LAW OFFICES
KELLER AND HECKMAN
1150 17TH STREET, N. W.
SUITE 1000
WASHINGTON, D. C. 20036

TELEPHONE
202 296-2100
CABLE ADDRESS "KELMAN"

JOSEPH E. KELLER
JEROME H. HECKMAN
CHARLES M. MEEHAN
WILLIAM H. BORGHESANI, JR.
ROBERT R. TIERNAN
WAYNE V. BLACK
DAVID L. HILL
MARTIN W. BERCOVICI
MARC K. SHAYE
LELAND J. BLAIR
PETER M. NEMKOV

May 16, 1972

Mr. Robert M. Miller
Hercules, Inc.
Delaware Trust Building
Wilmington, Delaware 19898

Re: Food and Drug Administration's Proposed Rulemaking; Procedures for Affirmation of GRAS Status and Determination of Food Additive Status (37 Fed. Reg. 6207).

Dear Bob:

With sincere apologies for the short time I am allowing you and the others receiving copies of this letter to review the material, I am herewith enclosing a draft of the Comments we would propose to file on behalf of The Society of the Plastics Industry in connection with the referenced Rulemaking.

As you know, we have for some time felt that the FDA Proposal should be employed to at least raise a number of questions about the present handling of incidental food additives problems and, where possible, to make suggestions for changes. Our thinking in this respect is simply that, obviously, we must continue to raise these questions with FDA whenever an opportunity presents itself in the hope that someday, somehow, we will be able to obtain "high priority" consideration of our "low priority" food additives problem.

We suspect that you will find the enclosed pleading a little unusual, and hope that perhaps FDA will ultimately feel the same way. Our objective, of course, is to try to bring about a restructuring of the incidental additives regulatory scheme so that some

version of the old "Ramsey proposal" can be adopted to delimit the necessity for filing full-scale Food Additive Petitions on substances of obvious toxicological insignificance.

Bearing in mind that the Comment deadline date in the proceeding is May 26, and again with sincere apologies for the short notice, I am hereby asking that anyone who feels that the enclosed draft is inappropriate, or should be revised in any way, let my office know by telephone as promptly as possible. I will be here from May 22 through May 24 so sometime during this period would be the best time to give me your thoughts. We can then place the statement in final order and submit it on May 26.

I will be looking forward to hearing from any of you with suggestions to offer.

Cordially yours,

George W. Stickman

Enclosure

cc: SPI Food, Drug and Cosmetic
Packaging Materials Committee

[Please note: This May 16, 1972 draft is considered by us to be a working document only. The final comments will, we hope, properly reflect corrections, additions, and revisions occasioned by FDCPMC members' reactions]

Hearing Clerk
Department of Health, Education,
and Welfare
Room 6-88
5600 Fishers Lane
Rockville, Maryland 20852

Re: Food and Drug Administration's Proposed Rulemaking; Procedures for Affirmation of GRAS Status and Determination of Food Additive Status (37 Fed. Reg. 6207)

Dear Sir:

Pursuant to Section 4 of the Administrative Procedure Act, as amended, 5 U.S.C. §553(c), and the referenced Food and Drug Administration Notice of Proposed Rulemaking published on March 18, 1972, The Society of the Plastics Industry, Inc. (SPI), by its attorneys, and acting through its Food, Drug and Cosmetic Packaging Materials Committee, 1/

1/ The Society of the Plastics Industry, Inc. (SPI) is a Corporation organized under the Membership Corporation Law of the State of New York. It is composed of approximately 1200 member companies and individuals who supply raw materials; process or manufacture plastics or plastics products; engineer or construct molds or similar accessory equipment for the plastics industry, and engage in the manufacture of machinery used to make plastics products or materials of all types. SPI is the major national trade association of the plastics industry, its membership being responsible for an estimated 75% of the total dollar volume of sales of plastics in this country. The Food and Drug Administration is quite familiar with the constitution and activities of the Society as a result of our many filings and participation in other proceedings of direct consequence to plastics producers. Copies of SPI membership directories, organization charts, and the like have been supplied to FDA in connection with some of these filings. Any further background information desired can be supplied (con't)

hereby respectfully submits its views with regard to the above-referenced proposed amendments to Part 121 of the Food and Drug Administration's Regulations.

I

INTRODUCTION AND GENERAL STATEMENT OF POSITION; REQUEST FOR ORAL ARGUMENT

By means of the rulemaking proposal which is the subject of these Comments, the Food and Drug Administration appears to be looking towards a new approach to the handling of a segment of the general food additives regulatory problem which might well add a degree of rationality to what has been largely a maze of confusion and uncertainty since at least 1960. To the extent that this is the case, and bearing in mind that our primary interest here is in the indirect additive, or "food contact surface" area, we commend the Administration for making some effort to bring order out of chaos.

At the same time, however, we are dismayed to note that the proposal raises many questions; so many that we have doubt as to the legal basis for parts of the proposal, and even more doubt as to how it will serve the useful purpose of providing industry and the public with a better understanding of the indirect food additive "ground rules."

Among other things, there is nothing in the explanatory statement or the proposal to indicate the statutory basis for FDA's mention in several places of its intent to evaluate and

1/ (con't.) immediately upon request by the Food and Drug Administration.

pass on the "functionality" of indirect additives. If the term "functionality" is equatable to "efficacy" in the present context, we respectfully submit that Congress specifically rejected giving FDA authority to pass on efficacy except in very unusual circumstances, i.e. where a tolerance must be established to protect the public health,[2/] and that these circumstances have never come into play, to the best of our knowledge, where indirect additives are concerned.

Other points which we consider confusing, or especially significant because they are not discussed at all are exemplified by the following listing (discussed in more detail hereinafter):

1. How will the proposed new procedures, which will necessarily bring about the filing of still more food additive petitions, be administered as a practical matter when FDA has thus far found it virtually impossible to act on any but a very few regular petitions (an estimated 50 to 70% of which relate to indirect food additives) within the 180 day

2/ cf. Section 409(c)(3)(A) and 409(c)(4) of the Federal Food, Drug, and Cosmetic Act, as amended. A review of these provisions demonstrates that FDA, in dealing with food additives, must be convinced of their safety, but may only deal with the question of efficacy where a true "tolerance" is necessary to assure safety. The entire legislative history of the 1958 law confirms this view.

statutory deadline provided for promulgation of regulations or amendments responsive to Section 409 Petitions?

