
AUTHORIZING ABBREVIATED RECORDS IN REVIEWING
ADMINISTRATIVE AGENCY PROCEEDINGS

JULY 23, 1957.—Ordered to be printed

Mr. WILLIS, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 6788]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6788) to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

No. 1. Page 2, line 8, strike out "rules" and insert "rules, which so far as practicable shall be uniform in all such courts".

Page 2, line 12, strike out "in which" and insert "to the extent that".

No. 2. Page 2, line 20, after "proceeding", change the period to a comma and add:

and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court.

No. 3. Page 2, line 21, after "for", add "and transmitted to".

No. 4. Page 3, line 2, after "which", strike out "in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved" and insert "a proceeding with respect to such order was first instituted".

No. 5. Page 3, line 6, after "filed.", add—

For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

- No. 6. Page 4, line 11, strike "necessary" and insert "proper".
- No. 7. Page 4, line 15, strike "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the" and insert "The".
- No. 8. Page 4, line 19, after "subsection" insert "and if so requested by the petitioner for review or respondent in enforcement shall,".
- No. 9. Page 5, line 13, at the end of the line strike "proceedings" and insert "or enforcement proceedings."
- No. 10. Page 5, between lines 13 and 14, insert a new subsection:
- (d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.
- No. 11. Page 6, line 10, after "therein", insert "concurrently with the Commission until the filing of the record,".
- No. 12. Page 7, line 21, after "therein", strike the comma and insert "concurrently with the Commission or Board until the filing of the record,".
- No. 13. Page 9, line 16, after "Subsections", strike "(b) and (c)" and insert "(b), (c), and (d)".
- No. 14. Page 10, between lines 8 and 9, insert a new subsection:
- (d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.
- No. 15. Page 10, line 20, strike "third sentence" and insert "third and fourth sentences."
- No. 16. Page 10, line 21, strike out "is" and insert "are".
- No. 17. Page 11, line 3, after "Code.", add—
- The testimony and evidence taken or submitted before the said Commission, duly filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case.
- No. 18. Page 12, lines 18 and 19, strike "exclusive jurisdiction," and insert "jurisdiction, which upon the filing of the record shall be exclusive,".
- No. 19. Page 14, line 21, strike "members" and insert "member".
- No. 20. Page 14, line 23, strike "members" and insert "member".
- No. 21. Page 16, line 21, strike "exclusive jurisdiction" and insert "jurisdiction, which upon the filing of the record shall be exclusive,".
- No. 22. Page 17, line 5, strike "find" and insert "finding".
- No. 23. Page 17, line 6, after "it", strike the period and insert "under the provisions of this Act.".
- No. 24. Page 17, line 22, strike "Board" and insert "Commission".
- No. 25. Page 17, line 23, strike "Board" and insert "Commission".
- No. 26. Page 17, line 24, strike "Board" and insert "Commission".
- No. 27. Page 18, line 22, after "it", strike the period and insert "under the provisions of this Act.".
- No. 28. Page 19, line 18, after "in", insert "the court".

No. 29. Page 20, line 13, strike "The third sentence" and insert "(a) The second and third sentences".

No. 30. Page 20, line 15, strike "is" and insert "are".

No. 31. Page 20, line 16, after "follows:", insert—

A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose.

Page 20, between lines 19 and 20 insert the following paragraph:

(b) The first sentence of paragraph (3) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended, is amended to read as follows: "Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently."

No. 32. Page 22, line 13, after "The" strike "second and third" and insert "second, third and fourth".

No. 33. Page 23, between lines 4 and 5, insert a new paragraph as follows:

The evidence so taken or admitted and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

No. 34. Page 24, line 4, strike "exclusive jurisdiction" and insert "jurisdiction, which upon the filing of the record shall be exclusive,".

No. 35. Page 24, line 15 and 16, strike "exclusive jurisdiction" and insert "jurisdiction, which upon the filing of the record shall be exclusive,".

No. 36. Page 24, line 18, after "(a)" strike "The third sentence of paragraph" and insert "Paragraph".

No. 37. Page 24, line 21, after the colon insert the following subsection:

(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose.

