

**Appendix I**

**Form 1-a**

**Order Scheduling Prehearing Conference, With Instructions**

UNITED STATES OF AMERICA  
Agency  
Washington, D.C.

[Name of Case] Docket No. \_\_\_\_\_

ORDER PRIOR TO PREHEARING CONFERENCE

The prehearing conference in this preceding is scheduled for \_\_\_\_\_ [date] \_\_\_\_\_, commencing at 9:00 A.M.

IT IS ORDERED, that prior to the conference

(1) The parties shall attempt to achieve a settlement and shall report on their efforts at the conference, and

(2) Counsel are directed to explore the possibility of stipulating to facts and procedural matters.

IT IS FURTHER ORDERED, that at the conference counsel shall be prepared to discuss any relevant questions including:

**Pending Motions or Pleadings**

All questions relating to procedures governing the course of this hearing. Counsel will disclose any plans to file additional motions or pleadings and the relief to be sought.

**Discovery**

Discovery plans, procedures already started, current status, probable completion date, and deadlines, subject to the following guidelines:

(1) Discovery must be initiated no later than \_\_\_\_\_ date \_\_\_\_\_ and

(2) Written interrogatories or depositions upon oral examination may be used, but no both in the absence of unusual circumstances.

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**Exhibits**

(1) The extent to which direct and rebuttal cases will be submitted in writing.

(2) Dates for exchange of exhibits.

(3) Preparation and organization of exhibits, including identification and numbering.

(4) The need for copies and the numbering of documents of which official notice is requested.

**Witness Notification**

The date or dates on which each party will notify every other party of those witnesses it desires to cross-examine and the areas to be covered by such cross-examination.

**Hearing Date and Place**

The date and place of the hearing most convenient to the parties.

[Date]

\_\_\_\_\_  
Administrative Law Judge

NOTE: This order is adapted from a Federal Communications Commission order.

**Order Scheduling Prehearing Conference**

**Form 1-b**

UNITED STATES OF AMERICA  
AGENCY  
Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

PRESIDING ADMINISTRATIVE LAW JUDGE'S ORDER  
CONVENING PREHEARING CONFERENCE

In accordance with the agency's order of \_\_\_\_\_ [date]\_\_\_\_\_, a prehearing conference will be held at 10:00 A.M., \_\_\_\_\_ [date]\_\_\_\_\_, in a hearing room at \_\_\_\_\_ [place]\_\_\_\_\_, Washington, D.C. The parties are to be prepared to present discovery requests, to identify all outstanding issues, to stipulate to all factual matters not in dispute, and to propose a procedural schedule.

[Date]

\_\_\_\_\_  
Administrative Law Judge

NOTE: This order is adapted from a Federal Energy Regulatory Commission order.

**Letter to Unrepresented Party Confirming Prehearing Conference**

Agency/ALJ Address

Addressee Address

Dear \_\_\_\_\_ :

This is to confirm my telephone call setting up a prehearing conference. As was indicated in our conversation, [I/the Administrative Judge] believe[s] such a conference will help expedite your case. He/She has asked me to conduct the conference with you.

The prehearing conference will be held on (Day of Week), (Full Date), at (Time) o'clock in Room \_\_\_\_\_ of \_\_\_\_\_ Building, (Number and Street, City, State) .

You should bring to the conference \_\_\_\_\_ (and) any additional evidence you wish to submit.

The time of this Conference has been set aside especially for you. If you are not able to attend at the scheduled time or if you decide that you do not wish to attend the conference, please call me at once at (telephone number).

The purpose of this conference is (1) to clarify the factual data and issues in your case (and)/, (2) to determine if additional evidence is needed (./and \_\_\_\_\_) . The conference will be informal and no testimony will be taken. Therefore you do not need to bring any witnesses with you.

If you have obtained, or are planning to obtain, an attorney or other individual to represent you in your (claim)/case please advise me at once.

Sincerely yours,

NOTE: Adapted from Social Security Administration letter.

**Letter to Representative Confirming Prehearing Conference**

Agency/ALJ Address

Addressee Address

Dear \_\_\_\_\_ :

This is to confirm my telephone call setting up a prehearing conference in the case of \_\_\_\_\_. As was indicated in our conversation, [I/the Administrative Judge] believe[s] such a conference will help expedite your client's case. [The Administrative Law Judge has asked me to conduct the conference with you.]

The prehearing conference will be held on (Day of Week), (Full Date), at (Time) o'clock in Room \_\_\_\_\_ of \_\_\_\_\_ Building, (Number and Street, City. State) .

You should bring to the conference \_\_\_\_\_ (and) any additional evidence you wish to submit.

The time of this Conference has been set aside especially for you. If you are not able to attend at the scheduled time or if you decide that you do not wish to attend the conference, please call me at once at (telephone number) .

The purpose of this conference is (1) to clarify the factual data and issues in your case (and)/, (2) to determine if additional evidence is needed (./and) . The conference will be informal and no testimony will be taken. Therefore you do not need to bring any witnesses with you.

You may wish to have your client accompany you to the conference.

Sincerely yours,

cc. claimant or others

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NOTE: Adapted from Social Security Administration letter.

Appearance Sheet

Form 2

UNITED STATES OF AMERICA
AGENCY
Washington, D.C.

[Name of Case]
PLEASE PRINT OR
WRITE CLEARLY

Docket No. \_\_\_\_\_

Date \_\_\_\_\_

APPEARANCE SHEET

1. Applicant \_\_\_\_\_ Prospective Applicant \_\_\_\_\_
Intervenor \_\_\_\_\_ Prospective Intervenor \_\_\_\_\_

2. Person upon whom service is to be made (one person):
Full Name \_\_\_\_\_
Firm Name \_\_\_\_\_ Telephone: \_\_\_\_\_
Address \_\_\_\_\_ ZIP \_\_\_\_\_
Representing \_\_\_\_\_

3. Persons in addition to (2) above whose appearances are to be
noted:
Full Name \_\_\_\_\_ Telephone: \_\_\_\_\_
Address \_\_\_\_\_ ZIP \_\_\_\_\_
Full Name \_\_\_\_\_ Telephone: \_\_\_\_\_
Address \_\_\_\_\_ ZIP \_\_\_\_\_

4. Number of copies of exhibits, pleadings, and other communi-
cations to be sent to the person in (2) above: \_\_\_\_\_ copies

5. Persons, in addition to (2) above, to whom exhibits,
pleadings, and other communications are to be sent. In
deference to each other and to minimize expenses, please
limit requests to copies actually needed. A mailing list
will be attached to the prehearing conference report.

Full Name \_\_\_\_\_ Copies \_\_\_\_\_
Address \_\_\_\_\_ ZIP \_\_\_\_\_
Full Name \_\_\_\_\_ Copies \_\_\_\_\_
Address \_\_\_\_\_ ZIP \_\_\_\_\_
Full Name \_\_\_\_\_ Copies \_\_\_\_\_
Address \_\_\_\_\_ ZIP \_\_\_\_\_

NOTE: This appearance sheet is adapted from standard forms
used at the former Civil Aeronautics Board and at the
Federal Communications Commission.

UNITED STATES OF AMERICA  
 Agency  
 Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

## GROUND RULES

1. **Evidence.** All evidence, including the testimony of witnesses, shall be prepared in written exhibit form and shall be served at dates designated by the Administrative Law Judge in advance of the hearing. Evidence as to events occurring after the exhibit exchange dates shall be presented by revision of exhibits.

Unless sponsorship is waived, witnesses cognizant of the exhibits shall be made available for cross-examination. Such witnesses shall have available at the hearing the work papers used in preparing their exhibits. Witnesses will not be permitted to read prepared testimony into the record.

The evidentiary record shall be limited to factual material. Argument will not be received in evidence but rather should be presented in the briefs.

2. **Exhibits Generally.** Information responses, exhibits, and written testimony shall be exchanged on prescribed dates prior to the hearing. Two copies shall be served upon the Administrative Law Judge and copies shall be sent to the parties in accordance with the attached mailing list. One of the Administrative Law Judge's copies is to be tabbed.

The exhibits shall include appropriate footnotes or narrative explaining the source of the information used and the methods employed in statistical compilations and estimates. Rebuttal exhibits shall refer specifically to the exhibits being rebutted.

Each party shall submit, prior to the hearing, lists of (a) its exhibits, appropriately indexed as to number and title, and (b) the witnesses sponsoring particular exhibits.

Where one part of a multi-page exhibit is based upon another part, appropriate cross-reference shall be made. For example, a profit-and-loss forecast based on detailed estimates appearing on

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other pages should contain specific references showing which pages support the different individual items of the forecast. Such exhibits shall be arranged in an organized manner in accordance with the party's theory of the case.

3. **Title of Exhibits.** The principal title of each exhibit should state precisely what it contains and may also contain a statement of the purpose for which the exhibit is offered. However, such statements will not be considered as part of the evidentiary record.

4. **Authenticity of Documents.** The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection. For example, absent objection, if an exhibit purporting to be a copy of a letter mailed on a certain date were submitted, it would not be necessary to prove such mailing or the accuracy of the copy.

#### HEARING

5. **Statement of Position.** Counsel for each party shall submit a statement of position before he presents his direct case. It shall include his theory of the case and such other material as directed by the Judge. This statement shall not be subject to cross-examination and shall not be received in evidence.

6. **Order of Presentation and Cross-Examination.** The order of presentation will be as follows, alphabetically within each category:

- (1) Civic Parties
- (2) Applicants
- (3) Industry Intervenors
- (4) Labor Parties
- (5) Governmental Agencies
- (6) Other Parties and Other Interested Persons
- (7) Agency Staff

Each party shall develop the hearing record on direct examination in logical order, and rebuttal shall be presented at the same time as the direct case. The order of cross-examination

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will be the same as for presenting direct cases unless the Judge deems some other order more appropriate.

**7. Requirement for Submission of Corrected Copies of Exhibits.** Each party shall present at the hearing three fully corrected sets of its exhibits received in evidence. The original is to be presented to the reporter, and ultimately will be transmitted to the agency for inclusion in the original docket. The other two copies are to be presented to the Administrative Law Judge, one for his use and the other for inclusion in the duplicate docket maintained by the agency.

**8. Cross-Examination.** Cross-examination, except by agency staff, shall be limited to the scope of the direct examination and to witnesses whose testimony is adverse to the party desiring to cross-examine. This is intended specifically to prohibit so-called "friendly cross-examination."

Second rounds of cross-examination normally will not be permitted. Cross-examination of any particular witness shall be limited to one attorney for each party.

**9. Motions.** Oral presentation on any motion or objection shall be limited to the party or parties making the motion or objection and the party or parties against whom the motion or objection is directed. Such presentations shall also be limited to one attorney for each party.

**10. Official Notice and Stipulation.** Parties using stipulated or officially noticed material shall refer to it by specific pages.

**11. Receipt of Evidence Without Sponsoring Witnesses.** Any party who believes he has evidence of a non-controversial nature that is appropriate for receipt in evidence without the necessity of a sponsoring witness may present with his exhibit exchange time (1) an affidavit, by the persons who prepared the exhibits, to the effect that they were prepared by the witness or under his direction and are true and correct, and (2) a request that the exhibits be received in evidence without a witness at the hearing.

Any party who desires to cross-examine and therefore objects to such a request shall advise the requesting party in writing, with copy to the Administrative Law Judge, at least ten calendar days prior to the hearing (five calendar days in the case of rebuttal exhibits), specifying the witness or witnesses he

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intends to cross-examine. If no objections are received, the exhibit will be received without a witness at the hearing, subject, of course, to the right of objection on other grounds.

12. These rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any rule may be made by the Administrative Law Judge for good cause shown.

[Date}

\_\_\_\_\_  
Administrative Law Judge

NOTE: These rules are adapted from the standard rules used at the former Civil Aeronautics Board.

**Prehearing Conference Report****Form 4-a**

UNITED STATES OF AMERICA  
 Agency  
 Washington, D.C.

[Name of Case]

Docket No. 101

## PREHEARING CONFERENCE REPORT

Pursuant to notice a prehearing conference was held on  
 \_\_\_\_\_ [date] \_\_\_\_\_ and the following appearances were entered:

[Names of counsel and parties represented]

**Issues.** The agency on \_\_\_\_\_ [date] \_\_\_\_\_ directed that this proceeding, which involves the question of whether A company or John Smith has acquired control of B Company and whether such control should be approved, be set for hearing on an expedited basis.