2. Is it intended that FDA will treat, and list as "generally recognized as safe" (GRAS), packaging materials or other food contact surface components when appropriate tests satisfy a seller or user that the substance involved may not reasonably be expected to become a component of foods, and, hence, is not a food additive under the basic Statute (Section 201(s)) or FDA's Regulations (Section 121.1(e)). This may seem to be a question which answers itself,but fourteen years of very difficult experience indicates the contrary to be the case. This is primarily because FDA's scientists have refused to concur in non-migrant, ergo non-food additive, status in all but a very few types of situations, and despite supporting data acquired under grossly exaggerated test conditions. Such refusals have occurred somewhat erratically but often even when scientists of equal competence to FDA's, and with even more

experience as to specific packaging materials components, have concluded that there is no reasonable expectation of migration to foods.

3. Will the proposal require food additive or GRAS petitions to be filed in cases where test data is interpreted by the Bureau of Foods to indicate possible "insignificant levels" of migration to foods from packages or food contact surfaces? Indeed, this vexatious area has been the subject of the most prolonged and, thus far, fruitless debate between FDA and the packaging industries. If this rulemaking proceeding is intended to at least help deal with it forthrightly, and bring reason into play in the field of scientific judgment, as it would seem to purport to do, this should be made much clearer than is now the case.

4. Where a GRAS petition is filed, is it appropriate or proper to open the entire petition to public view if, among other things, FDA will require, under Section 121.40(c)(1), that all details of past usage be included in the Petition? If this is done, many petitioners may

well have to lay open customer lists, and other important trade secrets now protected under Section 302(j) of the Food, Drug and Cosmetic Act, and the Public Information section of the Administrative Procedure Act ("Freedom of Information Act"). This type of information would even be protected under the Agency's new proposal to release a great deal of other information now held confidential. (See 37 Fed. Reg. No. 88, pps. 9128 and 9129 and especially the discussion of the trade secrets, etc. exemption plan.) For the sake of consistency alone, the instant proposal should be revised to assure protection of such information.

5. In what specific ways will the new rules do anything to expedite clearances or rejections of GRAS or other substances, and help clarify product classifications for the packaging industries, or their customers?

6. Will there be time limits for final FDA action on GRAS petitions, or proposed interim food additive regulations, whether the same are instituted on the Commissioner's own

initiative, or at the instance of outside parties?

At least as we view the situation, failure to consider these questions, and explain how they will be handled, casts serious doubt on the value of the rulemaking proposal. Here, as in all other instances in these Comments we are, of course, limiting our observations to indirect food additive problems.

It is our position, just as it has been since 1956,[3/] that (1) indirect food additives present entirely different factual situations and questions than direct food additives; (2) sensible handling of these situations requires special and discrete, though far less demanding, treatment; and (3) there are means available to deal with the problem on bases which would allow most indirect additives to be cleared (yet made fully known to FDA and the public) without the procedural "folderol," waste of scarce scientific talent, time, and expense, and processing delays now involved with respect to what the Administration's staff has always declared to be its lowest priority concern vis-a-vis public health.

3/ Statement of John G. Kuniholm on Behalf of The Society of the Plastics Industry, Inc.; Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, Eighty-Fifth Congress, On Bills to Amend the Federal Food, Drug and Cosmetic Act With Respect to Chemical Additives in Food, (Pages 145-152).

Rather than burden this set of Comments with a repetition of information already in the Food and Drug Administration's hands, albeit apparently bypassed heretofore as far as definitive action is concerned, we respectfully request that the agency consider incorporated by reference herein the following documents:[4/]

1. The lengthy Comments filed on behalf of The Society of the Plastics Industry, Inc. on November 6, 1967 in response to the FDA Notice of Proposed Rulemaking of August 8, 1967 (32 Fed. Reg. No. 152, p. 11443 et. seq.) which looked towards amendment of the Food Additives procedural regulations.

2. The Transcript of the National Conference on Indirect Food Additives held on February 13, 14, 1968. It would also be helpful if the Food and Drug Administration made reference to any exchanges of correspondence between it and the Subcommittee on Regulatory Agencies of the House of Representatives Small Business Committee that led to or bore on the decision to call this

4/ Copies of all of the listed materials are readily available in our files and can be resubmitted to FDA if they cannot be found conveniently in the Agency's files.

Conference. It is our belief that this correspondence would clearly show that the Conference was called as a partial response to inquiries made of then Commissioner Goddard by Congressman John Dingell; that promises of prompt remedial action were made to Congressman Dingell; and that no such action has yet been taken despite these promises and others made "on the record" by Commissioner Goddard.

3. All correspondence and, where possible, any relevant FDA memoranda, relating to what industry has come to call the "Ramsey proposal," sent on an informal basis to industry representatives on May 6, 1969. For reasons which still remain quite unclear to us, no further action has been taken on this proposal.

We are of the view, based on our experience to date, that most of the questions and issues raised directly, or implied by the foregoing inquiries and the more specific comments that follow, are not susceptible of satisfactory resolution without a true exchange of opinions on the subject in a suitable, though not unduly burdensome forum. For this reason, we respectfully urge the Commissioner to hear oral argument on the entire indirect food additives "administrative"

problem. Such oral argument is permissible under Section 4(b) of the Administrative Procedures Act, 5 U.S.C. §553(c) although it is understood that conducting such legislative type proceedings is discretionary.

Due to the importance, and long range impact of the questions we are raising, and the recommendations being made, we submit that such argument before the Commissioner, where all parties could be provided a reasonable time to explain their positions and respond to the Commissioner's questions so as to make a full record, is the only sensible means by which essential issues can be brought into focus. We, therefore, urge that interested parties be allocated argument time before the Commissioner for this purpose and request that SPI be allotted one hour of the time provided for this purpose.

In numerous instances, when other agencies are presented with public problems of significant import, their respective administrators do not hesitate to call for public hearings or oral presentations on their own initiative. For example, the Federal Trade Commission ordered open hearings to explore modern advertising practices and their impact on consumers with special attention to television advertising.[5/] The Environmental Protection Agency made provision for a public hearing regarding the issue of lead and phosphorous additives

5/ 36 Fed. Reg. 16698, August 25, 1971; attached hereto as Appendix B.

in motor vehicle gasoline;[6/] and the Federal Communications Commission has ordered oral argument regarding the "Fairness Doctrine."[7/]

Even though the controlling law[8/] does not require oral argument, we believe this form of presentation will contribute substantially in this instance. It should be noted that we are specifically not requesting an evidentiary hearing pursuant to 5 U.S.C. §556. In the present case, in our opinion, a hearing is not required but we believe a legislative type of oral argument is demanded to serve the public interest.

II
IN EFFECTUATING THE INSTANT PROPOSAL, IF IT IS ADOPTED, DUE CONCERN AND CAREFUL PLANNING SHOULD BE EMPLOYED TO ASSURE THAT REQUIRING "GRAS PETITIONS" WILL NOT FURTHER OVERBURDEN THE PRESENTLY UNSATISFACTORY PETITION PROCESSING SITUATION

As we read the present proposal, it will most assuredly require the filing of a great number of additional petitions, albeit and hopefully, many of these petitions will require less

6/ 37 Fed. Reg. 3882, February 23, 1972; attached hereto as Appendix C.