No. 38. Page 28, line 4, strike out all of section 32 and insert in lieu thereof:

Subsection (b) of section 207 of the Act of September 23, 1950, as amended (64 Stat. 974), is amended by adding at the end of that subsection three additional sentences reading as follows: "The local educational agency affected may file with the court a petition to review such action. A copy of the

petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. Upon the filing of the petition the court shall have jurisdiction to affirm or set aside the action of the Commissioner in whole or in part."

No. 39. Page 20, line 4, strike the figure "(1)" and insert the letter "(l)".

No. 40. Page 22, line 12, strike "a" immediately before "part".

No. 41. Page 26, line 23, insert a period immediately after "Code".

EXPLANATION OF AMENDMENTS

Amendment No. 1.—Several of the Federal agencies and the American Bar Association propose that the bill be amended to require the adoption of *uniform* rules. While uniformity is highly desirable, there will be special conditions in particular circuits which will not obtain generally. This amendment seeks substantial uniformity by requiring the approval of the Judicial Conference to rules promulgated by the various courts of appeals while at the same time permitting individual courts to make special provision required by peculiar local conditions.

The latter part of this amendment makes it clear that the rules to be adopted by the courts of appeals may cover the matters of time of filing, manner of filing, and contents of the record *to the full extent* that such matters or any of them are not specifically covered by applicable statutes.

Amendment No. 2.—Subsection (a) of new section 2112 has been expanded in accordance with suggestions made at the hearing on May 17, 1956, to provide that the rules of court may authorize the agency concerned, to file a certified list of the materials comprising the record and retain the actual papers in its physical custody to be transmitted to the court only when and if required by the court in its consideration of the case. This procedure has been recently tried in several of the courts and found feasible. In carrying out this provision the instant amendment was inserted to provide that the filing of a certified list of materials will be deemed full compliance with any provision of law requiring the filing of the record.

Amendment No. 3.—This amendment was made in the interest of precision to implement the provisions of amendment No. 2.

Amendments Nos. 4 and 5.—The bill, as introduced, provided that if proceedings have been instituted in two or more courts with respect to the same order, the agency would be required to file the record in that court which in its judgment would be most convenient to the parties, and the other courts were then to transfer their proceedings to it. This was intended to provide statutory authority for the procedure developed by the courts in this situation. See *Columbia Oil and Gas Co. v. Securities and Exchange Commission* (3d Cir. 1943, 134 F. 2d 265); *L. J. Marquis & Co. v. Securities & Exch. Com.* (2 Cir. 1943, 134 F. 2d 335); *L. J. Marquis & Co. v. Securities & Exchange Com.* (3 Cir. 1943, 134 F. 2d 822). This provision would have provided a general rule applicable to all agency review cases. The use of the phrase "in its judgment" was intended to make clear that the choice of forum in such a case was in the discretion of the agency and was not to be reviewable except for clear abuse of discretion. How-

ever, the American Bar Association and several of the agencies found fault with the provision and recommended that the court of appeals—and not a Federal agency—in which the first proceeding was instituted, should have exclusive jurisdiction of all proceedings involving the same order with authority to transfer all the proceedings to another court of appeals if that would best serve the convenience of the parties. The committee has adopted this suggestion, and the instant amendments carry out this recommendation.

Amendment No. 6.—It was suggested that additional portions of the record ought to be ordered filed when the court thinks it “proper.” It need not be shown to be “necessary” before the court may do so. Accordingly, this amendment was adopted to carry out the suggestion.

Amendment No. 7.—Following the introduction of the bill, it developed that as a result of recent rule changes, no court of appeals now requires the entire record to be printed. This limitation rendered the provision affected by this amendment unnecessary.

Amendment No. 8.—The American Bar Association suggested that the petitioner for review and the respondent in enforcement proceedings should have the option to require the entire proceeding to be filed in the court. Since subsection (b) of new section 2112 includes a provision giving the agencies the right, at their option, to file the entire record in the courts, it was deemed proper that petitioners and respondents, at their option, should also have the same right, and this amendment so provides.

Amendment No. 9.—This amendment makes a technical change in the bill.

Amendment No. 10.—This amendment was adopted to make clear that the bill is not intended to apply to the review of decisions of the Tax Court, which is not an administrative agency, or to the review of agency orders which are by law reviewable by the district courts and not, in the first instance, by the several courts of appeals.