On \_\_\_\_\_ [date] \_\_\_\_\_, A Company, B Company, and C Company filed an application requesting approval of the acquisition of control of B Company by A Company from C Company. This application was assigned Docket No. 102.

At the prehearing conference the Administrative Law Judge ruled that he would recommend that docket Nos. 101 and 102 be consolidated, and the conference was held on that basis.

**Requests for Information.** Several parties requested that specified information be submitted by one or more of the other parties. The parties agreed to circulate the material described in Appendix I.

**Material to be Stipulated.** A proposed stipulation listing material of general availability was circulated. A copy of that document will be attached only to the docket copy of this report, but not to any other copies since the proposed stipulation was distributed to counsel at the conference. Additional copies of the stipulation, if needed, may be obtained from agency staff.

It was agreed that the parties will be allowed until the date fixed for the submission of exhibits-in-chief to object to any item on the list or to suggest additional items. Otherwise the material will be considered to have been admitted by stipulation.

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**Written Testimony.** Each party shall submit written or explanatory testimony with reference to its own exhibits at the time these exhibits are submitted. Rebuttal or surrebuttal testimony shall be submitted at the time fixed for submitting that type of exhibit.

**Ground Rules.** A proposed set of "ground rules" to be followed during subsequent stages of the proceeding was circulated. After some minor adjustments the Administrative Law Judge adopted the ground rules attached as Appendix 2.

**Dates for Subsequent Procedural Steps:**

Exhibits in Chief \_\_\_\_\_

Rebuttal Exhibits \_\_\_\_\_

Tentative Hearing Date \_\_\_\_\_

[Date] \_\_\_\_\_  
Administrative Law Judge

NOTE: This report is adapted from a former Civil Aeronautics Board report. The attachments are omitted.

**Prehearing Conference Report**

**Form 4-b**

UNITED STATES OF AMERICA  
Agency  
Washington, D.C.

[Name of Case] Docket No. \_\_\_\_\_

Issued: \_\_\_\_\_ [date] Released: \_\_\_\_\_ [date]

Pursuant to agreement reached at a prehearing conference held this date, IT IS ORDERED that the following schedule shall govern the initial course of this proceeding:

\_\_\_\_\_ [date] -Exchange of exhibits in regard to Issue 1 plus a list of any witnesses who will testify orally, including an indication of the nature of their proposed testimony.

\_\_\_\_\_ [date] -Notification of witnesses desired for cross-examination.

\_\_\_\_\_ [date] -Commencement of hearing re Issue 1.

At the conclusion of this phase of the proceeding, dates will be set for the hearing in regard to the comparative issue and whatever additional issues might by then have been added as a result of the pending petitions to enlarge issues.

\_\_\_\_\_  
Administrative Law Judge

NOTE: This report is adapted from an order of the Federal Communications Commission.

FINAL PREHEARING ORDER

Case Caption

A final prehearing conference was held in this matter, pursuant to Rule \_\_\_ of the Commission's Rules of Practice for Adjudicative Proceedings ( \_\_\_ CFR \_\_\_\_\_), on the -- -- -- day of -- -- -- -- -- -- -- , 19 -- , at -- -- o'clock, -- m.

Counsel appeared as follows:

For the Complainant:

For the Respondent(s):

Others:

1. Nature of Action and Jurisdiction. This is an action for -- -- -- -- -- -- -- -- -- -- -- and the jurisdiction of the Commission is invoked under United States Code, Title -- -- -- -- -- -- -- , Section -- -- -- -- -- -- -- and under the Code of Federal Regulations, Title -- -- -- -- -- -- -- , Section -- -- -- -- -- -- -- . The jurisdiction of the Commission is (not) disputed. The question of jurisdiction was decided as follows:

2. Stipulations and Statements. The following stipulation(s) and statement(s) were submitted, attached to, and made a part of this order:

(a) A comprehensive written stipulation or statement of all uncontested facts;

(b) A concise summary of the ultimate facts as claimed by each party. (Set forth the claimed facts, specifically; for example, if a violation is claimed, Counsel must assert specifically the acts of violation complained of; Counsel for each respondent must reply with equal clarity and detail.)

(c) Written stipulation(s) or statement(s) setting forth the qualifications of the expert witnesses to be called by each party;

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(d) Written list(s) of the witnesses whom each party will call, written list(s) of the additional witnesses whom each party may call, and a statement of the subject matter on which each witness will testify;

(e) An agreed statement of the contested issues of fact and of law, or separate statements by each party of any contested issues of fact and law not agreed to.

(f) A list of all depositions to be read into evidence and statements of any objections thereto;

(g) A list and brief description of any charts, graphs, models, schematic diagrams, and similar objects that will be used in opening statements or closing arguments but will not be offered in evidence. If any other such objects are to be used by any party, those objects will be submitted to opposing counsel at least three days prior to the hearing. If there is then any objection to their use, the dispute will be submitted to the Presiding Officer at least one day prior to the hearing;

(h) Written waivers of claims or defenses which have been abandoned by the parties.

The foregoing were modified at the pretrial conference as follows:

(To be completed at the conference itself. If none, recite "none".)

3. Complainant's Evidence.

3.1 The following exhibits were offered by Complainant, received in evidence, and marked as follows:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

3.2 The following exhibits were offered by complainant, and respondent(s) (and party intervenors) the right to object to their receipt in evidence on the grounds stated:

APPENDIX I - FORMS

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality) brochure

4. Respondent's Evidence.

4.1 The following exhibits were offered by the respondent(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

4.2 The following exhibits were offered by the respondent(s) and marked for identification. There was reserved to complainant (and party intervenors) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

5. Party Intervenor's Evidence.

5.1 The following exhibits were offered by the party intervenor(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

5.2 The following exhibits were offered by the party intervenor(s) and marked for identification. There was reserved to complainant and respondent(s) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

APPENDIX I - FORMS

Note -- If any other exhibits are to be offered by any party, such exhibits will be submitted to opposing counsel at least ten (10) days prior to hearing, and a supplemental note of evidence filed into this record.

6. Additional Actions. The following additional action(s) were taken:

(Amendments to pleadings, agreements of the parties, disposition of motions, separation of issues of liability and remedy, etc., if necessary)

7. Limitations and Reservations.

7.1 Each of the parties has the right to further supplement the list of witnesses not later than ten (10) days prior to commencement of the hearing by furnishing opposing counsel with the name and address of the witness and general subject matter of his/her testimony and by filing a supplement to this pretrial order. Thereafter, additional witnesses may be added only after application to the Presiding Officer, for good cause shown.

7.2 Rebuttal witnesses not listed in the exhibits to this order may be called only if the necessity of their testimony could not reasonably be foreseen ten (10) days prior to trial. If it appears to counsel at any time before trial that such rebuttal witnesses will be called, notice will immediately be given to opposing counsel and the Presiding Officer.

7.3 The probable length of hearing is -- -- days. The hearing will commence on the -- -- day of -- -- -- -- , 19 -- , at -- o'clock -- m. at -- -- -- -- .

7.4 Prehearing briefs will be filed not later than 5:00 p.m. on -- -- -- -- .  
(Insert date not later than ten (10) days prior to the hearing.)  
All anticipated legal questions, including those relating to the admissibility of evidence, must be covered by prehearing briefs.

This prehearing order has been formulated after a conference at which counsel for the respective parties appeared. Reasonable opportunity has been afforded counsel for corrections or

APPENDIX I - FORMS

additions prior to signing. It will control the course of the hearing, and it may not be amended except by consent of the parties and the Presiding Officer, or by order of the Presiding Officer to prevent manifest injustice.

\_\_\_\_\_  
Presiding Officer.

Dated:

Approved as to Form and Substance Date: --

Attorney for Complainant. --

Attorney for Respondent(s) --

Attorney for Intervenors

(Adapted from Consumer Produce Safety Commission, suggested form at 16 CFR § 1025. Appendix I)

**Interlocutory Order**

**Form 5**

UNITED STATES OF AMERICA  
Agency  
Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

ORDER

Issued: \_\_\_\_\_

Released: \_\_\_\_\_ [date]

Under consideration is a letter dated \_\_\_\_\_ from counsel for the Respondent, requesting that the hearing in this case be postponed to a date more convenient for counsel. The letter does not comply with agency rules and, apparently, the required filing with the agency's secretary was not made. Nevertheless, consideration will be given to the merits of the request.

The letter arrived in this office on \_\_\_\_\_ [date], the day after exhibits and witness lists were due and nearly a month after the order scheduling this case for hearing. Moreover, the Agency Bureau has now filed and served the Respondent with the exhibits for the proceeding. (The Respondent has not indicated whether he will present witnesses or exhibits.) To delay further a hearing would be a disservice to all parties, and inefficient use of the agency's resources, and would not serve the public interest.

IT IS ORDERED that the request to postpone the hearing BE DENIED.

\_\_\_\_\_  
Administrative Law Judge

NOTE: This order is adapted from a Federal Communications Commission order.

**Prehearing conference Instructions**

**Form 6-a**

UNITED STATES OF AMERICA  
Agency  
Washington, D.C.

[Name of Case] \_\_\_\_\_ Docket No. \_\_\_\_\_

ORDER PRIOR TO PREHEARING CONFERENCE

Issued: \_\_\_\_\_ [date] \_\_\_\_\_ Released: \_\_\_\_\_ [date] \_\_\_\_\_

A prehearing conference and a hearing are scheduled to begin at \_\_\_\_\_ [place] \_\_\_\_\_, on October 12, 1982, at 10:00 A.M.

To prepare for the hearing IT IS ORDERED that the parties comply with the five following subparagraphs:

(1) On designated issues (b) and (c), Bureau counsel will prepare and serve on the other parties and the Presiding Officer a document that specifies the reasons those issues were included in the designation order. See \_\_\_CFR \_\_\_\_\_. This document will be served on or before August 24, 1982.

(2) On designated issues (b) and (c), both the burden of proceeding and the burden of proof have been placed on A Company. On or before September 7, 1982, A Company will serve on all other parties and the Presiding Officer any written documents it intends to rely on in support of its direct case, and a list of the witnesses (names and addresses) who will testify regarding those two issues.

(3) On issues (a)(1) through (7), each applicant is responsible for presenting the required information about its own proposal.

(4) On issues (a)(2) through (7), each applicant will reduce the essential facts to writing and present that material as an exhibit at the hearing. That exhibit will be accompanied by the affidavit of the witness or witnesses who prepared the material and who may be cross-examined on it.

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(5) All written materials referred to in paragraphs (3) and (4) supra will be exchanged with all the other parties and the Presiding Officer on or before September 7, 1982.

---

Administrative Law Judge

NOTE: This order is adapted from an FCC order.

APPENDIX I - FORMS

**Prehearing Conference Order/Instructions ("Simple" case) Form 6-b**

UNITED STATES OF AMERICA  
Agency  
[ADDRESS]

[Name of Case]

Docket No. \_\_\_\_\_

NOTICE OF CONFERENCE AND HEARING

This case is noticed for conference to be immediately followed by hearing. Said conference/hearing to be held on \_\_\_\_\_, at \_\_\_\_\_. [The parties will be notified later as to the exact location of the hearing.]

Parties or their representatives are required to be present unless previously excused by the undersigned Judge. Failure to appear will be considered a cause for dismissal and entry of judgment.

Prior to the date of the conference, the parties shall confer regarding: (1) possible settlement; (2) possible stipulations or admissions; (3) the narrowing of issues; (4) defenses; (5) witnesses and exhibits; (6) motions; (7) an agreed statement of issues and facts; and (8) any other pertinent matters.

At the conference, the parties shall be prepared to report on settlement efforts and all other matters which will tend to simplify the issues and expedite the proceedings. Hearing will proceed immediately upon the conclusion of the conference.

If a settlement has been agreed to, even though not yet executed, and the undersigned Judge has been timely advised, it may be unnecessary for the parties to attend this conference/hearing.

