

The Secretary would initiate all rule-making actions, whether based on staff recommendations or petitions for rule making. Proposed regulations would be published in the FEDERAL REGISTER, inviting public comment. All comments and other public documents related to each rule-making proceeding would be maintained in a public docket, available for inspection by any interested person. During a rule-making proceeding, the Secretary may conduct public hearings, informal conferences, or other activities in order to obtain the most beneficial public participation. When final regulations are issued, they would also be published in the FEDERAL REGISTER unless each person affected is named and served with a copy. On occasion, a new regulation or an amendment may be issued without notice or public procedure when the Secretary finds that this is impracticable, unnecessary, or contrary to the public interest.

Sections 556 and 557 of title 5, United States Code (formerly sections 7 and 8 of the Administrative Procedure Act) relating to the conduct of hearings on the record, do not apply to rule making under the Natural Gas Pipeline Safety Act since these rules are not "required to be made on the record after opportunity for an agency hearing". However, since an opportunity for oral presentation is required, factfinding hearings would be held upon request of any interested person. The hearing would be nonadversary, with no formal pleadings, and any regulation that resulted would not necessarily be based exclusively on the record of the hearing.

With respect to petitions for waiver from the minimum Federal safety standards, section 3(e) of the Natural Gas Pipeline Safety Act requires a different procedure than is required by procedural rules of the Department for other modes of transportation. Before granting a waiver from the minimum Federal safety standards (49 CFR Part 192), the Secretary must give notice and provide an opportunity for hearing. This is provided for in proposed § 193.15(a). Petitions for waiver from other regulations issued under the Act will be disposed of without a hearing or other proceeding unless the Secretary deems it necessary.

Section 3(e) of the Act also contains a provision whereby a State agency that has a section 5 certification or agreement in effect may grant waivers from the Federal standards in the same manner as the Secretary. Section 193.17 would cover the granting of waivers by State agencies.

The Secretary is empowered by section 3(b) of the Act to require operators to take necessary action to remove hazards to life and property from their pipeline facilities. This is accomplished through the issuance of hazardous condition orders. The procedural rules that would govern these orders are set forth in § 193.37. Since there may be situations requiring action, but which do not present an immediate hazard, paragraph (b) provides for issuance of a letter to give the operator affected an opportu-

nity to show cause why a hazardous condition order should not be issued.

Interested persons are invited to participate in the making of these proposed rules by submitting written data, views, or arguments as they may desire. Communications should identify the regulatory docket and notice number and be submitted in duplicate to the Office of Pipeline Safety, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590. Communications received before January 29, 1971, will be considered before taking final action on this notice. All comments will be available for examination by interested persons at the Office of Pipeline Safety before and after the closing date for comments. The proposals contained in this notice may be changed in light of comment received.

In consideration of the foregoing, it is proposed to amend title 49 of the Code of Federal Regulations by adding the following new Part 193.

This notice is issued under the authority of the Natural Gas Pipeline Safety Act of 1968 (b9 U.S.C. sec. 1671 et seq.), Part 1 of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 1), and the delegation of authority to the Director, Office of Pipeline Safety, dated November 6, 1968 (33 F.R. 16468).

Issued in Washington, D.C., on December 17, 1970.

JOSEPH C. CALDWELL,
Acting Director,
Office of Pipeline Safety.

PART 193—RULE-MAKING PROCEDURES FOR PIPELINE REGULATIONS

Subpart A—General

- Sec.
193.1 Scope.
193.3 Initiation of rule making.
193.5 Participation in rule-making proceedings.
193.7 Regulatory docket.

Subpart B—Petitions for Regulatory Action

- 193.11 Filing of petitions for rule making.
193.13 Filing of petitions for waivers.
193.15 Processing of petitions for rule making and waivers.
193.17 Granting of waivers by State agencies.

Subpart C—Procedures for Rule Making

- 193.21 General.
193.23 Notices of proposed rule making.
193.25 Petitions for extension of time to comment.
193.27 Consideration of comments received.
193.29 Additional rule-making proceedings.
193.31 Hearings.
193.33 Adoption of final regulations.
193.35 Petition for rehearing or reconsideration of rules.
193.37 Hazardous condition orders.

Subpart A—General

§ 193.1 Scope.

(a) This part prescribes general rule-making procedures that apply to the issue, amendment, waiver, and repeal of regulations under the Natural Gas Pipeline Safety Act (49 U.S.C. 1671 et seq.).

(b) Records relating to gas pipeline rule-making proceedings, including the regulatory docket maintained under § 193.7, are available for inspection as provided in Part 7 of the regulations of the Secretary of Transportation (Part 7 of this title).