Amendments Nos. 11 and 12.—These amendments remove any possible ambiguity as to the right of the Federal Trade Commission to modify or revoke an order under review prior to the filing of the record. At the same time, the amendments do not interfere with the basic scheme of the bill to make clear in all cases that jurisdiction attaches in the court of appeals for the purpose of making interlocutory and procedural orders from the time of the filing of the petition for review.

Amendments Nos. 13, 14, 15, 16, and 17.—These are clarifying amendments, and were suggested by the Department of Agriculture.

Amendment No. 18.—This amendment was adopted at the suggestion of the Securities and Exchange Commission to make clear that that Commission has concurrent jurisdiction with the court of appeals to modify, amend, or revoke its own order between the time the petition for review is filed and the time the record is filed. This permits the Commission to carry out the provisions of the Securities and Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. It was pointed out at the hearing that, in these cases, there is no advantage to be gained by conferring exclusive jurisdiction on the court of appeals before the record is filed in that court. In fact, in some instances, such a procedure might have the effect of depriving a party of the right of a rehearing before the Com-

mission and might be construed to deny the Commission the power to stay its own orders after the filing of a petition for review.

Amendments Nos. 19 and 20.—These amendments correct typographical errors.

Amendment No. 21.—See explanation of amendment No. 18 above.

Amendment No. 22.—This amendment corrects typographical error.

Amendment No. 23.—This is a clarifying amendment.

Amendments Nos. 24, 25, and 26.—These amendments are needed to indicate that the definition of “commission” includes both the Federal Maritime Board and the Department of Commerce, as set out in section 905 (e) of the Merchant Marine Act of 1936, as amended.

Amendment No. 27.—This is a clarifying amendment.

Amendment No. 28.—This is a technical amendment.

Amendments Nos. 29, 30, and 31 are procedural amendments.

Amendments Nos. 32 and 33.—These are clarifying amendments suggested by the Department of Agriculture.

Amendments Nos. 34 and 35.—See explanation of amendment No. 18 above.

Amendments Nos. 36 and 37.—These amendments give the courts of appeals jurisdiction upon the filing of the notice of appeal.

Amendment No. 38.—Section 32 of the bill as introduced is deleted by this amendment. The Federal Coal Mine Safety Board of Review pointed out that the procedure upon review of the orders of that Board is not analogous to other review proceedings covered by the bill. The Board’s proceedings are purely advisory between parties before the Board and the Board itself is not a party to the review proceeding. After the committee had decided to eliminate these provisions from section 32 of the bill, it further decided, at the suggestion of the Department of Health, Education, and Welfare, to add a provision to amplify section 207 (b) of the act of September 23, 1950, to bring that law in harmony with the other provisions of the bill affecting the Department of Health, Education, and Welfare. This provision now forms section 32.

Amendments Nos. 39, 40, and 41.—These amendments correct typographical errors.

PURPOSE

The purpose of the bill is to permit the several courts of appeals to adopt rules authorizing the abbreviation of the transcript and other parts of the record made before Federal administrative agencies when the orders of those agencies are to be reviewed by the courts of appeals.

In many instances much of the record made before such agencies is not relevant to the questions actually raised on appeal. This legislation, in permitting an abbreviated record to be transmitted, should result in a substantial saving of time and money without interfering with any of the appellate rights which persons now have under existing law.

BACKGROUND

In 1953 the Judicial Conference of the United States referred to its Committee on Revision of the Laws a proposal that existing statutes be amended so as to permit administrative agencies whose orders are to be reviewed by a court of appeals to send to the court an abbreviated record where the whole record is not necessary. The proposal also provided for the authorization of the use of the original papers

in appropriate cases in lieu of a transcript, the papers to be returned to the administrative agency upon the completion of the review proceedings. The Judicial Conference committee concluded that the proposal had substantial merit.

An examination of the Federal statutes authorizing judicial review of orders of administrative agencies by that committee disclosed that many of them now specifically require a transcript of the *entire* record to be filed by the agency in the court of appeals. It was thought that these requirements should be eliminated except in those instances where for some other reason it is necessary to file the entire record.

This objective could, perhaps, have been accomplished by a general statute repealing all inconsistent provisions of the various acts providing for judicial review of agency action. But this would have left the law in confusion as to what specific provisions would have been thus repealed by implication. The Judicial Conference committee became satisfied that in order to deal comprehensively with the problem it would be necessary to amend many of the existing statutes.