[The respondent shall post and/or serve a copy of this notice in accordance with Rule \_\_\_\_ of the [Commission's] Rules of Procedure. Failure of the respondent to do so may be considered as grounds for dismissal of respondent's notice of contest.]

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[Employees or their representatives wishing to take part in these proceedings as a party may do so by filing notice of their determination to do so at least ten (10) days before the date set for hearing. See [§ 29 C.F.R. \_\_\_\_]

---

Administrative Law Judge

Date: \_\_\_\_\_

NOTE: This notice is adapted from an Occupational Safety and Health Review Commission ALJ's notice.

APPENDIX I - FORMS

**Prehearing Conference Order/Instructions ("Simple" case) Form 6-c**

UNITED STATES OF AMERICA  
Agency  
[ADDRESS]

[Name of Case]

Docket No. \_\_\_\_\_

ORDER REQUIRING PARTIES TO MEET  
PURSUANT TO [SIMPLIFIED PROCEEDINGS]

This matter is before the undersigned for simplified proceedings pursuant to \_\_\_\_\_ C.F.R. § \_\_\_\_\_.

It is hereby ORDERED:

That the parties meet and confer within twenty (20) days after receipt of this Order.

The following matters shall be discussed:

1. Settlement of the case.
2. Narrowing the issues.
3. Agreed statement of the issues and facts.
4. Defenses.
5. Witnesses and exhibits.
6. Motions.
7. Any other pertinent matter(s).

It is further ORDERED that within twenty-five (25) days of receipt of this order, the parties shall report the results of their discussions to the undersigned Judge. Upon receipt of this report, unless the case is settled, the undersigned shall

APPENDIX I - FORMS

schedule and preside over a conference/hearing at an early date.

\_\_\_\_\_  
Administrative Law Judge

Date: \_\_\_\_\_.

Copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: This order is adapted from an Occupational Safety and Health Review Commission ALJ's order.

APPENDIX I - FORMS

**Order Granting Permission to Appeal Interlocutory Ruling Form 7**

UNITED STATES OF AMERICA  
Agency  
Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

ORDER GRANTING PERMISSION TO FILE APPEAL FROM INTERLOCUTORY  
RULING

SERVICE: [List of names and addresses of all parties and  
counsel]

On \_\_\_\_\_ [date] \_\_\_\_\_ agency staff submitted a request for (1)  
reconsideration or, in the alternative, (2) permission to file an  
appeal from an interlocutory ruling, dated \_\_\_\_\_.

In view of the extraordinary circumstances involved, I consent  
to the appeal of my ruling on agency staff's motion to dismiss,  
in accordance with Section \_\_\_\_\_ of the agency's Rules of  
Practice, \_\_\_\_\_ CFR \_\_\_\_\_. An agency ruling at this point on the  
question of the application of res judicata in cases where the  
passage of time is a factor, as contrasted with a ruling after a  
full hearing in the matter is completed, is in the public  
interest and is necessary to prevent substantial detriment to the  
public interest and the parties.

The parties shall have thirty (30) days in which to brief the  
question presented in the appeal to the agency.

[Date]

\_\_\_\_\_  
Administrative Law Judge

NOTE: This form is adapted from a National Transportation  
Safety Board order.

**Administrative Law Judge's Questions**

**Form 8-a**

UNITED STATE OF AMERICA  
Agency  
Washington, D.C.

[Name of case]

Docket No. \_\_\_\_\_

ADMINISTRATIVE LAW JUDGES'S QUESTIONS

Counsel for the agency and for the respondents are directed to answer and present argument on the following questions. Responses shall be in writing and served by \_\_\_\_\_ [date]\_\_\_\_\_.

1. What does the legislative history indicate were all the reasons for adopting the requirement of Presidential approval of the regulations? Give all specific references. Was there discussion of a need for uniformity prior to \_\_\_\_\_ [date]\_\_\_\_\_ when Congressman \_\_\_\_\_ introduced this proposal?

2. Section \_\_\_\_\_ of the Act originally provided that each agency should take action to effectuate the provisions of section \_\_\_\_\_ and that such action may be taken by rule or regulation or order of general applicability. This was later amended to a direction to effectuate section \_\_\_\_\_ by issuing rules, regulations, or orders of general applicability. Why was this change made? Give all specific references. Was this change made after \_\_\_\_\_ [date]\_\_\_\_\_? If so, does it affect the argument on page 17 of the brief of the agency that there was no suggestion that all major issues must be resolved by regulation, and that the agencies (not the President) would have a good deal of discretion?

Counsel for respondents are invited to answer the questions previously addressed to the agency by the notice of \_\_\_\_\_ [date]\_\_\_\_\_.

[Date]

\_\_\_\_\_  
Administrative Law Judge

Copies to all parties

NOTE: These questions are adapted from questions used in a Department of Health and Human Services proceeding.

**Administrative Law Judge's Letter to Expert Witness****Form 8-b**

Dear [Dr.] \_\_\_\_\_:

This letter is a request for your professional opinion in connection with \_\_\_\_\_'s disability claim, which is now before me for a hearing and decision.

Enclosed is a proposed exhibit, \_\_\_\_\_, which summarizes your professional qualifications. If necessary, please correct or complete the form to accurately reflect your professional qualifications, and return the original to me. The copy is for your files.

Also enclosed are copies of pertinent evidence for your consideration. Based on your professional knowledge and the information provided, please furnish written answers to the enclosed interrogatories. If additional space is needed, you may use the reverse side of the interrogatories or attach additional pages. A copy of this letter and the completed interrogatories will be made a part of the record of the proceedings in this case.

Submit your charges for this service in accordance with your Blanket Purchase Arrangement with the Department of \_\_\_\_\_. Sign the enclosed Contractor's Invoice and return it to me, along with the completed interrogatories, the evidence, and the other documents, as soon as possible, but no later than \_\_\_\_ (date)\_\_. For your convenience, I am enclosing a postage-paid, self-addressed envelope.

Sincerely yours,

Administrative Law Judge

NOTE: This form is adapted from a letter used by the Social Security Administration.

**Administrative Law Judge's Interrogatories to Expert****Form 8-c**

Individual:

SSN:

Claim for:

1. Please state your full name and address.
2. Is the attached curriculum vitae a correct summary of your professional qualifications?
3. Are you board-certified in any medical field and, if so, which field?
4. Are you aware that your responses to these interrogatories are sought from you in the role of an impartial (medical) (vocational) (other) \_\_\_\_\_ expert?
5. Has there been any prior communication between the Administrative law Judge and yourself regarding the merits of this case?
6. Have you ever personally examined the claimant?
7. Have you read the medical data pertaining to the claimant which we furnished you?
8. Is there sufficient medical evidence of record to allow you to form an opinion of (the claimant's medical status) (other) ?  
If not, what other evidence is required?
9. Please list the claimant's physical and/or mental impairments resulting from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. In addition, please state your opinion as to the severity of each impairment, and the exhibits and objective findings which support your opinion.

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10. Are there any conflicts in the medical evidence of record which affected your opinion and, if so, please state how you resolved them?

11. Have we furnished you with copies of the pertinent section of the Listing of Impairments, Appendix I, Subpart P, Social Security Regulations, No. \_\_\_\_?

12. In your opinion, do any of the claimant's impairments, when taken individually, meet the requirements of any of the listed impairments? Please fully explain this answer . . . .

13. . . .

. . . .

20. Do you have any additional comments or information which may assist us in reaching a decision? If so, please state.

NOTE: This form is adapted from a form used by the Social Security Administration.

**Letter Sending Interrogatories to Claimant or Representative**

Dear \_\_\_\_\_:

This refers to Mr./Mrs./Ms./your claim for disability benefits. I have determined that it is necessary to obtain further evidence from a/an medical/other expert. I proposed to do this by requesting a/an medical/other expert to review the file and to answer written interrogatories/questions about your claim.

I am enclosing the interrogatories/questions that I propose to submit to the expert. You may:

object to any of the questions;  
propose other questions; or  
object to my obtaining this information by means of interrogatories/questions.

If I revise the interrogatories/questions based on your comments, I will give you another opportunity to comment on the revised interrogatories/questions. I will also send you a copy of the expert's responses. You may then:

comment on the responses to the interrogatories/questions;  
submit more evidence; or  
ask me to submit additional interrogatories/questions to the expert.

If you object to my sending interrogatories/questions to an expert, you may request that I obtain the evidence at a supplemental hearing.

If I do not receive a response from you within 20 days from the date of this letter, I will assume you have no objections and no additional interrogatories/questions. I will then send the enclosed interrogatories/questions to the expert.

Please contact me if you have any questions on this procedure.

Sincerely yours,

Administrative Law Judge

NOTE: This form is adapted from a letter used by the Social

APPENDIX I - FORMS  
Security Administration.

**Letter Sending Revised Interrogatories  
to Claimant or Representative**

**Form 8-e**

Dear \_\_\_\_\_:

In response to your comments of date, I have revised the interrogatories/questions that I originally proposed to submit to a/an medical/other expert. I am enclosing the revised interrogatories/questions.

If you have any further comments, please send them to me within 10 days from the date of this letter. After that time, I will request an expert to respond to the interrogatories/questions.

Sincerely yours,

Administrative Law Judge

NOTE: This form is adapted from a letter used by the Social Security Administration.

**Letter Proffering the Responses to the Interrogatories Form 8-f  
to the Claimant or Representative**

Dear \_\_\_\_\_:

This refers to [Mr./Mrs./Ms. \_\_\_\_\_'s] [your] claim for disability benefits. I have received responses to the [interrogatories/questions] I submitted to \_\_\_\_\_, a \_\_\_\_\_ expert. I have enclosed a copy of those responses and a statement of \_\_\_\_\_'s professional qualifications.

Please review this material carefully. You may:

o submit a written statement of the facts and law in this case, including any comments you wish to make on the expert witness' responses; or

o request that the expert witness answer further [interrogatories/questions]; or

o \_\_\_\_\_..

If you wish to question the expert witness at a [supplemental] hearing, you may so request. If you so request, I will schedule a [supplemental] hearing and will notify you of the time and location of the hearing.

If I do not receive a response from you within 20 days from the date of this letter, I will conclude that you have no additional [interrogatories/questions] and that you do not wish to submit anything further. Also, I will accept into the record as additional evidence the questions to the expert, the expert's responses, and the statement of the expert's professional qualifications, and issue a decision.

Sincerely yours,

Administrative Law Judge

Enclosures  
[cc: claimant/others]

NOTE: This form is adapted from a letter used by the Social Security Administration.

**Intervention Order****Form 9**

UNITED STATES OF AMERICA

Agency

Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

ORDER GRANTING, DENYING, AND DISMISSING PETITIONS  
TO INTERVENE

Petitions to intervene were filed before May 10, 1982, by a Company, B city, C City, D City Airport commission, and E Association International. The hearing commenced May 10, 1982.

A Company provides service to points at issue herein. As such, therefore, it may be affected by any order that may be entered, and its interest may not be adequately represented by existing parties.

Cities B and D now receive service pursuant to route authorizations that are at issue herein. Each, therefore, may be affected by any order that may be entered and its interest may not be adequately represented by existing parties.

The petitioning labor organization E represents employees of carriers whose route authorizations are proposed for modification and/or change herein. It, therefore, may be affected by any order that may be entered and its interest may not be adequately represented by existing parties.

No proposal for modifying the air service authorized to C City is included among the issues in this proceeding and, consequently, any interest C City may have it too remote to justify intervention.

Pursuant to authority delegated by the agency in its regulations, it is found that each petitioner, except C City, has a sufficient economic interest in this proceeding to justify its participation as a party.

By petition filed August 2, 1982, F City seeks to intervene. The agency's Rules of Practice require filing of a petition to intervene by a city, other public body, or a chamber of commerce not later than the last day prior to the beginning of the

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hearing. This rule provides that a petition that is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for the failure to file on time.

In support of its contention that there is good cause for failure to file the petition until this late date, the petitioner asserts failure to receive notice of the pendency of the proceeding. The notice of hearing was published on April 1, 1982 (\_\_\_\_ Fed. Reg. \_\_\_\_). Moreover, official notice is taken that the pendency of this proceeding has also been widely covered in the press, including trade and business magazines and publications.