7/ 37 Fed. Reg. 4978, March 8, 1972; attached hereto as Appendix D.

8/ The relevant part of §4 of the Administrative Procedure Act, provides that:

> "...the agency shall give interested persons an opportunity to participate in the rule-making through submission of written data, views, or arguments with or without opportunity for oral presentation."

preparation and FDA review time. Nonetheless, we question the advisability of adding to the over-all petition load at a time when it remains apparent that the petition-regulation system is by no means operating as Congress intended, nor as industry or the public have a right to expect. Indeed, it might be best to consider whether this system should be retained at all before an additional burden is placed upon it.[9/]

The statutory time limitations placed on FDA require publications of Notices of Filings regarding Food Additive Petitions of any type within 30 days after filing (Federal Food, Drug and Cosmetic Act §409(b)(5)) and the adoption or denial of a proposed food additive regulation, 90 days or 180 days subsequent to the filing of the Petition. (§409(c)(2)). However, with few exceptions, the time limitations are continuously exceeded. This observation, which is a general basis of complaint by industry, has been acknowledged by FDA[10/]

9/ In many ways the present regulatory scheme is much more akin to licensing than rulemaking. Perhaps it is time to acknowledge this frankly and proceed accordingly, accomplishing the necessary public information function by publishing lists of "approvals" given from time to time. This could expedite matters by allowing the FDA Staff to focus on specific substances for specific intended uses instead of requiring that Regulations be devised to anticipate broader coverages than Petitioners require, or can even know about.

10/ At an FDA-SPI Seminar, held in Washington, D.C., on June 18, 1971, Mr. Nathanial Geary, then Director of the Division of Petitions Processing of the Food and Drug Administration, stated that the average time to process a "perfect" petition was 184 days.

and was further quantified to a degree in a recent survey conducted by SPI's Food, Drug and Cosmetic Packaging Materials Committee.

The SPI survey resulted in the receipt of responses from 19 petitioners covering 129 petitions relating to indirect food additives. Based upon these replies, it can be said prior to a 1966 internal FDA change in petition-processing procedures, there was an average delay of 13 1/2 months before regulations issued. The shortest times reported were one-half month for acceptance, in one case, and two months for issuance in another, but these were not for the same petition. As to the post-1966 filings, the average processing time was 12 1/2 months per petition. The shortest time for promulgation reported for a simple Regulation amendment was four months. Many responders reported petition-handling periods of over three years. Of the petitions reported on, 39 were filed since 1966, 51 prior to 1966, and the other 39 spanned the pre-and post-1966 years.

Stated simply, this survey merely confirmed the common knowledge that the handling of Food Additive Petitions almost always involves delays which make a mockery of the statutory requirements.[11/]

11/ It is acknowledged that some of the delay is due to requests by FDA for additional information but more often than not these requests are not even received until the "last hours" before a statutory deadline is due to expire.

The issue of time limitations naturally comes to mind in another sense in connection with the subject proposed rules since they will require petitioning for affirmation of GRAS status of a given food additive substance. In this case, the proposal does not mention time limitations so we must assume the plan is to follow the statutory procedures. This can only aggravate an already unacceptable situation and make further delays commonplace as to conventional petitions, as well as the new "GRAS" ones.

According to the proposal, when affirmation of GRAS status is sought either on the initiative of the Commissioner or upon the petition of an "interested person," 60 days after a notice is placed in the Federal Register, the Commissioner must evaluate all comments received and make a determination. (§121.40(b)(3) and 121.40(c)(4).) However, there is no time limitation placed on the Commissioner as regards the making of the evaluation, or as to the publishing of his decision in the Federal Register.

Even though the already-existing processing time limits are so frequently exceeded, their presence at least serves as a reminder that a given regulatory proceeding should not continue indefinitely. Thus, at the very least, it is respectfully submitted that if the proposed rules are adopted, they should include the expression of a time limit upon the Commissioner in §121.40, especially with regard to petitions

initiated by an outside party.

Accordingly, SPI recommends that §121.40 be revised as follows:

1. In §121.40(b)(3) on the fifth line, after the word "publish" insert the following phrase:

> "...within 90 days after publication of the notice in the Federal Register referred to in subsection (b)(1) of this Section,..."

2. In §121.40(c)(4), on the seventh line, after the word "publish" insert the following phrase:

> "..., within 90 days after publication of the notice in the Federal Register referred to in subsection (c)(2) of this Section,..."

III

THE FACT THAT SUBSTANCES WHICH ARE NOT DETECTED IN EXTRACTION STUDIES AT REASONABLE LEVELS OF METHOD SENSITIVITY SHOULD BE READILY DEEMED NON-ADDITIVES SHOULD BE MADE COMPLETELY CLEAR; MOREOVER GRAS STATUS SHOULD BE PROMPTLY AND EASILY GRANTED INDIRECT ADDITIVES USED IN AMOUNTS WHICH ARE OBVIOUSLY OF NO TOXICOLOGICAL SIGNIFICANCE

The development of formal procedures to make GRAS status determinations proposed by this rulemaking should not be completed without resolving the long-pending issue of how to eliminate the excesses of full-scale regulation now afforded in cases where there is no detectable, or extremely low level migration of indirect food additives. More specifically, it is respectfully submitted that FDA should eliminate the costly, burdensome and needless requirement of filing food additive

petitions to establish GRAS or any other status with respect to substances (other than heavy metals, pesticides, and known carcinogens) which may become incidental food additives at very low concentrations. It is well recognized that even potentially harmful materials taken in minute enough amounts are harmless. It is on this basis that the National Academy of Sciences - National Research Council 12/ has developed its guidelines as to toxicological insignificance which FDA is already recognizing in determining the safe level of use of a food additive. Food additives that by law are required to be regulated have dietary levels below which they have no adverse effect, the "no-effect" level, and therefore, are permitted by regulations for use at that level and lower. It is an extension of this philosophy to very low concentrations that underlies the so-called "Ramsey Proposal," which SPI now formally requests that FDA re-examine, revise somewhat, and adopt.