In addition it seemed advisable to that committee to add a new section 2112 to title 28 of the United States Code which would confer rulemaking power in this field upon the courts of appeals with the approval of the Judicial Conference. Such a statute should, the committee thought, be modeled upon section 6 of the Hobbs Act of December 29, 1950 (5 U. S. C. 1036), which provides for uniform rules promulgated by the courts of appeals with the approval of the Judicial Conference.

The Committee on Revision of the Laws of the Judicial Conference accordingly prepared a tentative draft of such an amendatory statute and submitted it to all the judges of the courts of appeals and to all the agencies involved for their study and suggestions.

It received a large number of constructive suggestions which it embodied in the revision of the bill which was introduced in the 84th Congress as H. R. 6682, and which was the subject of a hearing before Subcommittee No. 3 of the House Committee on the Judiciary on May 17, 1956. Thereafter a further document was compiled made up of hearings, Government agency reports, and other comments (hearings, Serial No. 25, House Committee on the Judiciary, 84th Cong.), and was made available to all interested organizations so that their views could be obtained on the proposed legislation.

When the legislation (H. R. 6788) was introduced in this Congress, further hearings were held. The Judiciary Committee has considered the suggestions and feels that the instant bill, as amended, will make a valuable contribution to the law of appellate administrative procedures.

The bill has been approved in principle by the American Bar Association. It incorporates the recommendation of the President's Conference on Administrative Procedure in this field. It has the approval of the Judicial Conference of the United States.

STATEMENT AND ANALYSIS OF BILL

The instant bill would add to title 28 of the United States Code a new section 2112 entitled "Record on review and enforcement of agency orders." The section includes enforcement as well as review proceedings in the courts of appeals.

Subsection (a) of new section 2112 as set out in section 2 of the bill gives the courts of appeals power to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and the contents of the record in all such proceedings instituted in those courts to review orders of Federal administrative agencies, unless present law affecting those agencies specifically provides a procedure on the subject. The general power granted by section 2112 (a), however, will render separate statutory provisions unnecessary in the future.

The section also provides that the rules of court may authorize the Federal administrative agency concerned to file a certified list of the materials comprising the record and retain the actual papers in its physical custody to be transmitted to the court only when and if required by the court in its consideration of the case. This has been a procedure which has been recently tried in several of the appellate courts and has been found quite feasible, saving both time and money.

As the result of a suggestion by the Securities and Exchange Commission subsection (a) also includes a provision providing that if review proceedings have been instituted in two or more courts with respect to the same order, the Federal administrative agency involved shall file the record in that court in which a proceeding was first instituted. The courts in which other proceedings are pending thereupon will transfer their proceedings to the court of appeals in which the record has been filed. In the interest of justice and for the convenience of the parties, such court may thereafter transfer the proceedings to another court of appeals.

Subsection (b) of proposed section 2112 provides for the abbreviation of the record by the inclusion only of such material as the rules of the court may require, or as the parties, including parties permitted to intervene by the court, may stipulate, or as the court may designate by order. The stipulation or order may provide in an appropriate case, such as a petition for a consent decree enforcing a National Labor Relations Board order, that no record at all be filed. There are in the courts of appeals many cases in which the National Labor Relations Board petitions the court to enter an enforcement decree which has been consented to by the parties concerned. The Board under present law must spend the time and public money required to send the court a complete transcript of the record before the latter can enter the decree requested. Subsection (b) will permit dispensing with the filing of the record in such a case, and a decree may be entered upon the petition and consenting answer or stipulation.

The provisions of subsection (b) will also enable the parties to abbreviate the record by eliminating all material not relevant to the actual questions raised on review, with consequent saving of time and expense. Provision is made, however, that additional portions of the record may be ordered by the court if found to be needed.

If the correctness of a finding of fact is in issue, subsection (b) requires all the evidence to be included in the record except such part as the parties, by stipulation, agree to omit as wholly immaterial to the questioned finding. This provision will enable the court to perform its duty in cases under section 10 (e) of the Administrative Procedure Act to "review the whole record or such portions thereof as may be cited by any party."

Several of the Federal agencies advised the committee that in some instances it would not only delay proceedings but it would be more

costly to abbreviate the record than it would be to send it in its entirety to the court of appeals. The subsection therefore contains a provision giving Federal agencies the right, at their option, to file the entire record instead of an abbreviated record.

