, 1975 (40 FR 15232) are amended by these rules. Sections 1.12 through 1.20, which were proposed by the Commission on April 4, 1975 (40 FR 15237-15239) are promulgated with certain changes. Sections 3.2, 3.13(a), 3.21 (a)(5) and 4.9(b)(5) are amended to correct cross-references to new and renumbered rules.

PART 1—GENERAL PROCEDURES

1. Subpart B (§ 1.11 through § 1.20) is revised to read as follows:

Subpart B—Rules and Rulemaking Under Section 18(a)(1)(B) of the FTC Act As Amended by Public Law 93-637

Sec.
1.11 Initial notice.
1.12 Final notice.
1.13 Rulemaking proceeding.
1.14 Promulgation.
1.17 Compensation for representation in rulemaking proceedings.
1.18 Public availability of rulemaking record.
1.19 Modification of a rule by the Commission at the time of judicial review.
1.20 Expeditious procedure.

AUTHORITY: (Sec. 6, 38 Stat. 721 (15 U.S.C. 46); sec. 18(a)(1)(B), 88 Stat. 2193 (15 U.S.C. 57a); sec. 552, 80 Stat. 378 (5 U.S.C. 552))

Subpart B—Rules and Rulemaking Under Section 18(a)(1)(B) of the FTC Act As Amended by Public Law 93-637

§ 1.11 Initial notice.

A trade regulation rule proceeding shall commence with an initial notice of proposed rulemaking. Such notice shall be published in the FEDERAL REGISTER and, to the extent practicable, otherwise made available to interested persons. The initial notice shall include: (a) the terms or substance of the proposed rule or a description of the subjects and issues involved; (b) reference to the legal authority under which the rule is proposed; (c) a statement describing with particularity the reason for the rule; (d) an invitation to all interested persons to propose issues which meet the criteria of § 1.13(d)(1)(i) for consideration in accordance with §§ 1.13(d)(5) and (d)(6); and (e) an invitation to all interested persons to comment on the proposed rule.

§ 1.12 **Final notice.**

A final notice of proposed rulemaking shall be published in the FEDERAL REGISTER, and to the extent practicable, otherwise made available to interested persons. The final notice shall include: (a) designated issues, unless there are none, which are to be considered in accordance with §§ 1.13(d)(5) and (d)(6); (b) the time and place of an informal hearing; (c) instructions to interested persons seeking to make oral presentations; (d) a requirement that interested persons who desire to avail themselves of the procedures of §§ 1.13(d)(5) and (d)(6) with respect to any issue designated in (a) above must identify their interests with respect to those issues in such manner as may be established by the presiding officer; and (e) an incorporation by reference of the contents of the initial notice.

§ 1.13 **Rulemaking proceeding.**

(a) *Written comments.* After commencement of a trade regulation rule proceeding, the Commission shall accept written submissions of data, views, and arguments on all issues of fact, law, and policy. Written comments other than under subsection (b) of this section shall be accepted until forty-five (45) days before commencement of the informal hearing.

(b) *Comments proposing issues subject to the procedures of §§ 1.13 (d)(5) and (d)(6).* Written comments which propose issues for consideration in accordance with §§ 1.13 (d)(5) and (d)(6) shall be accepted for a period of sixty (60) days after publication of the initial notice, or such other period as the Commission may establish in the initial notice.

(c) *Presiding officer.* Upon commencement of a proposed trade regulation rule proceeding, a presiding officer shall be appointed by the Special Assistant Director for Rulemaking, Bureau of Consumer Protection or, when the Commission or one or more of its members serves as presiding officer, by the Commission.