To review, this draft proposal affecting indirect additives was proposed to amend §121.2500 of the Food Additive Regulations and was issued on May 6, 1969 as an informal

12/ The Food Protection Committee-Food and Nutrition Board of NAS-NRC issued a pamphlet, "Guidelines for Estimating Toxicologically Insignificant Levels of Chemicals in Food," in 1969 wherein it was observed that: "for every chemical there is some finite level, sometimes called the 'safe level'"-- that level which refers to the maximum acceptable daily intake in the total diet-- "at or below which it can be present in food without prejudicing safety."

statement for discussion purposes. The major provisions of the proposal would make it unnecessary to file Food Additive Petitions concerning components of (1) articles intended for use in contact with Type VIII dry foods (as defined in Table 1 of §121.2526(c)), (2) articles intended for repeated use in contact with bulk quantities of food, (3) defoaming agents used in paper and paperboard, (4) food packaging adhesives complying with the good manufacturing practices requirements of §121.2520 and (5) those components (other than heavy metals, known carcinogens, and substances previously shown to be toxic at 40 ppm. or less) demonstrated by calculation, extraction studies, or food analyses to result in a transfer to food of less than 0.05 ppm.

As has already been indicated previously, the plastics and other packaging industries are in general agreement with the thrust of the Ramsey proposal because it was viewed as a good faith effort by the Food and Drug Administration to be responsive to some of the problems created by past administration of the Food Additives Amendment of 1958, as it relates to incidental food additives. Further, we believe FDA would agree that some means must be found for delineating between areas where potential hazards to health may be involved--and therefore warrant the careful attention and great expenditures of money, time, and expertise required to clear products by the food additive petition route--and those areas where there is

no hazard to warrant such expenditures. Actually, it has long been our view that this type of delineation is precisely what Congress had in mind when, among other limitations, it deliberately restricted coverage of the Food Additives Amendment to any substance "the intended use of which results or may reasonably be expected to result, directly or indirectly in its becoming a component...of food..."

This is why the packaging industries commended FDA shortly after the May 6, 1969 proposal was circulated. We viewed this action as a true attempt to comply with the implied statutory mandate to clearly distinguish between substances which should be within the purview of the Food Additives Amendment and those so unlikely to become components of food, or otherwise so insignificant, as to demand that they receive only such attention as is necessary to exclude them from unduly complicated regulatory coverage. However, to our great dismay, the provisions in the draft proposal have never been effected despite FDA's continued acknowledgement of their scientific soundness.

It is a fundamentally accepted proposition that "to provide assurance that any substance is absolutely safe for human or animal consumption is impossible."[13/] Because of the limitation of scientific manpower and the priority of other

13/ 21 CFR §121.3(a).

national programs, health hazards should be assigned relative severity factors and available resources applied to those which pose the most significant problems to public health. On this basis, the public health protection achieved by the present procedure of regulation of indirect food additives has simply not justified the vast expenditures that have been required.

In the fourteen years since the enactment of the Food Additives Amendment, millions of dollars have been spent on the toxicological testing of food packaging materials. However, the findings have established that potential health hazards from food packaging materials are extremely remote. Indeed the persuasive arguments put forth in 1966 by Dr. J. Frawley[14/] have only been further reinforced since then.

For all of these reasons we urge adoption of the 1969 draft proposal or a reasonable modification thereof, as a sound method to reduce the needless expenditure of time and funds in this area. It is recognized that adoption of the said draft proposal affecting indirect additives in its present form would implicity require the categorical clearance in advance of substances with which FDA personnel may or may not be familiar. We further recognize that this aspect of the

14/ American Chemical Society Symposium on Safety Evaluation of Coatings and Plastics for Food Packaging, September 14, 1966.

proposal might be viewed with concern by FDA's toxicologists.

To resolve this apparent roadblock we would propose the adoption of a system whereby indirect additive users or manufacturers could simply give official notice to FDA personnel prior to the use of a given indirect additive, when it is anticipated that the indirect additive will be used in concentrations falling within the range of "insignificance." By this means, FDA could raise any questions it might have about such use if it has reason to do so; and categorical clearance without definition of what is being used would be avoided.

With this provision for giving FDA an opportunity to review in advance any proposed use of a low level migrant, there would no longer be a real need to set the limit at 0.05 ppm. as was done in the 1969 draft proposal. This limit was set lower than safety or economy required in order to overcome FDA's reluctance to clear unknown substances in advance. Accordingly, the limit can now be safely raised, it is submitted, to 0.5 ppm.

It is, therefore, our recommendation that the proposed regulations be revised now to include the following provision:

Add the following subsection to proposed §121.40 Affirmation of GRAS Status:

* * *

"(d)(1) Persons seeking the affirmation of GRAS status of substances as provided for in §121.3(e) and based on the criteria set forth in subsection (d)(2) of this Section may obtain such by filing at least 90 days prior to intended use the Short Form Petition, Indirect Food Additives-Affirmation of GRAS Status. The Short Form Petition shall contain:

A. the names of the indirect additive, trade and generic,

B. the proposed use of the indirect additive,

C. the concentration in the resultant end products,

D. the concentration of additive reasonably to be expected as a result of the intended conditions of use in the food, specifying the type or nature of each food, and the corresponding maximum concentration reasonably expected, and

E. other proposed limitations.

"(d)(2) The Short Form Petition shall be filed for:

A. components of articles intended for use in contact with Type VIII dry foods (as defined in Table 1 of §121.2526(c)),

B. components of articles intended for repeated use in contact with bulk quantities of food,

C. defoaming agents used in paper and paperboard,

D. food packaging adhesives complying with good manufacturing practices requirement of §121.2520, and

E. components (other than heavy metals, known carcinogens, and substances previously shown to be toxic at 40 ppm or less) demonstrated by calculation based upon reasonable migration premises, extraction studies, or food analyses to result in a transfer to foods of less than 0.5 ppm."15/

* * * *

It is our hope that these Comments will be received favorably and in the constructive light intended. The time is long overdue for the type of changes we are advocating. Moving in the directions indicated here will, we submit, serve the best interests of the public, the government and industry.

Respectfully submitted,

General Counsel for The Society of the Plastics Industry, Inc.

of Counsel:
Keller and Heckman
1150 17th Street, N.W.
Washington, D. C. 20036

15/ A proposed draft of a Short Form Petition is attached hereto as Appendix A.

DRAFT

Appendix A

File Number

ASI-PR 0001490

FOOD AND DRUG ADMINISTRATION

Short Form Petition
Indirect Food Additives-
Affirmation of GRAS Status

1. Name of Applicant

2. Address of Applicant

3. Name of Indirect Additive

a. Trade Name

b. Generic Name

4. Proposed Use

5. Concentration in Resultant Product

6. Concentration in Food

a. Type or Nature of Food	b. Maximum concentration reasonably expected
1.	
2.	
3.	

7. Other Proposed Limitations

Signature of Applicant

Date

whether the suspension order should be vacated or made permanent, and if none was ordered by the Commission, the temporary suspension would become permanent. The issuer filed a response containing denials of the allegations in the temporary suspension order, but thereafter, without admitting or denying those allegations, the issuer stated that it did not desire to have and it did not request a hearing, and further stated that it understood that as a result of that decision on its part the suspension will become permanent.