The American Bar Association suggested, among other things, that the petitioner for review and the respondent in enforcement proceedings, should also have the right, at their option, to require the filing of the entire record. In accordance with this recommendation, the bill provides for the filing of the entire record of the proceedings upon such request.

Subsection (c) of new section 2112 as set out in section 2 of the bill authorizes the transmittal of certified copies instead of the original papers. A number of agencies pointed out that many of their records are public records which are required to be kept in their offices open to public inspection. It was also pointed out that in many instances an agency must retain the original papers for use in connection with a related case which is before it but which is not on review. The subsection therefore contains a provision authorizing the transmittal of the original papers at the option of the agency. It also provides that this situation may pertain to a part, as well as to the whole of, the record so that an agency may transmit some original papers and certified copies of others. All original papers and certified copies are to be returned to the agency at the conclusion of the case.

The bill is not intended to apply to the review of decisions of the Tax Court, which is not an administrative agency, or to the review of such agency orders as are by law reviewable by the district courts, such as exclusion and deportation orders. The Department of Justice has suggested that this be made explicit in the proposed legislation. Therefore, subsection (d) has been added to the proposed section 2112 to clarify the congressional intent.

Many of the statutes providing for the enforcement or review of agency orders provide that the courts of appeals acquire jurisdiction upon the filing of the petition for review. Many others provide, however, that jurisdiction is not acquired by the courts until the filing of the transcript of the record. It was pointed out at the hearing that this latter provision is illogical and unwise, illogical since it places it within the power of the Federal agency to delay the acquisition of full jurisdiction by the court, and unwise since it raises a serious question as to the extent of the court's power to make orders relating to the filing of the record or other preliminary orders between the time of filing the petition for review and the time the record is actually filed. Accordingly, to take care of this situation, the language of the bill adopts the pattern of the Hobbs Act (5 U. S. C. 1036) relating to the review of orders of certain Federal agencies, and proposes to amend the various statutes to provide in all cases that the reviewing court shall acquire jurisdiction upon the filing of the petition on review.

At the hearings the committee's attention was called to the fact that the Federal Trade Commission act, the Clayton Act, the Packers and Stockyards Act, the National Labor Relations Act, the Federal Power Act and the National Gas Act provide that an agency acting under and pursuant to them may modify or set aside its order after a petition for review has been filed and up to the time of the filing of the record. Giving exclusive jurisdiction to the courts upon the filing of the petition, as the instant bill, as introduced, provides, could work

undue hardship. The bill was therefore amended to provide that although jurisdiction shall be immediately acquired by the court upon the filing of a petition for review, such jurisdiction will be concurrent and shall become exclusive only upon the filing of the record.

Sections 3 to 33 contain provisions which make changes to present law. For the most part those changes are to conform the present provisions of law to section 2 of the bill and are explained in another part of this report under "Explanation of amendments". The agencies, boards, commissions or offices whose orders are to be reviewable under the statutes proposed to be amended by sections 3 to 34 of the bill are the following:

- Section 3. Federal Trade Commission
- Section 4. Interstate Commerce Commission, Federal Communications Commission, Civil Aeronautics Board, Board of Governors of the Federal Reserve System
- Section 5. Postmaster General
- Section 6. Secretary of Agriculture
- Section 7. Contract Market Commission, Secretary of Agriculture
- Section 8. Secretary of the Treasury
- Section 9. Securities and Exchange Commission
- Section 10. Securities and Exchange Commission
- Section 11. Foreign Trade Zone Board
- Section 12. Federal Communications Commission
- Section 13. National Labor Relations Board
- Section 14. Secretary of the Treasury
- Section 15. Securities and Exchange Commission
- Section 16. Federal Power Commission
- Section 17. Federal Maritime Board; Secretary of Commerce
- Section 18. Civil Aeronautics Board
- Section 19. Federal Power Commission
- Section 20. Secretary of Health, Education, and Welfare, Secretary of Agriculture
- Section 21. Secretary of Health, Education, and Welfare
- Section 22. Secretary of Labor
- Section 23. Railroad Retirement Board
- Section 24. Secretary of Agriculture
- Section 25. Securities and Exchange Commission
- Section 26. Securities and Exchange Commission
- Section 27. Public Health Service
- Section 28. Secretary of Agriculture
- Section 29. Subversive Activities Control Board
- Section 30. Detention Review Board
- Section 31. Federal Communications Commission, Secretary of Agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission
- Section 32. Department of Health, Education, and Welfare
- Section 33. Attorney General (Executive Order 10644)
- Section 34. Board of Governors of the Federal Reserve System

VIEWS OF EXECUTIVE DEPARTMENTS

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,
SUPREME COURT BUILDING,
Washington, D. C., April 5, 1957.