Pursuant to authority delegated by the agency in its regulations, \_\_\_\_\_CFR\_\_\_\_\_, it is found that the petitioner has not clearly shown good cause for failure to file its petition on time.

ACCORDINGLY, IT IS ORDERED:

1. That all of the above petitions to intervene, except that of C City and F City, are granted.
2. That the petition of C City to intervene is denied.
3. That the petition of F City is dismissed.

Persons entitled to petition the Board for review of this order pursuant to the agency's regulations, \_\_\_\_\_CFR\_\_\_\_\_, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the agency upon expiration of the above period unless before that date a petition for review is filed, or the agency gives notice that it will review this order on its own motion.

[Date]

\_\_\_\_\_  
Administrative Law Judge

NOTE: This form is adapted from several orders issued by the former Civil Aeronautics Board.

**NOTICE OF HEARING**

**FORM 10-a**

UNITED STATES OF AMERICA  
Agency  
Washington, D.C.

NOTICE OF HEARING

PLEASE TAKE NOTICE that the hearings in docket Number \_\_\_\_\_,  
\_\_\_\_\_, and will commence at 10:00 A.M. on \_\_\_\_\_ [date]\_\_\_\_\_, in Room \_  
\_\_\_\_\_, Federal Building, \_\_\_\_\_ [city and state]\_\_\_\_\_.

For information concerning the issues involved and other  
details in this proceeding, interested persons are referred to  
the prehearing conference report issued on \_\_\_\_\_ [date]\_\_\_\_\_ and  
other documents which are in the docket of this proceeding on  
file in the Docket Section of the Agency.

[Date]

\_\_\_\_\_  
Administrative Law Judge

NOTE: This notice is adapted from a Federal Reserve System  
notice.

**NOTICE OF HEARING**

**FORM 10-b**

UNITED STATES OF AMERICA  
Agency  
Address

Caption

NOTICE OF HEARING

A hearing will be held in the above matter on August 29, 1988, at 9:30 a.m. at/in [full address, including where relevant the name of the building [e.g., New Courthouse Building, city, state] \_\_. Please report to [clerk's office, first floor, for information regarding room number] [other purposes].

Pursuant to section 9(b) of the Occupational Safety and Health Act and section [ ] of the Commission's Rules of Procedure, the respondent is hereby required to serve and/or post this Notice of Hearing in order to afford affected employees or their representatives an opportunity to participate as parties during this proceeding.

Affected employees/others are entitled to participate in this hearing under terms and conditions established by the Occupational Safety and Health Review Commission in its Rules of Procedure.

Notice of intent to participate should be sent to:

[Full address of administrative law judge/agency/or other addressee, as appropriate]

Date: \_\_\_\_\_

\_\_\_\_\_

Administrative Law Judge

NOTE: This notice is adapted from an Occupational Safety and Health Review Commission ALJ's notice.

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**Request by Judge for a Person to Appear as a Witness**

**Form 11**

UNITED STATES OF AMERICA  
Agency  
Washington, D.C.

Date \_\_\_\_\_

Re: [Name of Case]

[Name of Case]

Docket No. \_\_\_\_\_

Dear Sir:

The agency is holding a proceeding involving the reclassification of mail. The issue is the possible development of a new system of classification based on the technological capabilities that may reasonably be attained in the near future. For example, do machines exist that can read and sort mail? When are such machines likely to be available? What are the practical and financial problems involved in using such machines?

I request that you, in your capacity as a knowledgeable and concerned private citizen, appear and testify on this matter at any agency hearing to be held at \_\_\_\_\_ [place] \_\_\_\_\_, Washington, D.C. at 10 A.M., Thursday, \_\_\_\_\_ [date] \_\_\_\_\_.

Rules of this agency prevent your discussing your testimony with me outside of the hearing.

Sincerely,

\_\_\_\_\_  
Administrative Law Judge

NOTE: This letter is adapted from a Postal Rate Commission letter.

**Presiding Judge's Instructions for Briefing****Form 12**

UNITED STATES OF AMERICA  
 Agency  
 Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

## PRESIDING JUDGE'S INSTRUCTIONS FOR BRIEFING

An examination of the record discloses certain novel or legal problems that were not fully covered in the factual record or arguments of the parties during the hearing. Consequently, to expedite the decision the following specific matters shall be briefed.

## 1. Subsidy Eligibility

Each of the applicants is now receiving subsidy and it is possible, if the merger is approved, that the surviving carrier will be entitled to subsidy in an amount to be determined by the agency. The applicants request that the merger issues should be decided at once and that, if the merger is approved, determination of the amount of the subsidy, if any, be deferred for decision in another proceeding. The agency, on the other hand, contends that decision on the merger should be deferred pending decision on subsidy needs in an ancillary rate proceeding.

The applicants and the agency are requested to include arguments on this matter in their brief.

## 2. Labor Protective Conditions

Historically, the agency has in merger cases used the labor protective conditions adopted in X Case in 1952 and reaffirmed in Y Case in 1979. (These conditions are based on those included in the **WASHINGTON JOB AGREEMENT OF MAY 21, 1936.**)

The applicants request that the same conditions be imposed if the merger is approved. The C Union, in light of changed economic conditions, requests that the agency reexamine the labor protective conditions and make such changes as it finds needed.

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The applicants, the C Union, and the agency are requested to include arguments on this matter in their briefs.

Briefs shall be submitted ten days after the close of the hearing. Reply briefs will not be permitted.

---

Administrative Law Judge

[Date]

**ORDER CORRECTING TRANSCRIPT****Form 13**

UNITED STATES OF AMERICA  
 Agency  
 Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

## ORDER CORRECTING TRANSCRIPT

Issued: \_\_\_\_\_ Released: \_\_\_\_\_

Under consideration are a motion to correct transcript filed by A on \_\_\_\_\_ [Date]\_\_\_\_\_ and on opposition filed by B on \_\_\_\_\_ [Date]\_\_\_\_\_ .

A's motion requests that references to section 21.505 of the Rules that are found on page 167, line 25 and on page 168, line 6 of the transcript be changed to section 21.504. Accompanying A's motion is an affidavit of C, consulting engineer, indicating that upon reviewing his testimony he discovered these typographical errors.

The references in question appear in the testimony of the witness C, and refer to a series of propagation curves actually set forth in section 21.504.

B's contention that A's motion is an attempt to change C's testimony is unsound. It is obvious that the reference to section 21.505 rather than section 21.504 is a typographical error.

In order that the agency may have an accurate record before it, IT IS ORDERED that A's motion IS GRANTED and the transcript IS CORRECTED as proposed.

\_\_\_\_\_  
 Administrative Law Judge

NOTE: This order correcting transcript is adapted from an order of the Federal Communications Commission.

**ERRATA SHEET**

**Form 14**

UNITED STATES OF AMERICA  
Agency  
Washington, D.C.

[Name of Case] Docket No. \_\_\_\_\_

ERRATA SHEET

INITIAL DECISION OF THE  
ADMINISTRATIVE LAW JUDGE  
(Issued \_\_\_\_\_)

1. On page 4, paragraph 2, line 7, change "\$74,936" to "\$74,936,000".
2. On page 7, paragraph 2, line 38, change "\$21,401" to "\$21,401,000".
3. On page 9, paragraph 2, line 3, between the words "can" and "exceed" insert the word "not".
4. On page 14, second quote, line 12, change "employer" to "employee".
5. On page 14, last paragraph, line 11, change "yards" to "meters".
6. On page 16, last paragraph, line 1, change "is dismissed" to "is denied".

[Date] \_\_\_\_\_  
Administrative Law Judge

NOTE: This errata sheet is adapted from one used by the Federal Energy Regulatory Commission.

**CERTIFICATION OF A RECORD TO AN AGENCY**

**FORM 15**

UNITED STATES OF AMERICA  
Agency  
Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

PRESIDING ADMINISTRATIVE LAW JUDGE'S  
CERTIFICATION OF THE RECORD ACCOMPANYING  
INITIAL DECISION

TO THE SECRETARY:

In accordance with the provisions of Section \_\_\_\_ of the Commission's Rules of Practice and Procedure, I hereby certify:

I. That the following constitutes the record of the hearing in this proceeding:

(1) The official stenographer's report of the hearings held on October 5 through 8, 1982, consisting of volumes numbered 1 through 5, pages numbered 1 through 715, including errata.

(2) Exhibits numbered 1 through 16, which are described on the various index pages of the official stenographer's report. All exhibits were admitted into evidence.

(3) Items A through G, which are described on the various index pages of the official stenographer's report.

II. That, in accordance with Section \_\_\_\_ of the Rules of Practice and Procedure, the attached document, dated \_\_\_\_\_, is my Initial Decision in this proceeding.

[Date]

\_\_\_\_\_  
Presiding Administrative Law Judge

NOTE: This certification of a record is adapted from one used at the Federal Energy Regulatory Commission.

**ORDER ADMITTING EXHIBIT INTO EVIDENCE**

**FORM 16**

UNITED STATES OF AMERICA  
Agency  
Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

ORDER ADMITTING EXHIBIT INTO EVIDENCE

Pursuant to the Judge's request at the hearing, A city has submitted its rate contract with X Power Company to the Judge and all parties. This contract, dated \_\_\_\_\_, is marked A exhibit 1 for purposes of identification.

It appears that the document is relevant to the issues and is received into evidence.

Any party wishing to object to the admission of this document into evidence should submit its objections in writing and hand deliver them to the Presiding Judge on or before \_\_\_\_\_ [date] \_\_. If any objections are received, the Presiding Judge will reconsider the action taken in this order and issue a further order dealing with the objections.

SO ORDERED.

[Date]

\_\_\_\_\_  
Administrative Law Judge

NOTE: This order is an adaptation of one issued by the Federal Energy Regulatory Commission.

**ORDER SETTING ORAL ARGUMENT**

**FORM 17**

UNITED STATES OF AMERICAN  
Agency  
Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

ORDER SETTING ORAL ARGUMENT

By motion filed \_\_\_\_\_ [date] \_\_\_\_\_ X Company sought an order allowing the Company access to certain documents in the files of Agency Staff. Agency Staff filed a response in opposition on \_\_\_\_\_ [date] \_\_\_\_\_. X Company seeks oral argument on this matter. Oral argument regarding production of the date in question will be heard at 10:00 A.M. on \_\_\_\_\_ [date] \_\_\_\_\_ in a hearing room of this Agency, \_\_\_\_\_

\_\_\_\_\_ [place] \_\_\_\_\_, Washington, D.C. Other procedural dates will also be set at that time.

[Date]

\_\_\_\_\_  
Administrative Law Judge

NOTE: This order is adapted from one used at the Federal Energy Regulatory Commission.

**INQUIRY re FURTHER PROCEEDINGS**

**FORM 18-a**

IN THE UNITED STATES COURT OF CLAIMS

TRIAL DIVISION

No. \_\_\_\_\_

(Dated:

\_\_\_\_\_) )

\_\_\_\_\_) )

)

)

v.

)

)

The United States )

Since issue has now been joined, this inquiry is made to determine what steps should henceforth be taken to expedite the disposition of this case.

If a trial is to be held, normal procedure calls for the issuance of a Standard Pretrial Order on Liability under which the parties are required to submit to each other (with plaintiff making the first submission) statements setting forth the facts which they believe are not in dispute, the issues of fact and law as they perceive them to be, the exhibits they propose to introduce into evidence, and the witnesses whose testimony they propose to take, together with an indication of the issues to which the testimony of each witness will relate.

However, if the parties contemplate the disposition of the case by means other than a trial, it may not be necessary to invoke such formal pretrial procedures. For instance, if the parties will proceed by a dispositive motion (such as a motion for summary judgement), or if they intend to stipulate all of the material facts (assuming the case lends itself to such a stipulation), or if they propose to dispose of the case by way of a settlement, the issuance of the Standard Pretrial Order may be withheld. In some cases, where justified, the issuance of the Order may be postponed pending the completion of necessary discovery proceedings (see Rule 71(a)).