In view of the foregoing, it is appropriate to enter an order permanently suspending the exemption.

Accordingly, it is ordered, Pursuant to rule 261 of regulation A under the Securities Act of 1933, that the exemption from registration with respect to the offering of securities by Lov'n Leather, Inc. be, and it hereby is, permanently suspended.

For the Commission, by the Office of Opinions and Review, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Acting Associate Secretary.

[FR Doc.71-12407 Filed 8-24-71;8:48 am]

FEDERAL TRADE COMMISSION

MODERN ADVERTISING PRACTICES

Notice of Public Hearing and Opportunity to Submit Data or Views

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq., will conduct open hearings designed to explore modern advertising practices and their impact on consumers, with special attention to television advertising.

The hearings will involve neither review nor evaluation of specific advertising representations or claims in terms of their possible violation of the law. Individual questions of advertising deception or misrepresentation will continue to be dealt with by complaint or rulemaking procedures. The hearings will attempt to elicit empirical information from a wide variety of authorities regarding a number of aspects of advertising. The Commission's current primary interests are the following:

Children. As a class, children have always been the subject of the special protection of law. Underlying this proposition is a recognition of the vulnerability of children to suggestion, and their immaturity of judgment. This special protection afforded for children includes protecting them as consumers or television viewers. The unique aspects of television may provide compelling reasons for arguments that special standards should be developed in the regulation of advertising addressed to children. In order to better acquaint itself with the considerations involved in developing such standards, the Commission desires to explore how children learn, perceive, and make decisions.

Advertising themes. The Commission desires to inform itself about the extent to which some advertising may appeal to such fears or anxieties as social acceptance or personal well-being.

Technical aspects. The Commission desires to inform itself about whether and how certain photographic and other techniques used in making TV and other commercials may make use of nonverbal persuasion which may not be recognized by viewers.

Physical, emtional and psychological responses. New methods of advertising may be causing effects in viewers different from those customarily generated by advertising. The Commission desires to learn about consumers' physical, psychological, and emotional responses to advertising.

The hearings will be for informational purposes only and will not be geared to the adoption of a rule or other form of guideline. Whether future Commission action will result from the information developed will depend on the facts obtained from the record of these hearings.

All interested persons, including the consuming public, having information based upon empirical data or other expertise, are hereby notified that they may file written data or views concerning modern advertising practices with the Director, Bureau of Consumer Protection, Federal Trade Commission, Pennsylvania Avenue and Sixth Street NW., Washington, DC 20580. To the extent practicable, persons wishing to file written presentations in excess of two pages should submit 20 copies.

All interested parties are also given notice of opportunity to present data or views orally at the public hearings to be held 10 a.m., October 20, 21, and 26, 1971, in Room 532 of the Federal Trade Commission Building, Washington, D.C.

Any person desiring to present his views orally at the hearing should so inform the Attorney-Advisor to the Chairman not later than September 15, 1971, and state the estimated time required for his oral presentation. Reasonable limitations upon the length of time alloted to any person may be imposed. In addition, all parties desiring to deliver a prepared statement at the hearing should file such statement with the Director, Bureau of Consumer Protection, on or before October 1, 1971.

NOTES: (1) Depending on the geographical location of those persons desiring to present views or data orally, the Commission will consider holding hearings in locations other than Washington, D.C. Notice of hearings scheduled for locations other than Washington, D.C., will appear in the FEDERAL REGISTER. (2) Because the duration of the hearings is contingent on the number of persons wishing to express views or data orally, the public record in this proceeding will remain open until further notice appears in the FEDERAL REGISTER.

The data or views presented at the hearings or filed for the record will be available for examination by interested parties at the Office of the Assistant Secretary for Legal and Public Records, Federal Trade Commission, Washington, D.C.

By direction of the Commission dated August 17, 1971.

[SEAL] PAUL M. TRUEBLOOD,
Acting Secretary.

[FR Doc.71-12415 Filed 8-24-71;8:49 am]

TARIFF COMMISSION

[TEA-I-22]

CERAMIC ARTICLES, INCLUDING DINNERWARE

Notice of Change in Scope of Investigation and Rescheduling of Hearing

Following receipt of communications filed by the American Dinnerware Emergency Committee and the American Fine China Guild on August 17 and 19, respectively, the U.S. Tariff Commission, on August 19, 1971, amended the scope of investigation No. TEA-I-22 under section 301(b) of the Trade Expansion Act of 1962 (36 F.R. 11617).

The investigation, as amended, is to determine whether, as a result in major part of concessions granted under trade agreements—

articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients, all the foregoing of fine-grained earthenware, of fine-grained stoneware, of chinaware, or of subporcelain, and provided for in items 533.14 through 533.77 of the Tariff Schedules of the United States, inclusive, but excluding item 533.51 thereof,

are being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the domestic industry or industries producing articles which are like or directly competitive with the imported articles. Notice of the investigation was published in the FEDERAL REGISTER of June 16, 1971 (36 F.R. 11617).

Public hearing rescheduled. The public hearing ordered to be held beginning September 14, 1971 (36 F.R. 14682), is rescheduled to begin at 10 a.m., e.s.t., on November 30, 1971, in the Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, DC. Appearances at the hearing should be entered in accordance with § 201.13 of the Tariff Commission's rules of practice and procedure.

Requests to appear must contain a careful estimate of the aggregate time desired for presentation of oral testimony by all witnesses for whose appearances the request is filed.

Issued: August 20, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc 71-12410 Filed 8-24-71;8:49 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 80]

REGULATION OF FUELS AND FUEL ADDITIVES

Lead and Phosphorus Additives in Motor Vehicle Gasoline

On January 30, 1971, advance notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 1486) to inform the public that the Agency, in accordance with the requirements of section 211 of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.), was considering available relevant scientific, medical, economic, and technological data concerning the use of lead additives in motor vehicle gasolines, with the intention of proposing regulations or prohibitions on the use of the additives on the earliest date possible.

After considering available scientific and economic data, including a cost-benefit analysis comparing motor vehicle emission control devices or systems which are or will be in general use and require control or prohibition of lead additives in gasolines with emission control devices or systems which are or will be in general use and do not require such control or prohibition of these additives, the Administrator has determined that emission products of lead additives will impair to a significant degree the performance of emission control systems that include catalytic converters which motor vehicle manufacturers are developing to meet 1975–76 motor vehicle emission standards and are likely to be in general use if lead additives are controlled or prohibited for use in certain motor vehicle gasolines. The same considerations were given, and the same determination was made regarding the use of phosphorus-containing additives in motor vehicle gasolines.