(c) As used in this part, "Secretary" means the Secretary of Transportation or any person to whom he has delegated authority in the matter concerned.

§ 193.3 Initiation of rule making.

The Secretary initiates rule making on his own motion. In doing so, the Secretary considers the recommendations of other agencies of the U.S. Government and the petitions of interested persons.

§ 193.5 Participation in rule-making proceedings.

Any person may participate in rule-making proceedings by submitting written information or views. The Secretary may also allow any person to participate in additional rule-making proceedings, such as informal meetings or hearings, held with respect to any rule.

§ 193.7 Regulatory docket.

Records concerning rule-making actions, including notices of proposed rule making, comments received in response to those notices, petitions for rule making or waiver, grants and denials of waivers, denials of petitions for rule making, records of additional rule-making proceedings conducted under § 193.29, records of public contact during rule-making proceedings, and final regulations are maintained in current docket form in the Office of Pipeline Safety.

Subpart B—Petitions for Regulatory Action

§ 193.11 Filing of petitions for rule making.

(a) Any person may petition the Secretary to issue, amend, or repeal a rule.
(b) Each petition for rule making must—

(1) Be submitted, in duplicate, to the Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590;
(2) Set forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner seeks to have repealed;

(3) Explain the interest of the petitioner in the action requested; and
(4) Contain information to support the action sought.

§ 193.13 Filing of petitions for waivers.

(a) Any person may petition the Secretary for a waiver from any provision of Parts 191–193 of this chapter, with respect to any pipeline facilities other than those for which a State agency has submitted a certification or agreement under section 5 of the Natural Gas Pipeline Safety Act.

(b) Each petition for waiver must be submitted in duplicate to the Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590, and must contain the following information:

(1) The regulatory provision involved.
 (2) The justification for the waiver, including showing why the regulations are not appropriate, why the public interest would be served by the proposal, and the basis upon which the proposal would not be inconsistent with gas pipeline safety.

(3) If appropriate, a detailed description of the pipeline or pipeline facilities involved.

(4) The name, address, and telephone number of the petitioner.

(5) If appropriate, a statement or recommendation regarding any changes to the regulations which would make similar waivers unnecessary.

(c) Unless there is good reason for priority treatment, each petition is considered in the order in which it is received. To permit timely consideration, petitions should be submitted at least 60 days before the requested effective date.

§ 193.15 Processing of petitions for rule making and waivers.

(a) *General.* The Secretary considers the information submitted by the petitioner and any other available pertinent information. Except as provided in paragraph (b) of this section, no public hearing, oral argument, or other proceeding is held directly on a petition for waiver or rule making before its disposition, unless the Secretary, in his discretion, so directs.

(b) *Hearings for waivers.* Before granting a waiver from the minimum Federal safety standards of Part 192 of this chapter, the Secretary gives notice of the petition in the FEDERAL REGISTER and provides an opportunity for a hearing on the proposed waiver.

(c) *Grants.* If the Secretary finds that the petitioner's proposal is consistent with gas pipeline safety and is otherwise justified, he issues a waiver under this subpart with a statement of his reasons for granting the waiver, or he initiates rule-making action under Subpart C of this part.

(d) *Denials.* If the Secretary finds the petitioner's proposal is inconsistent with gas pipeline safety or is not otherwise justified, the Secretary denies the petition. The Secretary will inform the petitioner of the basis for the denial.

(e) *Confidential or proprietary material.* The treatment of confidential or proprietary material submitted by any petitioner is governed by § 7.59 of this title.

§ 193.17 Granting of waivers by State agencies.

(a) As provided by section 3(e) of the Natural Gas Pipeline Safety Act, a State agency that has submitted a certification under section 5(a) of that Act or entered into an agreement under section 5(b) of that Act must give notice and opportunity for hearing before granting a waiver from the minimum Federal safety standards of Part 192 of this chapter. The notice of the petition for waiver may be published by any method authorized under the laws of that State for giving notice.

(b) A waiver granted by a State agency in accordance with paragraph (a) of this section may not become effective until at least 60 days after the State agency has given the Secretary written notice of the terms and conditions of the waiver. If the Secretary objects in writing to the waiver before it becomes effective, the grant of the waiver is stayed. The Secretary may also initiate proceedings in accordance with § 193.15(b) upon receipt of the written notice. If the Secretary objects to the waiver, he promptly notifies the State agency of his objection and affords the State agency an opportunity to present its request for waiver, including a hearing if requested. Thereafter, the Secretary will finally determine whether the requested waiver may be granted.

Subpart C—Procedures for Rule Making

§ 193.21 General.