(1) *Powers of the presiding officer.* The presiding officer shall be responsible for the orderly conduct of the rulemaking proceeding. He shall have all powers necessary to that end including the following: (i) to publish a final notice in accordance with § 1.12 or issue any other public notice that may be necessary for the orderly conduct of the rulemaking proceeding; (ii) to designate or modify, issues for consideration in accordance with §§ 1.13 (d)(5) and (d)(6); (iii) to set the time and place of the informal hearing and to change any time periods prescribed in this subpart; (iv) to prescribe rules or issue rulings to avoid unnecessary costs or delay. Such rules or rulings may include, but are not limited to, the imposition of reasonable time limits on each person's oral presentation; and requirements that any examination; including cross-examination, which a person may be entitled to conduct or have conducted be conducted by the presiding officer on behalf of that person in such a manner as the presiding officer determines to be appropriate and to be required for a full and true disclosure with respect to any issue designated for consideration in accordance with §§ 1.13 (d)(5) and (d)(6); (v) to make rules and rulings limiting the representation of interested persons for the purpose of examination, including cross-examination, and governing the manner in which such examination is limited, including the selection of a representative from among a group of persons with the same or similar interests; (vi) to compel the attendance of persons or the production of documents or to obtain responses to written questions; (vii) to require that oral presentations at the informal hearing or responses to written questions be under oath, (viii) to require that oral presentations at the informal hearing be submitted in writing in advance of presentation; and (ix) to certify questions to the Commission for its determination.

(2) *Review of rulings by the presiding officer.*—(i) *Review after certification by the presiding officer.*—Except as otherwise provided in subsection (ii), applications for review of a ruling will not be entertained by the Commission prior to its review of the record pursuant to § 1.14, unless the presiding officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate review of the ruling may materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy. Within five (5) days after a ruling by the presiding officer, any interested person may petition to presiding officer for certification of that ruling to the Commission. Certification of a ruling shall not stay the rulemaking proceeding unless the presiding officer or the Commission shall so order. Within five (5) days after the presiding officer's certification of a question to the Commission for its determination any interested person may file an application for review, not to exceed fifteen (15) pages. Submissions by other interested persons, not to exceed fifteen (15) pages may be made within ten (10) days of the presiding officer's certification. All such filings shall be a part of the rulemaking record. The Commission may thereupon, in its discretion, permit the appeal. Commission review, if permitted, will be based on the application for review and any additional submissions, without oral argument or further briefs, unless otherwise ordered by the Commission.

(ii) *Review without certification by the presiding officer.*—Within ten (10) days after publication of the final notice, any interested person may petiiton the Commission for addition, modification or deletion of a designated issue, accompanied by a filing not to exceed fifteen (15) pages. Additional submissions on the issue by other interested persons, not to exceed fifteen (15) pages may be made within twenty (20) days of the publication of the final notice. The Commission may thereupon, in its discretion, permit the appeal. Commission review, if permitted, will be based on the petition and any additional submissions, without oral argument or further briefs, unless otherwise ordered by the Commission. A petition hereunder shall not stay the rulemaking proceeding unless the presiding officer or the Commission shall so order. All petitions filed under this subsection shall be a part of the rulemaking record. Notice of the filing of any such petition may be obtained from the Office of the Secretary of the Commission. In the event any designated issue is added or substantially modified by the Commission, interested persons shall be given a further opportunity to identify their interests with respect to those issues.

(d) *Informal hearings.* An informal hearing with the opportunity for oral presentations on all issues shall be conducted by the presiding officer. In addition, if an issue is designated pursuant to these rules for consideration in accordance with §§ 1.13(d) (5) and (6), the informal hearing on such issues shall be conducted in accordance with those subsections. For all other issues the presiding officer may in his discretion employ, in whole or in part, the procedures of those subsections.

(1) *Nature of issues for consideration in accordance with §§ 1.13 (d)(5) and (d)(6).*—(i) *Issues that must be considered in accordance with §§ 1.13(d)(5) and (d)(6).* The only issues that must be designated for consideration in accordance with subsections (d)(5) and (d)(6) of this section are disputed issues of fact, that are determined by the Commission or the presiding officer to be material and necessary to resolve.

(ii) *Issues that may be considered in accordance with §§ 1.13 (d)(5) and (d)(6).* The Commission and the presiding officer retain the power to designate any other issues for consideration in accordance with subsections (d)(5) and (d)(6) of this section.