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Accordingly, in order that a determination may be made concerning the nature, extend and timing of further proceedings, counsel for each of the parties is directed to respond to this Inquiry (by letter, with a copy to opposing counsel) within \_\_\_ days, by advising whether [s]he presently intends (1) to file a dispositive motion; (2) to undertake a stipulation of all of the facts (experience has indicated that such a stipulation sometimes evolves more expeditiously as a result of complying with the Standard Pretrial Order); (3) to initiate settlement negotiations; or (4) to engage in such discovery proceedings as would, in counsel's opinion, justify the postponement of the Standard Pretrial Order until the completion of such proceedings.

If either counsel intends to pursue one or more of the above courses of actions, the response should be accompanied by a request for a deferral of the issuance of the Standard Pretrial Order for a stated reasonable time, and upon condition that within such time counsel will pursue the indicated courses of action.

---

Trial Judge

**PRETRIAL INSTRUCTIONS**

**Form 18-b**

UNITED STATES COURT OF CLAIMS  
717 Madison Place, N.W.  
Washington, D.C. 20005

PRETRIAL INSTRUCTIONS

The accompanying pretrial order is issued with a view to securing just and inexpensive determination of litigation, without unnecessary delay, it is designed to explore:

- (a) simplification and clarification of the issue;
- (b) the possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;
- (c) limitation of the number of expert or other witnesses, and avoidance of cumulative evidence, should the case go to trial;
- (d) the possibility of agreement disposing of all or any of the issues in the case; and
- (e) such other matters as may aid in the disposition of this litigation.

In following the instructions contained in this order, counsel should bear these purposes in mind. Your full cooperation is essential if pretrial proceedings are to be effective. Time spent on through pretrial not only saves an equivalent or greater period of time during the course of the trial for the court, counsel, and witnesses, but reduces costs.

Counsel are therefore asked to approach their respective obligations in a genuine and sincere spirit of cooperation, both in the preparation of their submissions, and in their assessment of and comment on submissions of opposing counsel. Settlement possibilities should be thoroughly and conscientiously assessed, without unduly delaying the pretrial procedures. The possibility of voluntary disclosure of discoverable information should be explored before resort is had to compulsory process. The latter, if required, is to be initiated without delay and concluded prior to response to the pretrial order.

With the full cooperation of counsel, it should not be necessary to impose the sanctions provided by Rule 114(b) for

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failure or refusal to comply with the requirements of the pretrial order.

**STANDARD PRETRIAL ORDER ON LIABILITY**

**Form 18-c**

IN THE UNITED STATES COURT OF CLAIMS

TRIAL DIVISION

No. \_\_\_\_\_

(Filed: \_\_\_\_\_ )

\_\_\_\_\_

\_\_\_\_\_ )

)

)

\_\_\_\_\_ )

)

Standard Pretrial Order  
on Liability  
(Rule 111)

Plaintiff,\*

v.

The United States

Defendant.

\_\_\_\_\_

IT IS ORDERED as follows:

1. Plaintiff's Submission. On or before \_\_\_\_\_ 19\_\_\_\_, the plaintiff\* shall furnish the following to the attorney of record for the defendant and to the trial judge:

(a) A list accurately describing the documents that are relied on and are to be offered in evidence. The documents shall be numbered; and the list shall be accompanied by a copy of each document referred to therein, except that (1) no copy need be supplied to defendant's counsel where the plaintiff reasonably believes that the defendant already has the original or a copy, and (2) the trial judge need not be provided a copy of any exhibit unless its admissibility is put in issue.

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(b) A statement of the material matters of fact as to which it is believed that there is no substantial controversy between the parties, or which have been agreed to by the parties. The paragraphs of this statement shall be numbered.

(c) A memorandum of contentions of fact and law, which shall comply with the following requirements:

(1) The contentions of fact shall consist of a concise statement of the ultimate, material facts which the plaintiff expects to establish, rather than a general statement of the claim or a repetition of the pleadings.

(2) The contentions of law shall be in the form of conclusions of law based on the ultimate facts which the plaintiff expects to establish, and, in addition, shall contain a brief statement of the points of law and a citation of the authorities relied upon in support of each point.

(d) (1) A list setting forth the name, address, and occupation of each of the witnesses whom the plaintiff proposes to call, and a succinct statement of the issue or issues to which the testimony of each witness will relate.

(2) The preferred date for the beginning of the trial, and the preferred place or places therefor.

(3) An approximation of the time that will be required for the direct examination of the plaintiff's witnesses at each place.

2. Defendant's Response. Within \_\_\_ days after receiving the data referred to in paragraph 1 of this order, the defendant shall furnish the following to the attorney or record for the plaintiff to the trial judge:

(a) A statement admitting or denying the admissibility of each document listed under paragraph 1(a) of this order, together with the reasons for any denial of admissibility, and a further statement admitting or denying the genuineness of any documents the admissibility of which is disputed.

(b) A statement (arranged in numbered paragraphs) agreeing to, denying, revising or otherwise commenting on the factual data submitted under paragraph 1(b) of this order.

(c) A list of the proposed defense exhibits, meeting the

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requirements of paragraph 1(a) of this order.

(d) A statement setting out any further material matters of fact as to which the defendant believes that there is no substantial controversy between the parties. the paragraphs of this statement shall be numbered.

(e) A memorandum of contentions of fact and law, which shall comply with the requirements set forth in paragraph 1(c) of this order.

(f) A list of the proposed defense witnesses, complying with the requirements of paragraph 1(d)(1) OF this order.

(g) A statement indicating the defendant's preferences as to the date and location of the trial.

(h) An estimate of the time likely to be required for the presentation of the direct testimony of the defendant's witnesses, and the cross-examination of the plaintiff's witnesses, at each preferred location.

3. Plaintiff's Reply. Within \_\_\_\_\_days after receiving the data referred to in paragraph 2 of this order, the plaintiff shall furnish the following to he attorney of record for the defendant and to the trial judge:

(a) A statement agreeing to, denying, or otherwise commenting on any revised or additional factual data submitted under paragraph 2(b) an (d) of this order.

(b) Such observations in rebuttal as the plaintiff may wish to offer respecting the defendant's contentions of fact and law submitted under paragraph 2(e) of this order.

(c) A statement admitting or denying the admissibility of each of the documents listed under paragraph 2(c) of this order, together with the reasons for any denial of admissibility, and a further statement admitting or denying the genuineness of any documents the admissibility of which is disputed.

(d) An estimate of the time likely to be required for the cross-examination of defendant's proposed witness at each preferred location.

4. Form of Compliance. for convenient of reference,

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submissions in compliance with this order shall follow the format of the order by citing the numbered paragraph pursuant to which each portion of a particular submission has been prepared.

5. Sanctions. Rule 114(b) provides sanctions for failure or refusal to comply with the requirements of this order.

---

Trial Judge

STANDARD PRETRIAL ORDER ON ACCOUNTING

FORM 18-d

IN THE UNITED STATES COURT OF CLAIMS

No. \_\_\_\_\_

(Filed )

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Plaintiff, \* Standard Pretrial Order  
On Accounting  
(Rule 111)

v.

THE UNITED STATES,

Defendant.

\_\_\_\_\_

IT IS ORDERED as follows:

1. **Plaintiff's Statement.** On or before \_\_\_\_, 19\_\_, the plaintiff\* shall furnish to the attorney of record for the defendant and to the commissioner a statement in schedule form showing all the items and figures which the plaintiff intends to prove from books of account or other records. Such statement shall be prepared in accordance with the requirements set out in the following subparagraphs of this paragraph 1:

(a) The basic figures, costs, and rates from which any claim is computed shall be tabulated in such detail that the statement may be admitted in evidence in lieu of producing the books and records from which the pertinent data were taken.

(b) The statement shall include a complete computation of the total amount of each claim that is based upon or derived from book of account or other records.

(c) Each separate portion of the statement shall contain a reference showing the particular books and records from

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which it was taken.

(d) Where the statement includes a claim for overhead, factory burden, general expense, or similar items based upon allocations of entries shown in the books or records, the statement shall itemize such indirect expenses for the period involved, and shall show the accounting method or principle upon which the allocations were made.

(e) Where a claim includes an item of damages for machinery or equipment expense, the statement shall show the type, class, capacity, or other identifying description of each major piece of machinery or equipment involved, and the book value of each item. If book values are not separately shown in the records, or if some basis of value other than book value is used, the statement shall show how the value was determined. The statement shall contain a complete computation of the equipment expenses claimed; and unless the costs incurred or the expenses claimed are fully set forth in the books or records, the statement shall show the accounting method, principle, or authority upon which such computation is based.

(f) The statement shall be accompanied by:

(i) a declaration that the books and records, or any part thereof, upon which the statement is based (including ledgers, journals, payrolls, and the original invoices, vouchers, checks, and other records and documents needed for a verification of the amount claimed or for a determination of the basis upon which the claim is computed) will be made available to the defendant for examination; and

(ii) a notice showing the address where such books and records may be examined by the defendant, together with the name and address of the bookkeeper or accountant who prepared the statement and who will be made available for the furnishing of information regarding such books and records in connection with the defendant's examination

**2. Defendant's Response.** Within \_\_\_\_ days after receiving the plaintiff's statement in accordance with paragraph 1 of this order, the defendant shall make an examination of the pertinent books of account and other records, and shall furnish to the attorney of record for the plaintiff and to the commissioner a statement showing the results of such examination, or waive challenge of the accuracy of the statement submitted by the

APPENDIX I - FORMS

plaintiff as reflecting the contents of such books and records and the accuracy of the computations, including allocations, made therefrom. The defendant's statement shall be prepared in accordance with the requirements set out in the following subparagraphs of this paragraph 2:

(a) If the defendant verifies the items and figures (or any of them) contained in the plaintiff's statement, including the plaintiff's computations and allocations, the defendant shall so report in its statement. Such a report shall not be deemed to be an admission by the defendant of anything more than the accuracy of-

(i) the statement examined as reflecting the contents of the books and records, and

(ii) the allocations and computations based thereon.

(b) If the defendant's examination fails to verify any of the items, figures, allocations, or computations contained in the plaintiff's statement as submitted, the defendant shall specify in its statement each item, figure, allocation or computation not verified, together with such different item, figure, allocation, or computation, if any, derived by the defendant from its examination. The defendant shall set forth in its statement a complete explanation of each exception, and shall specify any alternative methods or theories of accounting upon which the exceptions are based.

(c) The defendant shall be deemed to have waived challenge of the accuracy of all items, figures, allocations, and computations contained in the plaintiff's statement, as submitted, that are not specified in the defendant's statement as the subject of exceptions.

**3. Defendant's Cross-Statement.** In a situation where the defendant (a) has derived any items, figures, allocations, or computations from its examination of the plaintiff's books and records, and (b) intends to offer evidence based upon the material so derived in reduction of any portion of the amount claimed by the plaintiff, or in support of a counterclaim or offset or affirmative defense, or in support of a theory of damages different from that of the plaintiff, the defendant shall prepare a cross-statement reflecting such items, figures, allocations, or computations. The cross-statement shall be prepared in conformity with the requirements set out in subparagraphs (a)-(e) of paragraph 1 of this order, and it shall

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be furnished to the attorney of record for the plaintiff and to the commissioner within the period prescribed in paragraph 2 of this order.

**4. Counterclaim or Offset Based on Defendant's Records.**

(a) If the defendant has filed, or intends to file, a counterclaim or offset based on its own books of account or other records, the defendant, within the time prescribed in paragraph 2 of this order, shall furnish to the attorney of record for the plaintiff and to the commissioner a statement prepared in accordance with the requirements set out in paragraph 1 of this order.

(b) Within \_\_\_\_\_ days after receiving the statement referred to in subparagraph (1) of this paragraph 4, the plaintiff shall make an examination of the pertinent books and records of the defendant and shall furnish to the attorney of record for the defendant and to the commissioner a statement showing the results of such examination, or waiver challenge of the accuracy of the defendant's statement as reflecting the contents of such books and records and the accuracy of the computation, including allocations, made therefrom. The provisions of paragraph 2 of this order shall be applicable to the plaintiff's statement.

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Commissioner

**STANDARD ORDER SCHEDULING PRETRIAL CONFERENCE**

**Form 18-e**

IN THE UNITED STATES COURT OF CLAIMS

Trial Division

No. \_\_\_\_\_

Filed \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Plaintiff(s),

v.

Standard Order Scheduling  
Pretrial Conference

The United States

(Rule 112)

Defendant.