Therefore, it is proposed to provide for general availability by July 1, 1974, of essentially lead-free and phosphorus-free gasolines of an octane quality suitable for 1975 and subsequent model year light-duty vehicles. Copies of the cost-benefit analysis referred to above, entitled Aerospace Report, PB–205–981, are available for $4.50 each from National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22151.

Based on the available evidence, the Administrator has concluded that airborne lead levels exceeding 2 micrograms per cubic meter, averaged over a period of 3 months or longer, are associated with a sufficient risk of adverse physiologic effects to constitute endangerment of public health. Since airborne lead levels in many major urban areas currently range from 2 to somewhat over 5 micrograms, and since motor vehicles are the predominant source of airborne lead in such areas, attainment of a 2-microgram level will require a 60 to 65 percent reduction in lead emissions from motor vehicles. The Administrator proposes to regulate the lead content of "regular" and "premium" leaded gasolines by providing for the reduction of lead over a 4-year period, beginning January 1, 1974. It is the Agency's judgment that these reductions, together with the introduction of one grade of lead-free gasoline, as proposed herein, will provide for the protection of health in major urban areas within the shortest time reasonably possible. Copies of a summary and analysis of evidence on health hazards of airborne lead, entitled "Health Hazards of Lead," are available from the Publications Section, Environmental Protection Agency, 5600 Fishers Lane, Room 18B–08, Rockville, MD 20852.

The Administrator has considered whether it would be more economically and technologically feasible to provide for the protection of public health by means of a new motor vehicle emission standard for lead particles than by means of the proposed reduction of gasoline lead content. It is considered unlikely, however, that new motor vehicles could be equipped with lead emission control devices prior to the 1975 model year, it is anticipated that new vehicles will be equipped with emission control systems requiring the use of lead-free gasoline; thus, imposing a lead emission standard would produce no benefit, in terms of lead emissions. Furthermore, the Administrator does not have authority to prescribe a lead emission standard applicable to other-than-new vehicles. Accordingly, the Administrator has determined that providing for the protection of public health by means of a new motor vehicle emission standard for lead is not feasible.

The Administrator finds that prohibition of the use of lead additives and phosphorus-containing additives and the reduction of gasoline lead content will not cause the use of any other fuel or fuel additive that will produce emissions which will endanger the public health or welfare to the same or greater degree. The bases for this finding are set forth in a paper entitled "Effects of Reduced Use of Lead in Gasoline on Vehicle Emissions and Photochemical Reactivity," copies of which are available from the Publications Section, Environmental Protection Agency, 5600 Fishers Lane, Room 18B–08, Rockville, MD 20852.

The Administrator is also considering the need for limiting the sulfur content of gasoline because sulfur may have an adverse effect on the performance of catalytic emission control systems. Accordingly, the Administrator invites comments concerning the effect of various levels of sulfur concentrations in lead-free and phosphorus-free gasoline on such emission control systems; the maximum level of sulfur which can be tolerated if the catalyst is to function properly; the impact of a sulfur limitation on the petroleum industry; and the impact of a sulfur limitation on motor vehicle performance and the cost of gasoline to the consumer.

The Administrator specifically invites all interested parties to submit information reflecting their interpretation of the significance of airborne lead as a health hazard. Additionally, comments are requested on the regulatory approach proposed herein and on possible alternatives which would achieve the same result. Comments on any such alternative should be accompanied by information on its cost-benefits and other effects.

Among other things, these regulations set forth certain labeling requirements applicable to gasoline retailers. It is the Administrator's intent to coordinate such requirements with the Federal Trade Commission.

Interested persons may submit written comments on the proposed regulations, in triplicate, to the Deputy Assistant Administrator for Air Programs, Environmental Protection Agency, 5600 Fishers Lane, Room 17–59, Rockville, MD 20852. All relevant comments postmarked not later than 90 days after publication of this notice will be considered. Comments received will be available for public inspection during normal working hours (8 a.m. to 4:30 p.m.) at the Office of Public Affairs, Waterside Mall, 401 M Street SW., Room 3241, Washington, DC 20460.

The Act provides that if a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submits a written request for a public hearing to the Administrator within 10 days of the publication of this notice, the Administrator will call a public hearing and subsequently will publish findings with respect to the matters he is required to consider under section 211(c)(2)(B) of the Act. However, because of the significance of the proposed regulations, the Administrator has decided to call the public hearings. The particulars concerning the hearings will be announced in the FEDERAL REGISTER at a later date.

This notice of proposed rule making is issued under the authority of section 211 of the Clean Air Act as amended (42 U.S.C. 1857f–6c, section 9, Public Law 91–604; 84 Stat. 1958).

Dated: February 17, 1972.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.

A new Part 80 would be added to Chapter I, Title 40 of the Code of Federal Regulations, as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

Subpart A—General Provisions

Sec.

Subpart B—Controls and Prohibitions

increased rates are forecast to raise Airborne's revenues for that year by $1.2 million, or an average of 1.45 percent.

3. The increased rates are forecast to result in a profit margin before taxes of 2.68 percent of revenues, as compared with 3.46 percent for the first 11 months of 1971.[4]

4. The record provides sufficient evidence to conclude that:

a. The increase proposed is cost-based and does not reflect future inflationary expectations;

b. The increase is the minimum required to assure continued, adequate, and safe service and to provide for necessary expansion to meet future requirements[5]; and

c. The increase will achieve the minimum profit margin to attract capital at reasonable costs and not impair Airborne's credit.[6]

In view of the foregoing considerations, the Board finds that there is no basis to continue the investigation previously initiated in this docket and accordingly it will be dismissed and the suspension vacated.

Accordingly, it is ordered, That:

1. The suspension of increased rates, charges, and provisions in Order 72-1-25, dated January 11, 19[illegible] in Docket 24110 is vacated and the investigation instituted in that docket is dismissed;[7]

2. A copy of this order shall be filed with the tariffs and served upon Airborne Freight Corp.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-3493 Filed 3-7-72,8:50 am]

[4] These are the figures in the petition for reconsideration. In a letter amplifying its original justification, Airborne forecast that the profit margin for 1972 before taxes would amount to 2.72 percent of revenues after the rate increase, while the figure without the rate increase would be 1.40 percent.

[5] The Board has not heretofore established a rate of return for airfreight forwarders and has not deemed it appropriate to do so, in view of the Board's long-standing policy of free entry into the air freight forwarding field and the resultant forces of competition which operate on the many entrants in this field. Accordingly, we are not in a position to apply a rate of return analysis to this segment of the air transportation industry.

[6] On the basis of information before us, it appears that if the increases here sought were not permitted the profit margins which would result would be substantially below that other freight forwarders will achieve, and this fact would be relevant to potential lenders of capital. Accordingly, we conclude that the profit margin here sought is not excessive.