(2) *Addition or Modification of issues for consideration in accordance with §§ 1.31 (d)(5) and (d)(6).* The presiding officer may at any time on his own motion or pursuant to a written petition by interested persons, add or modify any issues designated pursuant to § 1.12(a). No such petition shall be considered unless good cause is shown why any such proposed issue was not proposed pursuant to § 1.13(b).

(3) *Identification of interests.* Not later than twenty (20) days after publication of the final notice each interested person who desires to avail himself of the procedures of subsections (d)(5) and (d)(6) of this section shall notify the presiding officer in writing of his particular interest with respect to each issue designated for consideration in accordance with those subsections. In the event that new issues are designated, each interested person shall promptly notify the presiding officer of his particular interest with respect to each such issue.

(4) *Examination and cross-examination by the presiding officer.* The presid-

ing officer may conduct any examination, including cross-examination, to which a person may be entitled. For that purpose he may require submission of written requests for presentation of questions to any person making oral presentations and shall determine whether to ask such questions or any other questions. All requests for presentation of questions shall be placed in the rulemaking record.

(5) *Examination, cross-examination, and the presentation of rebuttal submissions by interested persons*—(i) *In general.* The presiding officer shall conduct or allow to be conducted examination, including cross-examination of oral presentations and the presentation of rebuttal submissions relevant to the issues designated for consideration in accordance with subsections (d)(5) and (d)(6) of this section. Examination, including, cross-examination, and the presentation of rebuttal submissions, shall be allowed to the extent to which it is appropriate and is required for a full and true disclosure with respect to those issues.

Requests for an opportunity to examine, including cross-examine, or to present rebuttal submissions, shall be accompanied by a specific justification therefor. In determining whether or not to grant such requests, the presence of the following circumstances indicate that such requests should be granted:

(A) An issue for examination including cross-examination, or the presentation of rebuttal submissions, is an issue of specific, in contrast to legislative fact.

(B) A full and true disclosure with respect to the issue can only be achieved through examination including cross-examination rather than through rebuttal submissions or the presentation of additional oral submissions.

(C) Circumstantial guarantees of the trustworthiness of a presentation do not exist.

(D) The particular presentation is required for the resolution of a designated issue.

(ii) *Selection of representatives for cross-examination.* After consideration of the information supplied in response to the final notice, the presiding officer shall identify groups of persons with the same or similar interests in the proceeding. Such groups may be required to select a single representative for the purpose of examination, including cross-examination. If a group is unable to select a representative then the presiding officer may select a representative of each such group.

(iii) *Inability to select representative for examination, including cross-examination.* No person shall be denied the opportunity to conduct or have conducted, examination, including cross-examination, under subsection (d)(5)(i) of this section if he is a member of a group as described in subsection (d)(5)(ii) of this section and is unable to agree upon group representation with other group members after a good faith effort to do so and seeks to present substantial and relevant issues which will not be adequately presented by the group representative. In that event he shall be allowed to conduct or have conducted any examination, including cross-examination, to which he is entitled on issues designated for consideration in accordance with subsections (d)(5) and (d)(6) of this section and which affect his particular interest.

(6) *Requests to compel the attendance of persons or the production of documents or to obtain responses to written questions.* During the course of the rulemaking proceeding the presiding officer shall entertain requests from interested persons to compel the attendance of persons or the production of documents or to obtain responses to written questions on behalf of the Commissions' staff or any interested person. The presiding officer may require the payment of a fee to any person to whom such requests are directed in accordance with § 4.5 of this Chapter. Requests to compel the attendance of persons or the production of documents or to obtain responses to written questions shall contain a statement showing the general relevancy of the material, information or presentation, and the reasonableness of the scope of the request, together with a showing that such material, information or presentation is not available by voluntary methods and cannot be obtained through examination, including cross-examination, of oral presentations or the presentation of rebuttal submissions, and is appropriate and required for a full and true disclosure with respect to the issues designated for consideration in accordance with subsections (d)(5) and (d)(6) of this section. The Commission may, on its own motion, review a determination of the presiding officer under this subsection which requires the production of confidential Commission records or the appearance of an official or employee of the Commission or another government agency.