(a) A notice of proposed rule making is issued and interested persons are invited to participate in the rule-making proceedings with respect to each substantive rule, unless the Secretary finds, for good cause stated, that notice is impracticable, unnecessary, or contrary to the public interest. Normally, the Secretary will provide a minimum of 30 days for comment on each notice.

(b) Interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are prescribed as final without notice or other public rule-making proceedings, unless the Secretary determines that notice and public rule-making proceedings are desirable.

(c) In his discretion, the Secretary may invite interested persons to participate in the rule-making proceedings described in § 193.29.

§ 193.23 Notices of proposed rule making.

(a) Each notice of proposed rule making is published in the FEDERAL REGISTER, unless all persons who might be subject to the final rule are named therein and are served with a copy.

(b) Each notice of proposed rule making, whether published in the FEDERAL REGISTER or served, includes—

(1) A statement of the time, place, and nature of the proposed rule-making proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance or terms of the proposed rule;

(4) A statement of the time for the submission of written comments and the number of copies required; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

§ 193.25 Petitions for extension of time to comment.

(a) Any person may petition the Secretary for an extension of time to submit comments responding to a notice of proposed rule making. The petition must

be submitted in duplicate not later than 7 days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Secretary grants the extension only if it is in the public interest and the petitioner shows good cause for the extension. If an extension is granted, it is granted to all interested persons and is published in the FEDERAL REGISTER.

§ 193.27 Consideration of comments received.

All timely comments are considered before final action is taken on a rule-making proposal. Late filed comments are considered so far as practicable.

§ 193.29 Additional rule-making proceedings.

After issuing a notice of proposed rule making, the Secretary may initiate any further rule-making proceedings that he finds necessary or desirable in any particular case. For example, he may invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceeding. Upon request, he will provide interested persons with an opportunity to present oral testimony and argument.

§ 193.31 Hearings.

(a) Sections 556 and 557 of title 5, United States Code (relating to the conduct of hearings required to be on the record) do not apply to hearings held under this part. Each hearing is a non-adversary, fact-finding proceeding, and there are no formal pleadings or adverse parties. A rule issued in a case in which a hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The Secretary or his designated representative conducts any hearing held under this part. The General Counsel or a member of his staff serves as legal officer at the hearing.

§ 193.33 Adoption of final regulations.

If the Secretary adopts a regulation, it is published in the FEDERAL REGISTER or all persons subject to it are named and are served with a copy. All regulations become effective 30 days after the date of issuance, unless the Secretary, for good cause recited, determines an earlier or later effective date is required as a result of the period reasonably necessary for compliance.

§ 193.35 Petition for rehearing or reconsideration of rules.

(a) Any interested person may petition the Secretary for reconsideration of any rule issued under this part. The petition must be transmitted, in duplicate, to the Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590, at least 10 days before the effective date of the rule. However, in any case in which a rule becomes effective in less than 15 days after issuance, the petition may be filed at any time before the effective date. Petitions

that are not timely filed will be considered as petitions for rule making filed under § 193.11. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not possible, is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests the consideration of additional facts, he must state the reason they were not presented to the Secretary within the allotted time.

(c) The filing of a petition under this section does not stay the effectiveness of a rule.

§ 193.37 Hazardous condition orders.

(a) Whenever the Secretary finds a particular pipeline facility to be hazardous to life or property, he issues a hazardous condition order requiring the person operating the facility to take such steps as are necessary to remove the hazard. The order may require shutdown of the facility, compliance with safety standards not otherwise applicable, or imposition of such other conditions or restrictions on operation as the Secretary deems necessary to protect the public.

(b) Whenever the Secretary finds that a particular pipeline facility, although not presently hazardous to life or property, may be hazardous or may in the future become hazardous, he issues a letter directing the operator involved to show cause why a hazardous condition order should not be issued under paragraph (a) of this section. After considering all information submitted, the Secretary either issues a hazardous condition order or notifies the operator involved that a hazardous condition order will not be issued.

(c) Unless otherwise stated therein, a hazardous condition order is effective upon receipt by the operator affected.

[F.R. Doc. 70-17224; Filed, Dec. 22, 1970; 8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 21, 43, 61]

[Docket No. 18920; FCC 70-1339]

DOMESTIC PUBLIC POINT-TO-POINT MICROWAVE RADIO SERVICE

Specialized Common Carrier Services; Memorandum Opinion and Order Designating Oral Argument

In the matter of establishment of policies and procedures for consideration of applications to provide specialized common carrier services in the domestic public point-to-point microwave radio service and proposed amendments to Parts 21, 43, and 61 of the Commission's rules.