HON. SAM RAYBURN,
Speaker of the House of Representatives,
Washington, D. C.

DEAR MR. SPEAKER: On behalf of the Judicial Conference of the United States, I transmit herewith for the consideration of the Congress a draft of a bill concerning the record on review or enforcement of orders of administrative agencies by the courts of appeals.

The purpose of the proposed legislation is to promote economy in and to facilitate the review by the courts of appeals of orders of administrative agencies subject to review by the courts of appeals. It would permit the agencies pursuant to rules adopted by the several courts of appeals, with the approval of the Judicial Conference of the United States, to send to the court an abbreviated record where the whole record is not necessary and authorize the use of the original papers in lieu of a transcript, the papers to be returned to the agency upon the completion of review proceedings and to permit the agency to file in the court a certified list of the materials comprising the record and retain or hold for the court all such materials transmitting the same or any part thereof to the court when and as required by the court.

The bill is the product of approximately 4 years' work by the Judicial Conference Committee on the Revision of the Laws, of which Circuit Judge Albert B. Maris of the third circuit is chairman, during the course of which affected agencies have been consulted and views of the judges through the country solicited and considered. The Judicial Conference of the United States has approved the proposed legislation upon consideration of the report and recommendation of its committee.

The bill would add to chapter 133 of title 28 of the United States Code dealing with miscellaneous provisions concerning judicial review, a new section, 2112, dealing with the record on review and enforcement by the courts of appeals of orders of administrative agencies. Among the principal provisions of the new section are the following:

Power would be given to the several courts of appeals to adopt, with the approval of the Judicial Conference of the United States, rules governing the time, manner of filing, and the contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies in which the applicable statute does not specifically prescribe these matters. The rules could authorize the agency to file in the court a certified list of the materials comprising the record and retain or hold for the court the materials transmitting all or parts thereof to the court as required. It would provide that if proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency concerned shall file the record in that one of those courts "in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved."

The bill would provide that the record to be filed in the court of appeals should consist of the order in question, the findings or report

upon which it was based, and pleadings, evidence, and proceedings before the agency concerned, or such portions thereof as the rules of the court of appeals might require to be included, the agency or any party to the case might consistently with the rules of the court designate, or the court upon motion of a party, or, after a prehearing conference, upon its own motion might by order designate to be included. It might be provided in an appropriate case by stipulation or order that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact was questioned, all of the evidence should be included except such as by stipulation filed with the agency or in the court the parties concerned might agree to omit as immaterial to the questioned finding. The agency involved might as its option, if the rules of the court of appeals in which the proceeding was pending did not require the printing of the entire record, file in the court the entire record without abbreviation.

This is in accordance with the pattern of a late congressional enactment on the subject, the act of December 29, 1950, relating to the review of orders of the Federal Communications Commission, and takes it out of the power of administrative agencies which they have under some present provisions to retard the gaining of full jurisdiction by the court of appeals by delaying the filing of the record. Various other perfecting amendments of existing statutes are included in the bill.

It is believed that the bill if enacted will simplify the procedure for the review or enforcement by the courts of appeals of orders of administrative agencies, will be conducive to economy and expedition in the proceedings and in their determination and will therefore be in the interest of the litigants and the public. It is accordingly hoped that the bill may be favorably considered by the Congress and in due course be enacted.

Sincerely yours,

ELMER WHITEHURST,
Acting Director.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D. C., June 26, 1957.

Re H. R. 6788, 85th Congress, 1st session, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. CELLER: In response to your letter of May 16, 1957, I enclose 35 copies of a memorandum setting forth the comments of the Commission on the above bill.

The Commission has been advised by the Bureau of the Budget that it has no objection to the views expressed in the attached comments.

Sincerely yours,

ANDREW DOWNEY ORRICK,
Acting Chairman.