(e) *Written transcript.* A verbatim transcript shall be made of the informal hearing which transcript shall be placed in the rulemaking record.

(f) *Summary and findings.* After the close of the informal hearing, the presiding officer shall prepare a summary of the record, both written and oral, relating to the issues designated for consideration in accordance with subsections (d)(5) and (d)(6) of this section and make initial factual findings and conclusions as to these issues and other findings and conclusions as he sees fit.

(g) *Staff recommendations.* The staff shall make recommendations to the Commission in a report based on the rulemaking record and taking into account the presiding officer's findings of fact. Such report shall contain its analysis of the record and its recommendations as to the form of the final rule.

(h) *Post record comment.* The findings and conclusions of the presiding officer as well as the staff report shall be the subject of public comment for a period of sixty (60) days after the staff recommendations are placed in the rulemaking record. Such comments shall be confined to information already in the record and may include requests for review by the Commission of determinations made by the presiding officer.

§ 1.14 Promulgation.

(a) The Commission shall review the rulemaking record including the summary, findings, and conclusions of the presiding officer as to the issues designated for consideration in accordance with §§ 1.13 (d)(5) and (d)(6), the verbatim transcript of the informal hearing, the report and recommendations of the staff and any public comments thereon, to determine what form of rule, if any, it should promulgate. The Commission may issue, modify, or decline to issue any rule. Where it believes that it should have further information or additional views of interested persons as to the form and content of the rule, it may withhold final action pending the receipt of such additional information or views. If it determines to issue a rule, it shall adopt a Statement of Basis and Purpose to accompany the rule. If it determines not to issue a rule, it may adopt and publish an explanation for not doing so. The Statement of Basis and Purpose to accompany a rule promulgated under this subpart shall include (1) a statement as to the prevalence of the acts or practices treated by the rule, (2) a statement as to the manner and context in which such acts or practices are unfair or deceptive, and (3) a statement as to the economic effect of the rule, taking into account the effect on small businesses and consumers.

(b) In the event the Commission determines, upon its review of the rulemaking record, to propose a revised rule for further proceedings in accordance with this subpart, such proceedings, including the opportunity of interested persons to avail themselves of the procedures of §§ 1.13 (d)(5) and (d)(6), shall be limited to those portions of the revised rule, the subjects and issues of which were not substantially the subject of comment in response to a previous notice of proposed rulemaking.

(c) The final rule and Statement of Basis and Purpose shall be published in the FEDERAL REGISTER not less than thirty (30) days prior to the effective date of the rule except where the Commission for good cause found and published with the rule sets an earlier effective date.

§ 1.17 Compensation for representation in rulemaking proceedings.

(a) *Purpose of compensation.* The Commission may provide compensation for reasonable attorneys fees, expert witness fees and other costs of participation, including costs necessary for the preparation of oral or written presentations, to any person who has or represents an interest which would not otherwise be adequately represented in a rulemaking proceeding, and representation of which is necessary for a fair determination of the rulemaking proceeding taken as a whole, and who is unable effectively to participate in such proceeding because such person cannot afford to pay costs of making oral presentations, conducting cross-examination, and making rebuttal submissions in such proceeding.

(b) *Level of funding.* At or after the time of the initial notice of proposed rulemaking, the Commission may announce a tentative total level of funding for compensation for participation in that proceeding.

(c) *Applications.* An application for compensation for participation in a rulemaking proceeding may be filed at any time after the publication of the initial notice of proposed rulemaking. An application for compensation shall be filed prior to the time when the costs for which compensation is sought are incurred. Such application shall contain the following:

(1) A description of the interest the applicant has or represents in the rulemaking proceeding;

(2) A statement of the reasons representation of such interest is necessary for a fair determination of the proceeding taken as a whole;

(3) Insofar as possible, the reasons why such interest would not otherwise be adequately represented in the proceeding;

(4) A statement of the reasons the applicant is unable effectively to participate in the rulemaking proceeding without financial assistance including information relating to:

(i) The economic stake of the interest involved as compared with the costs of participation;

(ii) The feasibility of contributions to the costs of participation by individual representatives of the interest;

(iii) The resources of the applicant, or of the interest represented by the applicant;

(5) Insofar as possible, a specific statement of the expenses to be incurred for which compensation is sought, including an estimate of the total anticipated expenses; and

(6) A statement of the applicant's organizational and financial status in such form as the Commission may prescribe.