[7] The increases rates, charges, and provisions permitted by this order will be effective upon the filing of appropriate tariff revisions as required by Part 221 of the Board's economic regulations but on not less than 10 days' notice, and in no case be effective prior to March 10, 1972 unless otherwise permitted by the Board.

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19260, FCC 72-207]

FAIRNESS DOCTRINE AND PUBLIC INTEREST STANDARDS

Order Regarding Oral Argument "En Banc" and Handling of Public Issues

In the matter of the handling of public issues under the fairness doctrine and the public interest standards of the Communications Act, Docket No. 19260.

1. On June 11, 1971, the Commission released its Notice of Inquiry in this proceeding instituting a broad-ranging study of the Fairness Doctrine and related public interest policies (36 F.R. 11825). We divided the Inquiry into four parts:

II. The Fairness Doctrine Generally.

III. Access to the Broadcast Media as a Result of Carriage of Product Commercials.

IV. Access Generally to the Broadcast Media for the Discussion of Public Issues.

V. Application of the Fairness Doctrine to Political Broadcasts.

By March 15, 1972, we expect that all comments and reply comments will have been submitted in response both to the June 11, 1971 notice of inquiry (36 F.R. 11325) and our further notice of inquiry, released March 3, 1972, requesting comments on the issue (under Part IV of the June 11 notice of inquiry) of access under the public interest standard of the Communications Act.[1]

2. We indicated in the June 9, 1971, notice of inquiry that, in view of the importance of the subject matter, we intend to employ special procedures to assist us in resolving the difficult issues involved. We have decided to utilize both the customary oral presentations to the Commission "en banc" by interested parties or their representatives and, in addition, a series of panel discussions by knowledgeable persons directed to some of the important questions presented by our two notices and the responses to these notices which we have received. We are following this course because we found it to be of substantial benefit when we utilized it for the first time in connection with the proceedings on cable television. (See orders released February 4, 1971, and March 8, 1971, in "Community Antenna Television Systems," Docket No. 18397-A et al., 27 FCC 2d 303, 27 FCC 2d 932). In that proceeding we embarked upon the novel course of using panel discussions as a mechanism for sharpening the issues in the give and take of a form of discussion which is not available in the normal oral argument form of presentation. Since the panels fulfilled our expectations in the cable television proceeding, they should also be of benefit in the complex fairness area.

3. The issues for panel discussion will be as follows:

PART II

1. Is the Fairness Doctrine serving its basic purpose of promoting robust, wide open, and reasonably balanced debate on important public issues? Does it, in practice, encourage or inhibit the presentation of controversial programming? Does it, in practice, constitute undue Government intrusion in licensee discretion or, on the contrary, inadequate Government assurance that controversial issues are covered and covered fairly? What changes, if any, should be made by the Commission or by way of recommendations to Congress (i.e., what specific statutory amendments are required)?

2. If the Fairness Doctrine is fundamentally sound, what policies and procedures could be instituted to improve its efficacy?

(a) What policy and procedure should be employed by the Commission in determining whether a complaint warrants referral to the licensee? What burden should be placed on the complainant to make a showing of unfairness before the licensee is obligated to demonstrate compliance with the Fairness Doctrine (i.e., "Letter to Mr. Allen Phelps," 21 F.C.C. 2d 12 (19[illegible])?

(b) What policy and procedure should be employed by the Commission in determining whether the licensee has afforded "reasonable opportunity for the discussion of conflicting views on issues of public importance" (Section 315(a))?

Should the licensee be required to furnish recordings or transcripts of all program matter (including all pertinent news items) dealing with the issue in question over a considerable period of time?

Should the Commission establish some minimum ratio of viewpoint to viewpoint which is necessary to achieve fairness (e.g., 2 to 1, 3 to 1, 5 to 1, etc.)? Is any such "stop-watch" technique appropriate?

Can the Commission accurately review a licensee's judgment as to how programing segments should be categorized (e.g., pro, anti, neutral)?

Should factors other than quantity of time be considered (e.g., frequency of presentation, probable audience for the time periods employed, timing of the broadcast in relation to the crucial event involved, i.e., election, decision, vote, etc.)?

Should the Commission instead adopt a test of whether or not the broadcasting audience of a particular station has been afforded the opportunity of being reasonably informed, on an overall basis, on issues of public importance (e.g., "Green v. F.C.C.," 447 F. 2d 323 (D.C. Cir. 1971))? If so, how should such a standard be determined and applied?

(c) What policy and procedure should the Commission employ in ruling on Fairness Doctrine complaints?

How should the Commission determine whether a controversial issue of public importance is involved?

Should there be a time limitation of filing fairness complaints against a licensee and, if so, how long? How would such a procedure work with continuing issues?

Should the Commission defer action on fairness complaints until renewal, at which time the Commission would consider the licensee's overall performance? Can revised renewal policies and procedures (e.g., such as those proposed in Docket No. 19153) contribute in any way to insuring compliance with the Fairness Doctrine?

Would periodic reviews at intervals shorter than 3 years be preferable and, if so, how long?

[1] The further notice of inquiry stated that comments on Part IV should be directed to the statutory public interest aspect of access rather than constitutional arguments.

If any such "deferred ruling" procedure is employed, how would fairness be ensured on individual issues?

Should an exception be made for urgent matters (e.g., elections, referenda, etc.)?

(d) Does the doctrine deal effectively with brief, peripheral, or subsidiary reference to a controversial matter (e.g., "In Re Petition by NBC for Reconsideration of Ruling Regarding Aircraft Owners and Pilots Association," 24 F.C.C. 2d 735 (1970))?

(e) Do the personal attack and editorializing rules serve their intended purpose or do they inhibit free and open discussion?

(f) What changes, if any, should be made with respect to the licensee's affirmative obligation to encourage and implement the presentation of controlling viewpoints?

(g) Should the "Cullman doctrine (Cullman Broadcasting Co., 40 F.C.C. 576 (1963)) be expanded or restricted in any way?

(h) Should the Commission impose forfeitures for Fairness Doctrine violations?

3. Does the Fairness Doctrine serve the public interest in its application to news?

4. Is the Fairness Doctrine necessary for all categories of broadcast licensees?

5. What is the relationship of this part of the inquiry to the other parts? Specifically, what policies, if any, concerning access to the broadcast media might properly and feasibly be evolved under the public interest standard of the Communications Act, and what would be their relationship to, and effect upon, present or proposed Fairness Doctrine policies?

PART III

BASIC QUESTIONS

1. Under the Fairness Doctrine, or alternatively a public interest standard, should time—either on a free or paid basis—be afforded by the broadcaster for the carriage of so-called countercommercials or other countercommercial programing?