\_\_\_\_\_

IT IS ORDERED as follows:

1. The attorneys for the parties\* are directed to appear before me in room \_\_\_\_\_, U.S. Court of Claims Building, 717 Madison Place, N.W. (Lafayette Square), Washington, D.C., at \_\_\_\_\_ o'clock on \_\_\_\_\_ 19\_\_\_\_, for pretrial conference.

2. The pretrial conference will deal with the following matters:

- (a) incorporating the agreed facts in the record;
- (b) admitting in evidence, or marking for identification, the documentary exhibits which the parties wish to offer (such exhibits should be numbered prior to the conference);
- (c) defining the legal issues that are involved in the litigation;
- (d) defining the factual issues that are to be tried;

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(e) fixing a time and place for the trial;

(f) limiting the number of expert witness and providing for the exchange between the parties prior to the trial of written documents, in narrative or question-and-answer form, by such witnesses comprising their proposed direct testimony; and

(g) such other matters as may aid in the disposition of the case.

3. An attorney appearing at the pretrial conference on behalf of a party should preferably be the attorney who will try the case for such party, be thoroughly familiar with the case, and be authorized to act for his principal

4. Unless the attorneys for the parties have furnished to each other, in accordance with a previous pretrial order (or otherwise), lists of prospective witnesses, lists of proposed documentary exhibits, statements of supposedly uncontroverted facts, and statements of their contentions concerning the factual and legal issues involved in the case, the attorneys are directed to confer with each other before the pretrial conference and to:

(a) exchange lists containing the names and addresses of all witnesses whom they respectively expect to call at the trial, and indicating as to each witness the issue or issues of fact to which his testimony will be directed (this subparagraph does not apply to witnesses who are to be used solely for the purpose of impeachment or rebuttal);

(b) exchange lists of the documentary exhibits which they respectively intend to offer at the trial, each list to be accompanied by copies of the exhibits listed unless the originals or copies thereof are already in the possession of the opposing party;

(c) prepare a written statement of the agreed facts;

(d) attempt to reach agreement on written statements of the factual and legal issues that are involved in the case.

---

Trial Judge

**PROTECTIVE ORDER\*****Form 19-a**

UNITED STATES OF AMERICA  
 Agency  
 Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

## PROTECTIVE ORDER

Upon consideration of respondent's motion for a protective order filed on \_\_\_\_ [date] \_\_\_\_, with respect to data collected by complaint counsel showing payments by \_\_\_\_\_ to respondent, and complaint counsel's answer, it is hereby ordered that:

All documents submitted by \_\_\_\_\_, whether supplied voluntarily or pursuant to subpoena duces tecum, containing data showing payments by \_\_\_\_\_ to respondent and any compilations or summaries of such data, shall be subject to the following terms and conditions for the purpose of protecting the confidentiality of such information (referred to as "confidential financial information"):

- (a) confidential financial information and all documents containing confidential financial information shall be disclosed only to the staff of the Commission formally assigned to this proceeding and to respondent's counsel.
- (b) Disclosure of confidential financial information to any person described in Paragraph (a) of this order shall be only for the purpose of this proceeding and for no other purpose.
- (c) All such confidential financial information shall be prominently marked by complaint counsel as "Confidential-Subject to Protective Order," and shall be kept by complaint counsel in secure, segregated facilities. Access to those facilities shall be permitted only to persons designated in Paragraph (a) of this order.
- (d) No portion of the confidential financial information will be copied or recorded in any manner, other than in the work papers, notes, or memoranda of person designated in Paragraph (a) of this order, and all such work papers shall be treated as confidential financial information.
- (e) Confidential financial information shall not be

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disclosed by complaint counsel to any other person employed by the Commission until such person has executed an affidavit stating the he has read and understood this protective order and agrees to be bound by the terms thereof. Copies of any such affidavits shall be filed with the Secretary and served upon respondent.

(f) In the event complaint counsel desires that any confidential financial information be divulged to any person who is not an employee of the Commission, complaint counsel shall make written application to the Administrative Law Judge for modification of this protective order and respondent shall be granted ten (10) days after receipt of notice to oppose or otherwise answer said application. The persons to be granted access to the documents and information will be identified in any order granting modification of this protective order.

(g) In the event complaint counsel desires to introduce into evidence by way of documents or testimony any confidential financial information subject to this protective order, complaint counsel shall provide respondent with ten (10) days prior notice to the intent to make such offer so that respondent may seek in camera treatment of said confidential financial information. If advance notice cannot be provided pursuant to this order, respondent shall be so notified at the time of introduction of such documents and the document shall be accorded in camera treatment pending a ruling by the Administrative Law Judge upon any request by respondent for such treatment, which request must be filed within ten (10) days of receipt of such notice.

(h) In the event this proceeding is resolved by means of a consent order or otherwise disposed of prior to an adjudicative hearing on the merits, all confidential financial information shall be destroyed forthwith. Should this proceeding not be so resolved, at such time thereafter (including the completion of any appeals procedures) as this proceeding is finally resolved, the original and all copies of work papers reflecting confidential information, except that which may have been incorporated into the record in this case, shall be destroyed forthwith.

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(i) Nothing herein shall be construed to prevent the Administrative Law Judge or any reviewing authority from disclosing such confidential information as may be necessary to reach a decision on any matter raised in connection with this litigation.

[Date]

\_\_\_\_\_  
Administrative Law Judge

NOTE: This order is adapted from a Federal Trade Commission protective order.

\* For protective orders involving confidential commercial information, Executive Order No. 12600 of June 23, 1987 (52 F.R. 23781), and any agency implementing rules should be consulted.

**PROTECTIVE ORDER**

**Form 19-b**

UNITED STATES OF AMERICA  
Agency  
Washington, D.C.

[Name of Case]

Docket No. \_\_\_\_\_

PROTECTIVE ORDER

\_\_\_\_\_ having requested the issuance of a protective order with regard to [exhibits they propose to offer in their case in defense and [other party/parties] having stated no objection to such request], IT IS HEREBY ORDERED that:

(1) All of the documents listed below and the information contained therein shall not be disclosed to anyone except the following persons: Respondents and their employees; Respondent's counsel of record; experts retained by Respondent's counsel for purposes of this litigation; [complainant's] counsel of record in this litigation; experts used by [complainant's] counsel for purposes of this litigation; a committee or subcommittee of Congress, in response to official request; or a court, in response to compulsory process. Those persons to whom disclosure is permitted under this Order shall not make further disclosure to anyone.

(2) The documents and information furnished shall be used only in connection with this proceeding. All copies of such documents, together with all notes, memoranda, and other papers reflecting the documents and information, or any part thereof, shall be returned to \_\_\_\_\_'s counsel at the termination of this proceeding.

(3) In the event [complainant's] counsel desire to offer into evidence any document or information subject to this Protective Order. [complainant's] counsel shall provide \_\_\_\_\_ with no less than fifteen (15) days prior notice of their intention to make such offer so that \_\_\_\_\_ may seek in camera treatment of said documents or information pursuant to \_\_\_\_\_ of the \_\_\_\_\_'s Rules of Practice.

(4) In the event the documents or information are officially requested by a Committee or subcommittee of Congress, or demanded by compulsory process of a court, the court or committee or subcommittee will be advised that \_\_\_\_\_ considers the information to be confidential, and \_\_\_\_\_ will be

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provided with thirty (30) days prior notice where possible, and in any event, as much prior notice as can reasonably be given.

The following [proposed exhibits] are covered by this Protective Order

EX Number	Description
. . . .	
205	Reported 1978 Advertising Expenditures for _____ manufacturers
206	_____ 's Corporation Statement of Income, Years Ended October 31, 1979, 1980.

IT SHOULD BE UNDERSTOOD THAT THIS PROTECTIVE ORDER COVERS THE PRE-HEARING STAGE OF THIS PROCEEDING ONLY, AND IN NO WAY INTIMATE'S THE JUDGE'S RULINGS WHEN AND IF CERTAIN EXHIBITS ARE OFFERED, AND THE APPLICABILITY OF \$[ ] of the [Commission's] Rules is raised. MOREOVER, this protective order is not intended to impede proper preparation of this case and if any provision in this order seriously interferes with [complainant's] [intervenor's] [other parties'/participants'] preparation, relief may be sought.

NOTE: This order is adapted from a Federal Trade Commission protective order.

PROTECTIVE ORDER, Re: DEPOSITION

Form 19-c

UNITED STATES OF AMERICA
Agency
Washington, D.C.

[Name of Case] Docket No.
[or other identification]

[PROTECTIVE ORDER/HEADING]

Certain documents furnished by deponents pursuant to the subpoenas, identified hereinafter by the Exhibit Number which was assigned at the depositions, are hereby placed under a protective order. The terms of the protective order are set forth herein following the identification of the documents which are covered by the order.

[Sancho Panza] Deposition Exhibits 5, 7, 9, 10, 12, 23, . . . .

[Dulcinea] Deposition Exhibits 1, 2, 7 . . . .

. . . .

IT IS ORDERED AS FOLLOWS:

1. The above identified exhibits shall be maintained in confidence by the [LaMancha] [Regional Office] of the [Federal Windmill Commission] and be made available only to the following employees of that Office: [Attorney Don Quixote, Investigator Quasimodo Jones, Secretary Earnest Torquimada], . . . . The foregoing persons shall use the identified documents only for purposes of this proceeding and such documents shall be made available to other persons within the [Federal Windmill Commission] only on written authorization of the assigned Administrative Law Judge.

2. All copies of the identified documents shall be returned to each deponent who produced the identified documents pursuant to subpoena, or to counsel for each deponent, at the conclusion of this proceeding. For purposes of this protective order, this proceeding shall be deemed concluded when a final order of the

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[Commission] shall have been served upon respondents herein.

3. Copies of any identified exhibits offered or received in evidence during formal trial of this matter shall not thereafter be subject to the terms of this protective order.

Date: \_\_\_\_\_

\_\_\_\_\_

Administrative Law Judge

NOTE: This order is adapted from a Federal Trade Commission protective order.

## Stipulated Protective Order

The Commission Trial Staff ("Staff") and Intervener, \_\_\_\_\_ have sought to obtain certain documents and information from \_\_\_\_\_ Corporation and certain of its affiliates ("the Companies") in this proceeding. The Companies assert that certain of the documents and information requested contain confidential and proprietary information. This Stipulated Protective Order is a device to facilitate and expedite the handling of this proceeding and it merely reflects agreement by counsel for the active participants at this point as to the manner in which "PROTECTED MATERIALS," as that term is defined in this order, are to be treated. This action is not intended to constitute an agreement on the merits concerning confidentiality of any of the "PROTECTED MATERIALS," and the parties shall not be deemed by taking such action to have waived any arguments with respect to whether the "PROTECTED MATERIALS" are confidential or proprietary in nature.

1. All documents and information furnished subject to the terms of this order hereinafter shall be referred to as "PROTECTED MATERIALS." However, "PROTECTED MATERIALS" shall not include any information or document contained in the public files of the Federal Energy Regulatory Commission ("the Commission") or any other federal or state agency. "PROTECTED MATERIALS" also shall not include documents or information which at, or prior to, disclosure in these proceedings, is or was public knowledge, or which becomes public knowledge as a result of publication or disclosure by the Companies.

2. The Companies may designate as "PROTECTED MATERIALS" those documents or discovery materials or portions thereof produced by them which in good faith they believe contain confidential or proprietary information. Designation shall be accomplished by marking the documents or other discovery materials or portions thereof with the words "PROTECTED MATERIALS, FERC DOCKET NO. \_\_\_\_\_." Any notes, memoranda, summaries, abstracts, studies or other information derived from such "PROTECTED MATERIALS" or portions thereof, other than a list of the "PROTECTED MATERIALS," shall be similarly marked, and reasonable precautions shall be taken to ensure that any such notes, memoranda, summaries, abstracts, studies or other information are not viewed by any persons except those to whom "PROTECTED MATERIALS" may be disclosed under paragraph 4. Upon request of the Staff, or \_\_\_\_\_, the Companies shall state

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the reason for designating as "PROTECTED MATERIALS" documents or discovery materials or portions thereof and shall provide a sworn affidavit stating that, to their knowledge and belief, the "PROTECTED MATERIALS" or portions thereof are not already on file with the Commission or any other federal or state agency or otherwise available to the public.