(d) *Determination of applications*—(1) *By the presiding officer.* The presiding officer shall consider applications for compensation filed under this section and forward initial findings to the Director of the Bureau of Consumer Protection as to whether the applicant meets the criteria of paragraph (a) of this section. In determining whether the representation of an interest is necessary for a fair determination of the proceeding taken as a whole, the presiding officer shall consider, among other factors, the number and complexity of the issues involved and the importance of a fair, balanced representation of all interests. In determining whether an applicant can afford to pay the costs of participation, the presiding officer shall consider, among other factors, the size of the economic stake of the interest involved as compared with the costs of participation; the resources of the applicant; and the feasibility of obtaining contributions from other parties who share the applicant's interest. In connection with his determination the presiding officer may conduct such inquiry of the applicant or require the production of such documents as he deems necessary.

(2) *By the Director of the Bureau of Consumer Protection.* The Director of the Bureau of Consumer Protection shall review applications and the initial findings of the presiding officer and determine, in his discretion, to what extent compensation shall be authorized under this section.

(e) *Payment of compensation*—(1) *In general.* The Commission will compensate the applicant only for those authorized expenses actually incurred. Appropriate proof of actual expenditures may be required by the Commission. The Commission may make any payments under this section in advance where necessary to permit effective participation in the rulemaking proceeding. Payment will be conditioned upon the execution by the applicant of an appropriate agreement setting forth the terms and conditions of the compensation.

(2) *Attorneys' fees; expert witness fees.* Attorneys' fees at a rate in excess of $50 per hour will be considered presumptively unreasonable and compensation will not be provided for such excess in the absence of special justification. Experts and consultants will be compensated at a rate not to exceed the highest rate at which experts and consultants to the Commission are compensated.

§ 1.18 Public availability of rulemaking record.

(a) *Rulemaking record.* For the purposes of these rules the term "rulemaking record" includes the rule, its Statement of Basis and Purpose, the verbatim transcript of the informal hearing, written submissions, the summary and findings of the presiding officer and the staff recommendations as well as any public comment thereon, and any other information which the Commission considers relevant to the rule.

(b) *Public availability of written submissions.* Written submissions commenting on the proposed rule as well as the verbatim transcript of the informal hearing, shall be made publicly available except when the presiding officer, for good cause shown, determines that it is in the public interest to allow any such submissions to be received *in camera* subject to the provisions of § 4.11 of this Chapter.

§ 1.19 Modification of a rule by the Commission at the time of judicial review.

In the event that a reviewing court determines under section 18(e)(2) of the Federal Trade Commission Act, as amended by Public Law 93-637, to allow further submissions and presentations on the rule, the Commission may modify or set aside its rule or make a new rule by reason of the additional submissions and presentations. Such modified or new rule shall then be filed with the court together with an appropriate Statement of Basis and Purpose and the return of such submissions and presentations.

§ 1.20 Expeditious procedure.

Any or all of the procedures established in this subpart may be dispensed with by the Commission, to the extent that they are not otherwise required by law, when it finds, for good cause, that such procedures are impractical, unnecessary, or contrary to the public interest. In that case the Commission shall publish with the rule or amendment a brief statement of its reasons for dispensing with any such procedures.

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

2. Sections 3.2, 3.13, and 3.21(a)(5) are revised to read as follows:

§ 3.2 Nature of adjudicative proceedings.