2. Would the purposes of the Fairness Doctrine, desirable as it is to illumine significant controversial issues, be served by requiring countercommercials? Is the public interest so served (e.g., do spot announcements add substantially to public knowledge; is repetition a significant factor to be considered)?

SPECIFIC QUESTIONS

3. If the broadcaster sells time for the promotion of products and services, must he also sell time to those who wish to argue against public use of these same products or services (cf., "Retail Store Employees Union, Local 880 v. F.C.C.," 436 F. 2d 248 (D.C. Cir. 1970))? If so, what would be the predictable effect on the continued carriage of product commercials and thus on the continued economic health and growth of the commercial broadcasting system? If not, what would be the predictable effect on the public interest?

4. Should the "Cigarette Advertising" ruling (9 F.C.C. 2d 921 (1967), aff'd, "Banzhaf v. F.C.C.," 405 F. 2d 1082 (D.C. Cir. 1968) cert. den. sub nom. "Tobacco Institute v. F.C.C.," 396 U.S. 842 (1969)), involving free time, be expanded to cover additional product commercials or should it be abandoned? If the former, what would be the predictable effect on the continued broadcast carriage of product commercials and thus on the economic health and growth of the commercial broadcasting system? What would be the effect if commercial time were reduced, for example, by 20 percent to accommodate countercommercials? If the latter, what would be the predictable effect on the public interest? Should "Cigarette Advertising" be replaced by some alternative policy and, if so, specifically what policy?

5. Is there some workable standard for distinguishing various categories of product commercials to which "Cigarette Advertising" would or would not apply?

(a) For example, should it apply only to commercials which explicitly present arguments on controversial issues of public importance?

(b) As to all other commercials, should there be a presumption that product advertisements do not raise controversial issues of public importance, a presumption which would be rebuttable only by compelling evidence to the contrary?

6. Assuming the application of the Fairness Doctrine to product commercials, should it apply only to the text of the advertisement or also to any controversy surrounding the use of the product advertised?

7. Are new or different FCC standards required in connection with false or misleading advertising? What should be the effect of consumer complaints, or the filing of a FTC complaint, that a particular advertisement is in some way false or misleading?

8. Are there any methods of providing "access" for the discussion of countercommercial content other than requiring acceptance by licensees of individual countercommercials (e.g., requiring blocks of time for discussion-format programs on commercials)?

9. Should the "Cullman" doctrine be applicable to countercommercials themselves or other countercommercial programing?

10. What specific Constitutional considerations, if any, are relevant to this part of the inquiry?

PART IV

Our position here has been set forth in an order and further notice, issued March 3, 1972 (FCC 72-194). Consideration of the Constitutional issues arising from the Court's decision in "Business Executives' Move for Vietnam Peace v. F.C.C.," ____ U.S. App. D.C. ____, 450 F. 2d 642 (1971) (see paragraph 4 of the further Notice of February 3, 1972) must await the Supreme Court's decision. Indeed, we have made clear that the entire Part IV access area may be resolved in light of the Supreme Court's action. We have, however, afforded interested parties the opportunity to advance considerations germane to access under the public interest standard and their relation to present or proposed Fairness Doctrine policies. (See order and further notice, paragraph 2, FCC 72-194; paragraph 19, notice of inquiry, FCC 71-823). We believe that the oral proceedings should also afford an opportunity to address this issue. We therefore have included it in the general fairness panels (see Question 5, Part II).

PART V

1. Should the Commission revise or clarify its interpretation of the Fairness Doctrine with respect to Presidential appearances (see "Democratic National Committee, et al.," 31 FCC 2d 708 (1971), aff'd, "Democratic National Committee v. F.C.C.," ____ U.S. App. D.C. ____, ____ F. 2d ____, Case No. 71-1637, decided February 2, 1972)? Should any such revision or clarification be extended to other important public officials (e.g., Governors, mayors, etc.)?

2. Should the quasi-equal opportunities approach (e.g., "Letter to Mr. Nicholas Zapple," 23 F.C.C. 2d 707 (1970)) be restricted or expanded, and what is the feasibility and effect of any proposed revision on the underlying policies of the statute (see section 315(a))?

Should the Commission adopt a position that "Zapple" applies only to political campaigns and not to other times?

Should "Zapple" be dissociated from the Fairness Doctrine and incorporated into section 315?

Should "Zapple" be limited by applying a 7-day deadline for requesting "quasi-equal opportunities"?

Should "Zapple" continue to apply only to major parties (see "Letter to Lawrence M. C. Smith," 25 F.C. 291 (1958)), or should it be extended to all parties or to some mathematically defined category of "parties with substantial public support" (e.g., percentage of popular vote)? How should it apply to "new" parties?

Should "Zapple" be extended to include spokesmen for ballot issues such as bond issues, amendments of state constitutions, etc.?

3. What is the effect of the new Federal Campaign Spending Act (Public Law 92-225) on political broadcasts (and particularly section 103(a)(2)(A) of the Act which requires broadcast licensees to allow reasonable access to their facilities by candidates for federal elective office)?

4. What should the Commission do to encourage the widest possible coverage of political campaigns?

a. What should the Commission do to foster free time for political broadcasts? What Commission rule revisions, if any, would be helpful? What statutory amendments, if any, would be necessary?

b. Are there constructions of the news exemptions in section 315(a) that are available to the Commission and would further the goal of enhancing appearances by political candidates?

4. In order to avail ourselves of a wide range of views by knowledgeable persons, from both within and without the industry, we will select panelists by invitation. To a considerable extent, we shall take into account the filings of interested persons or groups in making our selection.

5. As stated above, we also expect to hold an "en banc" oral argument in which all interested persons who have filed comments or reply comments may participate. Persons wishing to be heard should submit notices of appearance within 5 days of the release of this order, stating whether they wish to address all of the four main subjects referred to in paragraph 1 above or, if not, which of the four areas they intend to address. Parties with a common viewpoint are urged to select a single spokesman in order to avoid unnecessary duplication of arguments. The Commission, by further order, will specify the order of appearance of the participating parties with appropriate grouping by subject matter; it will also announce the amount of time allocated to each participant.

6. *Accordingly, it is ordered*, That panel discussions will be held at Washington, D.C., during a 3-day period commencing March 27, 1972, at a location and times to be announced by subsequent order, and that oral argument will be held before the Commission "en banc" at its offices in Washington, D.C., beginning on March 30 at 9:30 a.m. and continuing on the following day. Persons desiring to participate in the oral argument shall file a notice of appearance in accordance with the terms of this order within 5 days of the date of release of this order.

Adopted: March 2, 1972.

Released: March 3, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[2]

[SEAL] BEN F. WAPLE, *Secretary.*

[FR Doc.72-3190 Filed 3-7-72;8:51 am]

[2] Commissioners Bartley and H. Rex Lee absent.