1. Comments and reply comments on the Notice of Inquiry To Formulate Policy, notice of proposed rule making and order issued on July 17, 1970 (35 F.R. 11806) in this proceeding (24 FCC 2d

318) have been received by the Commission. In paragraph 74 of the notice (24 FCC 2d at 350), we requested the parties to address themselves to the question of whether oral argument before the Commission en banc would assist in a resolution of this matter. American Telephone and Telegraph Co. (AT&T) commented in support of oral argument and The Western Union Telegraph Co. (Western Union) indicated a possible future interest. Otherwise, there appear to be no widespread affirmative requests for oral argument, and the applicants are opposed.

2. Upon preliminary examination of the record, we are of the view that oral presentations, particularly on the issues specified below, would be of considerable assistance to the Commission and would not delay a resolution of this proceeding. We have decided to afford an opportunity for oral argument directed primarily toward some aspects of Issue A (Notice, paragraphs 25-45a), Issue B (paragraphs 46-50b) and Issue E (Notice, paragraphs 66-70). It does not appear that oral presentations would substantially enhance the written filings on Issues C and D (Notice, paragraphs 51-65). However, parties may address these issues, if they choose.

3. With respect to Issue A, we are particularly interested in arguments going to the substantive and policy aspects of the staff analysis. It is not necessary to treat the legal question of whether rule making or evidentiary hearing affords an appropriate procedure for resolving this issue. The written filings sufficiently set forth the pertinent legal authorities and precedents. However, parties are requested to address the question of what, if any, specific information would be adduced in any evidentiary hearing which is of material importance and has not been, or could not have been, filed in the record of this proceeding. With respect to Issue E, it is requested that the parties discuss not only the matters raised in paragraphs 66-70 of the notice and the comments and reply comments relating thereto, but also the petition for rule making (RM 1700) filed by Microwave Communications, Inc., on October 12, 1970, and the pleadings filed in response thereto. That petition seeks a rule making proceeding to allocate frequencies in the 38.6-40 GHz region of the spectrum for a common carrier local distribution service.

Accordingly, it is ordered. That the issues specified above are designated for oral argument before the Commission en banc at Washington, D.C. commencing at 9:30 a.m. on January 21, 1971.

It is further ordered. That each party desiring to participate in such oral argument shall file with the Commission, on or before December 29, 1970, a written notice of intention to do so, which shall set forth the amount of time desired. Parties holding similar views are encouraged to select a joint representative. The order of argument, specific time allotments, and place of presentation will be specified by further order of the Commission.

Adopted: December 17, 1970.

Released: December 18, 1970.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70-17257; Filed, Dec. 22, 1970; 8:49 a.m.]

[47 CFR Parts 89, 91, 93]

[Docket No. 19086; RM-1458]

EXPANDED USE OF NONVOICE EMISSION

Order Extending Time for Filing Comments

In the matter of expanded use of nonvoice emission under Parts 89, 91, and 93 of the Commission's rules, Docket No. 19086; petition of Dynacoustic Laboratories, Inc., seeking amendment of Parts 89, 91, and 93 of the Commission's rules to permit use of tone signals, RM-1458.

1. The Association of American Railroads (AAR) has requested the Commission to extend the time for filing comments in the above-captioned matter (FCC 70-1205, released November 13, 1970, 35 F.R. 17747) from December 21, 1970, to January 21, 1971.

2. Sylvania Electric Products, Inc. (Sylvania), has filed an opposition to the request of AAR contending that additional time is not needed or alternatively any extension should be limited to fourteen (14) days beyond December 21, 1970.

3. In support of its request, AAR states that it needs additional time to permit further consultation and study of the proposal in order to file meaningful comments. On the other hand, Sylvania urges that AAR has not shown that the necessary consultation and study could not be completed in less than 30 days. Further, it states that an extended period for comments is not necessary since digital techniques are well known and understood.

4. It appears that the additional time requested by AAR would not unduly delay this proceeding. Railroads utilize nonvoice techniques for purposes of controlling locomotives, a somewhat different use than that contemplated by Sylvania, and the comments of AAR should be useful to the Commission in reaching a determination in this matter. Therefore, we believe that AAR should be given the additional time it states it needs to prepare its comments.

5. In view of the foregoing: *It is ordered.* Pursuant to § 0.331(b)(4) of the Commission's rules, that the time for filing comments in the above-captioned proceeding is extended from December 21, 1970, to January 21, 1971, and the time for filing reply comments is extended from December 31, 1970 to February 1, 1971.

¹ Commissioners Bartley and Johnson absent.