Adjudicative proceedings are those formal proceedings conducted under one or more of the statutes administered by the Commission which are required by statute to be determined on the record after opportunity for an agency hearing. The term includes hearings upon objections to orders relating to the promulgation, amendment, or repeal of rules under sections 4, 5 and 6 of the Fair Packaging and Labeling Act. It does not include other proceedings such as negotiations for the entry of consent orders; investigational hearings as distinguished from proceedings after the issuance of a complaint; hearings for the purpose of inquiring into the manner and extent of compliance with outstanding orders; proceedings for the promulgation of industry guides or trade regulation rules; proceedings for fixing quantity limits under section 2(a) of the Clayton Act; investigations under section 5 of the Export Trade Act; rulemaking proceedings under the Fair Packaging and Labelling Act up to the time when the Commission determines under § 1.26(g) of this chapter that objections sufficient to warrant the holding of a public hearing have been filed; or the promulgation of substantive rules and regulations, determinations of classes of products exempted from statutory requirements, the establishment of name guides, or inspections and industry counseling, under sections 4(d) and 6(a) of the Wool Products Labeling Act of 1939, sections 7, 8(b), and 8(c) of the Fur Products Labeling Act, and sections 7(c), 7(d), and 12(b) of the Textile Fiber Products Identification Act.

§ 3.13 Adjudicative hearing on issues arising in rulemaking proceedings under the Fair Packaging and Labeling Act.

(a) *Notice of hearing.* When the Commission, acting under § 1.26(g) of this chapter, determines that objections which have been filed are sufficient to warrant the holding of an adjudicative hearing in rulemaking proceedings under the Fair Packaging and Labeling Act, or when the Commission otherwise determines that the holding of such a hearing would be in the public interest, a hearing will be held before an Administrative Law Judge for the purpose of receiving evidence relevant and material to the issues raised by such objections or other issues specified by the Commission. In such case the Commission will pub-

lish a notice in the FEDERAL REGISTER containing a statement of:

(1) The provisions of the rule or order to which objections have been filed;

(2) The issues raised by the objections or the issues on which the Commission wishes to receive evidence;

(3) The time and place for hearing, the time to be at least thirty (30) days after publication of the notice; and

(4) The time within which, and the conditions under which, any person who petitioned for issuance, amendment, or repeal of the rule or order, or any person who filed objections sufficient to warrant the holding of the hearing, or any other interested person, may file notice of intention to participate in the proceeding.

§ 3.21 Prehearing conferences.

* * * * *

(a) * * *

(5) Matters of which official notice will be taken and matters which may be resolved by reliance upon trade regulation and other rules pursuant to §§ 1.8, 1.22 (c) of this chapter; and

* * * * *

PART 4—MISCELLANEOUS RULES

3. Section 4.9(b)(5) is revised to read as follows:

§ 4.9 Public records.

* * * * *

(b) * * *

(5) Petitions filed with the Secretary of the Commission for the promulgation or issuance, amendment, or repeal of industry guides and of rules or regulations within the scope of §§ 1.7 and 1.21 of this chapter, including petitions for exemptions, or for any other Commission action disclosure of which would not be inconsistent with the general policy established by § 2.2(d) of this chapter;

* * * * *

(Sec. 6, 38 Stat. 721 (15 U.S.C. 46); sec. 18(a)(1)(B), 88 Stat. 2193 (15 U.S.C. 57a); sec. 552, 80 Stat. 378 (5 U.S.C. 552))

Issued by direction of the Commission dated July 29, 1975.

CHARLES A. TOBIN,
Secretary.

[FR Doc.75-21208 Filed 8-12-75;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-8878, File No. S7-562]

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1974

Variable Annuities; Adoption of Exemptive Rule

On April 30, 1975, the Securities and Exchange Commission published notice that it had under consideration the adoption of Rule 22d-3 [17 CFR 270.22d-3] and an amendment to Rule 0-1(e) [17 CFR 270.0-1(e)] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act") and invited all interested persons to submit their views and comments on the proposal.[1] The Commission has considered all of the comments and suggestions received and has determined to adopt Rule 22d-3 and the amendment to Rule 0-1(e) in the form set forth below. Rule 22d-3 and the amendment to Rule 0-1(e) are adopted pursuant to the authority granted to the Commission by Sections 6(c), 22(d), and 38(a) [15 U.S.C. 80a-6(c), 80a-22(d), and 80a-37(a)] of the Act.