3. Unless and until otherwise agreed or otherwise ordered by the Presiding Judge, the Commission, or a court of competent jurisdiction, all documents and other discovery materials or portions thereof that have been designated "PROTECTED MATERIALS," and any notes, memoranda, summaries, abstracts, studies or other information derived therefrom, shall be used only in connection with this litigation in accordance with this Stipulated Protective Order and may be inspected by or disclosed to only the persons described in Paragraph 4 under the conditions herein established.

4. a. "PROTECTED MATERIALS" may be disclosed to and used by attorneys of record for Staff and \_\_\_\_\_ in this proceeding or in any appellate proceeding resulting from this proceeding and persons who are regularly employed in such attorneys' offices and engaged in or supervising the conduct of this proceeding in accordance with this Stipulated Protective Order.

b. "PROTECTED MATERIALS" also may be disclosed to and used by Staff's and \_\_\_\_\_ technical experts, consultants, expert witnesses, other witnesses, and persons regularly employed in their respective offices who are involved in this proceeding in accordance with this Stipulated Protective Order. The attorney for Staff or \_\_\_\_\_ shall secure and provide to counsel for the Companies a certificate from each such person in the form attached hereto stating that he or she has read this Stipulated Protective Order, and that he or she may not divulge any "PROTECTED MATERIALS," or any portion thereof, or any information derived therefrom, except in accordance with this Stipulated Protective Order.

In the event that any person to whom disclosure of "PROTECTED MATERIALS" has been made ceases to be engaged in this proceeding, access to such materials by such person shall be terminated. However, any person who has executed the certificate in the form attached hereto shall continue to be bound by the provisions of this Stipulated Protective Order even if no longer so engaged.

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c. Any party or participant who receives "PROTECTED MATERIALS" pursuant to this Stipulated Protective Order will make no more than five copies of each document. Such party or participant will keep a log which sets forth the number of copies of each document which were made, and will provide a copy of that log to the Companies at the termination of this proceeding and any related appellate litigation. The parties or participants will negotiate in good faith concerning the reproduction of additional copies of "PROTECTED MATERIALS" for use as exhibits in depositions, in testimony or during the hearing.

5. a. If a reviewing party tenders for filing with the Presiding Administrative Law Judge, the Commission or any court, any written testimony, exhibit, brief or other submission that includes, incorporates, or refers to "PROTECTED MATERIALS," all portions thereof referring to such materials shall be marked "PROTECTED MATERIALS" and filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Stipulated Protective Order.

b. Unless objection to disclosure is waived by counsel for the Companies, "PROTECTED MATERIALS" or portions thereof may be served, offered, or introduced into evidence, or otherwise disclosed only in an in camera portion of this proceeding closed to all persons except those listed in paragraph 4.

The Presiding Judge shall determine, subject to such review as may be provided by the Commission's regulations and by any applicable law, whether or to what extent the "PROTECTED MATERIALS" or portions thereof will remain in camera, will be made public, or will be stricken or excluded from the record. Pending such determination, which shall be subject to such review as may be provided by Commission regulations and by any applicable law, any submission that is served, offered, or introduced in camera shall be subject to the provisions of this Stipulated Protective Order. That portion of the hearing transcript relating to in camera proceedings conducted pursuant to the Stipulated Protective Order shall be sealed and subject to this Stipulated Protective Order, unless otherwise ordered by the Presiding Judge.

6. "PROTECTED MATERIALS" may be disclosed to employees of the Commission's Assistant General Counsel for General Legal Services and the Office of Public Information for purposes of review pursuant to requests filed under the Freedom of Information Act,

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5 U.S.C. @ 552(a). Such employees shall thoroughly review all "PROTECTED MATERIALS" covered by requests filed under the Freedom of Information Act and determine whether the exemptions listed in 5 U.S.C. @ 552(b) apply. Documents covered by any such exemption shall not be released. In addition, such employees shall not authorize the release of such "PROTECTED MATERIALS" to any other person without first providing the Companies notice in writing at least five working days prior to such release of the intention to release such "PROTECTED MATERIALS." In the event of such notice, the Companies shall have the right to apply to the Commission for a determination that the "PROTECTED MATERIALS" come within the exceptions listed in 5 U.S.C. @ 552(b) and should not be released or to take such other action as they deem appropriate.

7. a. In the event that Staff or intervenors wish to disclose "PROTECTED MATERIALS" to any person to whom disclosure is not authorized by this Stipulated Protective Order, or wish to object to the designation of certain information or material as "PROTECTED MATERIALS," Staff or intervenors will first notify in writing counsel for the Companies and the Presiding Judge, identifying with particularity each of such "PROTECTED MATERIALS" and state the reason for the intended disclosure or objection. Staff, intervenors and the Companies will then undertake good faith negotiations in order to resolve any disputes as to such disclosures or the validity of the claim to protection.

Where these negotiations produce agreement, such agreement will be filed with the Presiding Judge, and other reviewing parties may make use of these materials, provided that they enter into similar agreements with the Companies.

- b. If the Staff, intervenors and the Companies fail to reach agreement with respect to the disclosure reference in paragraph 7a, or the Companies otherwise maintain that the information should continue to be classified as "PROTECTED MATERIALS," the Companies shall notify in writing the Staff and intervenors of their position within five days of the notice in paragraph 7a. The Staff or intervenors shall then file, within ten days of such notice, a motion requesting that the Presiding Judge review the documents in camera and determine whether they should be protected from disclosure. The Companies shall file a response to such motion within ten days after the motion is filed. This Stipulated Protective Order does not change the burden of proof under applicable law in determining whether designated documents or information or portions thereof are entitled to be so protected.

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8. In the event that the Presiding Judge at any time in the course of this proceeding finds sua sponte or in response to a motion that all or part of the "PROTECTED MATERIALS" are not confidential or proprietary, those materials shall nevertheless be subject to the protection afforded by this order for ten working days, unless otherwise ordered, from the date of issuance of the Judge's decision. Neither the Companies, Staff or intervenors waive their rights to seek additional administrative or judicial remedies after the Presiding Judge's decision.

9. Nothing in the foregoing provisions of this Stipulated Protective Order shall be deemed to preclude any person from seeking and obtaining, on an appropriate showing, such additional protection or relief as may be available under applicable law.

10. All "PROTECTED MATERIALS" in the possession of Staff or intervenors and all copies made thereof shall be returned to the Companies at the termination of this proceeding and any related appellate litigation, except to the extent that Staff, intervenors and the Companies shall agree otherwise. In addition, at the termination of this proceeding and any related appellate litigation, the Staff and intervenors shall destroy any notes, memoranda, and other documents and information derived from "PROTECTED MATERIALS," other than lists of such "PROTECTED MATERIALS," and certify in writing to counsel for the Companies that such destruction has been accomplished. Staff and intervenors shall have no obligation to return any material which was originally designated as "PROTECTED MATERIALS" under this Stipulated Protective Order but as to which a final order, no longer subject to review, has been issued which concludes that the material in question is not confidential or proprietary.

11. Nothing in this Stipulated Protective Order shall be construed to prevent the parties from attempting to obtain through discovery in any other judicial or administrative action or proceeding all or any of the "PROTECTED MATERIALS" returned to the Company pursuant to paragraph 10, above.

12. In the event that a document is supplied by the Companies which the Companies inadvertently failed to mark as "PROTECTED MATERIALS," upon request, FERC and \_\_\_\_\_ shall mark any such document as "PROTECTED MATERIALS" and the document and all copies thereof shall be subject to the provisions of this Stipulated Protective Order.

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NOTE: This is adapted from an opinion/protective order issued by an ALJ of the Federal Energy Regulatory Commission. (See, 32 F.E.R.C. P63,091; 1985 FERC LEXIS 1377 (1985)).

AGENCY

JUDGE'S DOCKET SHEET

Judge \_\_\_\_\_

Case Name[Caption] \_\_\_\_\_

Item Number	Date	Entry
J-1	3/12/89	Notice of Assignment
J-2	. . . . .	
J-6	4/7/89	Complainant's motion to Vacate Order Granting Simplified Proceedings
J-7	4/11/89	Order Vacating Order Granting Simplified Proceedings
J-8	4/15/89	Motion for Continuance
J-9	4/19/89	Order Rescheduling Hearing
J-10	4/19/89	Letter from Judge stating that no further continuances should be requested.
J-11	5/14	Complainant's Requests for Admission
J-12	. . . . .	
		. . . . .

NOTE: Adapted from Judge's Docket Sheet used by the Occupational Safety and Health Review Commission.

**Notice of Judge's Decision**

**Form 21-a**

NOTICE OF DECISION

In Reference To:

Caption of case

Docket No.

Enclosed is a copy of my decision. It will be submitted to the [Commission's Executive Secretary] on date. The decision will become the final order of the [Commission] at the expiration of thirty (30) days from the date of docketing by the [Executive Secretary], unless within that time [a Member of the Commission] directs that it be reviewed. All parties will be notified of the date of docketing.

Any party adversely affected or aggrieved by the decision may file a petition for discretionary review. A petition may be filed with this Judge within twenty (20) days from the date of this notice. Thereafter, any petition must be filed with the [Commission's] [Executive Secretary] within twenty (20) days from the date of the Executive Secretary's notice of docketing. The [Executive Secretary's] address is as follows:

[Executive Secretary]

[Washington, DC 20006-1246]

The full text of the rule governing the filing of a petition for discretionary review is [29 C.F.R. § 2200.91]. It is appended hereto for easy reference. The rule also prescribes requirements concerning: (a) any cross-petition for discretionary review; (b) the contents of a petition; (c) the effect of a failure to file a petition; (d) statements in opposition to a petition, and (e) the number of copies of any document that may be filed. There are closely related rules which are published in 29 C.F.R. § 2200.90 and                     . Rule 90 concerns the contents of a decision of this kind; the aforementioned docketing of this Judge's report by the Executive Secretary; and the correction of errors and relief from default. Rule        describes review by the [Commission] -- its jurisdiction and the standards that are applied concerning issues that are raised by the parties or otherwise may exist. The text of these rules is also appended.

Date .

\_\_\_\_\_  
Judge, OSHRC

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NOTE: Adapted from Notice used by the Occupational Safety and Health Review Commission.

**Notice of Judge's Decision Form 21-b  
(Unfavorable decision, court remand case)**

Notice of Administrative Law Judge Decision -- Denial

**PLEASE READ CAREFULLY**

Name of Claimant  
Street Address  
City, State

Enclosed is the Administrative Law Judge's decision on your claim. This notice gives you information about what you can do if you disagree with the decision. Please read this notice and the decision carefully.

**If You Disagree With This Decision:**

If you disagree with this decision, you may appeal to the Appeals Council. You must do this by filing written Exceptions. Exceptions are your statements explaining why you disagree with the decision of the Administrative Law Judge.

Mail the written statement of your exceptions to the Appeals Council, Office of Hearings and Appeals . . . .

You must file your written exceptions within 30 days from the date you receive this notice. The Appeals Council assumes that you receive this notice within five days after the date at the end of this notice unless you show that you did not receive it within the five day period.

If you need more time to file your written exceptions, you must file a written request for additional time with the Appeals Council within 30 days of the date you receive this notice. If you request more than a 30-day extension of time, you must explain why you need the extra time.

Please include the Social Security Number(s) shown on the decision on any paper you send to the Appeals Council.

The Appeals Council will consider your exceptions and the parts of the decision that you disagree with. The Appeals Council may also consider those parts which you do not disagree with.

## APPENDIX I - FORMS

If the Appeals Council concludes that further action is necessary, it will either return your case to an Administrative Law Judge, for further action or issue a decision. If the Appeals Council issues a decision, that decision may be either more or less favorable to you than the decision of the Administrative Law Judge.

If the Appeals Council concludes that there is no reason to change the Administrative Law Judge's decision, it will notify you in writing why your exceptions do not warrant a change.

If you submit written exceptions and the Appeals Council does not change the decision of the Administrative Law Judge, that decision becomes the final decision of the Secretary after remand.