Proposed Rule 22d-3. Section 22(d) of the Act prohibits a registered investment company, its principal underwriter, or a dealer from selling any redeemable security issued by such registered investment company to any person except at a current public offering price described in the prospectus. At the request of Congress, the Commission conducted a study of the possible consequences of the repeal of Section 22(d), at the conclusion of which it published a report, "Mutual Fund Distribution and Section 22(d) of the Investment Company Act of 1940" ("Report"), prepared by its Division of Investment Management Regulation. Based upon this study, the Commission determined not to recommend the repeal of Section 22(d). However, as suggested by the Report, the Commission, on November 4, 1974, announced a comprehensive program to propose revision of the laws and regulations affecting the distribution of shares of open-end investment companies, including mutual funds and variable annuities.[2] One of the recommendations in the Division's Report was that a rule be adopted conditionally exempting the sale of variable annuity contracts from Section 22(d) (See pages 102-3 of the Report). The Commission is hereby adopting such a rule.

The rule provides an exemption from Section 22(d) to permit variations of the sales load and certain other deductions from purchase payments for variable annuities, based upon differences in costs or services, and subject to the conditions set forth in the rule. The Commission believes that Section 22(d) has little relevance to the marketing of variable annuities because: (1) the uniform offering price requirement is unnecessary because variable annuity contracts are typically sold through employees of the sponsoring insurance company, and (2) it is unlikely that a secondary dealer market in variable annuity contracts would develop since such contracts are generally not assignable, and, even if they were, they do not lend themselves to public trading since they are based upon the continuing life of a particular individual. Nevertheless, the rule permits retail price competition in the sale of variable annuity contracts to the extent that such competition is not prohibited by state law. The Commission also expects that adoption of the rule will obviate the need for filing applications for certain types of exemptions from Section 22(d) which have been granted to numerous issuers of variable annuity contracts.[3]

Minor changes have been made in the rule since it was proposed which are intended to clarify its scope and to state more precisely the required basis for variations in sales loads or other deductions from purchase payments. The Commission has also modified the disclosure requirement of the rule to permit a separate account to disclose either the precise circumstances and amount of any variations which shall be available or the general basis for variations and the procedure which the company will employ to determine entitlement.

An additional revision was made to emphasize that variations in any deductions from purchase payments need not precisely equal variations in costs. In this regard, while the rule provides that variations in sales loads or in any administrative charge or other deduction from the purchase payments must be based upon differences in costs or services which might arise, for example, as a result of size, a prior or existing relationship with the prospective purchaser, or the prospective purchaser's performance of certain functions which the insurance company would otherwise be required to perform, such variations need not be precise or exact in their reflection of cost savings. Of course, variations in charges must not be unfairly discriminatory against any person.

COMMISSION ACTION

1. Rule 22d-3 is adopted as follows:

§ 270.22d-3 Exemption from section 22(d) for certain registered separate accounts.

A registered separate account, any principal underwriter for such account, any dealer in contracts or units of interest or participations in such contracts issued by such account and any insurance company maintaining such account shall, with respect to any variable annuity contracts, units, or participations therein issued by such account, be exempted from Section 22(d) to the extent necessary to permit the sale of such contracts, units or participations by such persons at prices which reflect variations in the sales load or in any administrative charge or other deductions from the purchase payments; *Provided, however,* that (a) the prospectus discloses as precisely as possible the amount of the variations and the circumstances, if any, in which such variations shall be available or describes the basis for such variations and the manner in which entitlement shall be determined, and (b) any such variations reflect differences in costs or services and are not unfairly discriminatory against any person.

2. Rule 0-1(e) is hereby amended to read as follows:

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[1] Investment Company Act, Rel. No. 8775 (April 30, 1975) (40 FR 20315).

[2] Investment Company Act Rel. No. 8570, November 4, 1974.

[3] See, for example, Investment Company Act Rel. No. 6261 (November 30, 1970) (35 FR 18566).