Any future claims you may file will not change a final decision on this claim if the facts and issues are the same.

### **If You Do Not File Written Exceptions:**

Even if you do not file written exceptions within 60 days from the date shown below, the Appeals Council may review your case on its own motion. The Appeals Council will notify you if it decides to review your case and will advise you what action it proposes to take.

If the Appeals Council does not review your case on its own motion and you do not submit exceptions, we will forward a copy of the decision and transcript of the record in your case to the United States Attorney, for filing with the court.

You have the right to pursue your civil action with the court.

### **New Application:**

You have the right to file a new application at any time, but filing a new application is not the same as filing exceptions to this decision. You might lose benefits if you file a new application instead of filing written exceptions to this decision. Therefore, if you disagree with this decision, you should file your exceptions within 30 days.

If you have any questions, please contact \_\_\_\_\_.

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This Notice and enclosed copy of decision mailed \_\_\_\_\_.

cc. Name & Address of Representative

cc. [as applicable]

NOTE: This form is adapted from a notice used by the Social Security Administration.

**Order Appointing Settlement Judge**

**Form 22**

UNITED STATES OF AMERICA  
AGENCY

[Case Caption/Title]

Docket No.

ORDER

1. There being no objection, the Secretary of/complainant's/respondent's \_\_\_\_\_ motion for the appointment of a settlement judge pursuant to [29 C.F.R. § 2200.101] is hereby granted. [Because there has been no objection, there is an implied consent for the use of the settlement judge procedure.] \_\_\_\_\_

\_\_\_\_\_. It is therefore determined that there is a reasonable prospect of settlement of at least a substantial portion of this case with the assistance of mediation by a settlement judge.

2. The case is hereby assigned to Administrative Law Judge \_\_\_\_\_, who will serve as the settlement judge, pursuant to applicable rules and regulations. Judge \_\_\_\_\_'s service as settlement judge in this case and related negotiations will be for a period not to exceed 45 days, unless such period is extended pursuant to applicable rules and regulations.

\_\_\_\_\_  
[Chief Administrative Law Judge]

Date: \_\_\_\_\_.

NOTE: Adapted from an Order issued by the Chief Administrative Law Judge of the Occupational Safety and Health Review Commission.

**Order re: Filing of Electronic Word Processing  
Files in Complex Case****Form 23**

Caption

## ORDER

A review of the complaint in this case indicates a likelihood that this case could become factually and legally complex. Therefore, in order to address the issues more readily, the parties are directed to provide the Judge, for each document greater than two (2) pages in length, an electronic copy of the document on a MS/Dos 5<sup>1/4</sup> or other suitable floppy diskette in WordPerfect 5.0 format, or in a format capable of being converted by WordPerfect 5.0. Diskettes need not be furnished for complaint and answer. The diskette(s) shall be transmitted to the \_\_\_\_\_ in an envelope or mailer, designed for that purpose, at the time of filing the printed document. Receipt of the diskette does not constitute filing or affect the time of the filing of the document (hard copy).

IT IS SO ORDERED.

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Administrative Law Judge

NOTE: Adapted from an order used by a Judge of the United States Claims Court.

APPENDIX II - SELECTED BIBLIOGRAPHY: ALTERNATIVE DISPUTE  
RESOLUTION (INCLUDING WEBSITES)

**APPENDIX II**

**SELECTED BIBLIOGRAPHY: ALTERNATIVE DISPUTE RESOLUTION (including  
websites)**

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Brett, Jeanne, Stephen B. Goldberg and William Ury, *Designing Systems for Resolving Disputes in Organizations*, "The American Psychologist, February 1990

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Crowell, Eldon H. and Charles Pou, Jr. *Appealing Government Contract Decisions: Reducing the Cost and Delay of Procurement Litigation with Alternative Dispute Resolution Techniques*. 1987 Recommendations and Reports of the Administrative Conference ("ACUS") 1139, reprinted in 49 Maryland Law Review 183-254 (1990).

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Claire B. Gallant, *Mediation in Special Education Disputes* (National Association of Social Workers 1982).

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Grassley, Senator Charles E. and Pou, Charles Jr., *Congress, the Executive Branch and the Dispute Resolution Process*, 1992 J. Disp. Resol. 1 (1992) (addressing the Administrative Dispute Resolution Act and other agency dispute resolution matters).

Gring, Pamela, *The Special Master's Role as Mediator*, 6 Ohio St. J. Dispute Resol. 21 (1990)

Harter, Phillip J. *Neither Cop Nor Collection Agency: Encouraging Administrative Settlements by Ensuring Mediator Confidentiality*, Report to the Administrative Conference of the U.S. of the U.S., 1988 ACUS 839.

Harter, Phillip J. *Points on a Continuum: Dispute Resolution Procedures and the Administrative Process*, Report to the Administrative Conference of the U.S.. 1986 ACUS 165, *reprinted*

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*in* 1 Admin. L. J. 141 (1987).

Heifetz, Alan W., *ALJs, ADR, and ADP: The Future of Administrative Adjudication*, 1 Widener Journal of Public Law 13 (1992) (Symposium: Administrative Law in the Twenty-First Century).

Herrman, M.S., *On Balance: Promoting Integrity Under Conflicted Mandates*, *Mediation Quarterly*, Volume 11, Number 2, (Winter 1993): 123-138.

Joseph, Daniel & Michelle L. Gilbert. *Breaking the Settlement Ice: The Use of Settlement Judges in Administrative Proceedings*, Report to the Administrative Conference of the U.S. 1988 ACUS 281, *reprinted in* 3 Admin. L. J. 571 (1990).

Hinchcliff, Carole L. *Dispute Resolution: A Selected Bibliography, 1987-88*. Washington, DC: American Bar Association, Standing Committee on Dispute Resolution.

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75, (June 1989): 66-68.

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Rogers, Nancy, and Craig McEwen, *Mediation: Law, Policy and Practice*, Second Edition, Clark Boardman Callaghan: Deerfield, Illinois, 1994

Stewart, Kenneth P., *Take the "Alternative" Out of Alternative Dispute Resolution; Results of an ADR Survey of Administrative Judges*, 62 The Journal of the Kansas Bar Association 14 (Jan. 1993).

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Warfield, Wallace, *The Implications of ADR Processes for Decisionmaking in Administrative Disputes*, 16 Pepperdine Law Review S93 (1989).

**SELECTED FEDERAL ADR WEBSITES**

(As with all websites and web pages, changes may occur without notice. The websites below were provided by Deborah Schick Laufer. Ms. Laufer (BA, Barnard College, Columbia University; JD, Georgetown University Law Center) is an attorney and mediator, who also is Director of the Federal ADR Network and is co-editor of the Federal Administrative Dispute Resolution Deskbook (ABA 2001)

**FEDERAL ADR RESOURCES**

Army Corps of Engineers - Early Resolution Program  
<http://144.3.144.209/corpusdata/usace/inet/usace-docs/eng-regs/er690-1-693/basdoc.pdf>

Army Corps of Engineers - Institute for Water Resources

APPENDIX II - SELECTED BIBLIOGRAPHY: ALTERNATIVE DISPUTE  
RESOLUTION (INCLUDING WEBSITES)

Alternative Dispute Resolution

<http://www.wrsc.usace.army.mil/iwr/AlternativeDisputeResolution/ADR.htm>

ACE -- Interest-Based Negotiation

<http://www.wrsc.usace.army.mil/iwr/AlternativeDisputeResolution/ADRibn.htm>

ACE -- ADR Continuum - Description of Methods

<http://www.wrsc.usace.army.mil/iwr/AlternativeDisputeResolution/ADRom.htm>

Army Corps of Engineers - Partnering

<http://www.hq.usace.army.mil/cemp/c/partner.htm>

<http://www.hq.usace.army.mil/cepa/pubs/partner.htm>

<http://www.hq.usace.army.mil/cemp/c/partgui8.wpd>

Army Materiel Command

Alternative Dispute Resolution (ADR) Program

[http://www.amc.army.mil/amc/command\\_counsel/index.htm](http://www.amc.army.mil/amc/command_counsel/index.htm)

(Select "ADR" on the site index.)

Council of Federal EEO and Civil Rights Executives

<http://www.fedcivilrights.org>

Defense Logistics Agency, ADR Home Page

<http://www.dsccl.dla.mil/offices/doccr/adr/adr.html>

DLA ADR Specialist's Training Manual

<http://www.dsccl.dla.mil/downloads/doccr/adr/adrtrain.doc>

Department of Agriculture

Animal and Plant Health Inspection Agency

(APHIS); Conflict Prevention and Resolution Homepage

<http://www.aphis.usda.gov/opd/cpr.html>

Department of Agriculture

Conflict Prevention and Resolution Center

<http://www.usda.gov/cprc/>

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Department of Agriculture, Farm Service Agency  
Agricultural Mediation Program

<http://www.fsa.usda.gov/pas/publications/facts/html/mediate01.htm>

Department of Agriculture: Research, Education, and Economics,  
Cooperative Resolution Program

<http://www.ars.usda.gov/afm2/coopres/>

Department of the Air Force, ADR Home Page

<http://www.adr.af.mil/>

Department of the Air Force, ADR Guidance for Air Force  
Acquisitions

<http://www.adr.af.mil/acquisition/index.html>

Department of Energy, Office of Dispute Resolution

<http://www.gc.doe.gov/adr/index.html>

Department of Health and Human Services, Departmental Appeals  
Board, ADR Division

<http://www.os.dhhs.gov/progorg/dab/>

Department of the Interior, Bureau of Land Management  
Alternative Dispute Resolution Page

<http://www-a.blm.gov/nradr/>

Department of the Interior, Bureau of Reclamation  
Conflict Management Guidebook

<http://www.usbr.gov/hr/conflict/>

Department of Justice, ADR Homepage

<http://www.usdoj.gov/disputeresolution.htm>

Department of Justice,  
Americans with Disabilities Act Mediation Program

<http://www.usdoj.gov/crt/ada/mediate.htm>

Department of Justice, Office of Dispute Resolution

APPENDIX II - SELECTED BIBLIOGRAPHY: ALTERNATIVE DISPUTE  
RESOLUTION (INCLUDING WEBSITES)

<http://www.usdoj.gov/odr/>

Department of Justice, Report to the President on Alternative  
Dispute Resolution (January 2001)

<http://www.financenet.gov/financenet/fed/iadrwg/presi-report.htm>

Department of Justice, Voluntary Civil Dispute  
Resolution Policy, Issued March 1999

<http://www.usdoj.gov/crt/adr/broch.html>

Department of Labor, Alternative Dispute Resolution

<http://www.dol.gov/dol/asp/public/programs/adr/main.htm>

Department of Labor, Early Resolution of EEO Complaints Program  
(EREC)

[http://www.dol.gov/dol/oasam/public/regs/compliance/erec\\_pol.htm](http://www.dol.gov/dol/oasam/public/regs/compliance/erec_pol.htm)

Department of Labor, Settlement Judge Program

[http://www.oalj.dol.gov/settlement\\_judge.htm](http://www.oalj.dol.gov/settlement_judge.htm)

Department of the Navy, ADR Website

<http://ogc.navy.mil/ogcwww/adr/>

Department of the Navy, ADR Lessons Learned

<http://ogc.navy.mil/ogcwww/adr/LessonsLearned.html>

Department of the Navy, Mediator Certification

<http://ogc.navy.mil/adr/Mediacert.html>

Department of the Navy, Principles of Conflict Resolution

<http://ogc.navy.mil/principles.html>

Department of Transportation, ADR Homepage

<http://www.dot.gov/adr>

Department of Veterans Affairs, Dispute Resolution Programs

<http://www.va.gov/adr/descript.htm>

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RESOLUTION (INCLUDING WEBSITES)

Environmental Protection Agency, Administrative Law Judges, ADR  
Neutrals for Superfund Cases

<http://www.epa.gov/aljhomep/about.htm>

Environmental Protection Agency, Region 1, ADR Page

<http://www.epa.gov/region01/steward/adr/index.html>

Equal Employment Opportunity Commission, Mediation

<http://www.eeoc.gov/mediate/index.html>

Federal ADR Program Managers' Resource Manual

<http://www.financenet.gov/financenet/fed/iadrwg/manual/>