MEMORANDUM OF SECURITIES AND EXCHANGE COMMISSION ON H. R. 6788, 85TH CONGRESS, 1ST SESSION, A BILL TO AUTHORIZE THE ABBREVIATION OF THE RECORD ON THE REVIEW OR ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES BY THE COURTS OF APPEALS, ETC.

This Commission would be affected by sections 2, 9, 10, 15, 25, 26, and 33 of H. R. 6788, and these comments are limited to those sections.

We are in accord with the general objectives of the bill. We believe, however, that the bill should be amended so that the exclusive jurisdiction of a court of appeals will not attach to a particular proceeding until the filing of the record with the court by the Commission. In this respect the bill would not affect proceedings for review of actions of this Commission under the Securities Act of 1933, where the time the exclusive jurisdiction of the reviewing court attaches is not specified. It would affect review of Commission actions under the other laws the Commission administers. The Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940 and the Investment Advisers Act of 1940 presently provide that the court of appeals with whom a petition for review is filed shall have exclusive jurisdiction upon the filing of the transcript of the record by the Commission. This generally occurs some days after the filing of the petition. Sections 10, 15, 25, and 26 of the bill would amend the court review provisions of those statutes to provide that upon the filing of a petition for review the court of appeals would have exclusive jurisdiction to affirm, modify, or set aside the Commission's order in whole or in part. We believe that the word "record" should be substituted for the word "petition" in the last sentence of the proposed amendment contained in each of those sections, so that there would be no acceleration of the date of the exclusive jurisdiction of the court of appeals.

We are aware of no advantage to be gained by conferring exclusive jurisdiction on the court of appeals before the record is filed in that court, and we believe that in some instances this (1) might have the effect of depriving a party of the right to a rehearing before the Commission; (2) might be construed to deny the Commission the power to stay its own orders after the filing of a petition for review; and (3) may be inconsistent with the provisions of section 2 of the bill, which would authorize the Commission where a petition has been filed in more than one court of appeals to file the record in that court where the Commission believes the proceedings might be carried on with the greatest convenience to all the parties. These possibilities arise from the fact that the proceedings before the Commission often involve various persons entitled to seek review.

(1) Rule XII (e) of the Commission's Rules of Practice (17 C. F. R. sec. 201.12 (e)) permits the filing of a petition for rehearing within 5 days after entry of the order complained of. Under the bill in its present form if one of the parties to the proceeding should file a petition for review before another party files a petition for rehearing, the Commission may lack jurisdiction to entertain the petition for rehearing for the reason that exclusive jurisdiction to modify or set aside the Commission's order in whole or in part would be vested in the court of appeals. This would deprive the Commission of the power to modify its order in light of objections or changed circumstances called

to its attention by a petition for rehearing or otherwise. Modification of an order, of course, may sometimes eliminate the basis for further litigation. Moreover, since proceedings before the Commission frequently involve more than one issue, the Commission may be deprived of power to modify its own order with respect to an issue which is not involved in the petition for review.

(2) Applications to the Commission for stays pending appellate court review are frequently made after the issuance of Commission orders. The Commission's familiarity with the case at this stage gives it a peculiar advantage in passing upon such applications. Where such applications are presented to an appellate court, the court generally has the benefit of the Commission's prior determination on the question of a stay. This may no longer be true if the proposed amendment is construed to deprive the Commission of jurisdiction in the matter once a petition for review has been filed.

(3) The Federal securities statutes commonly permit court review proceedings to be instituted in either the Court of Appeals for the District of Columbia Circuit or in the court of appeals for the circuit in which the allegedly aggrieved person resides or has his principal place of business. (See, e. g., sec. 24 (a) of the Public Utility Holding Company Act of 1935, 15 U. S. C., sec. 79x (a)). The proposed change may create a problem of construction with regard to the respective jurisdictions of the various courts of appeals where several petitions for review of a single Commission order are filed by various parties in different courts. Section 2 of the bill would amend title 28 of the United States Code by adding section 2112 (a), which would authorize the Commission to file the record in that court where the proceedings could be carried on with the greatest convenience to all the parties and would require the other courts to transfer the proceedings therein to the particular court in which the record was filed. This appears inconsistent with the language of the bill which would give the first court "exclusive jurisdiction" on the filing of the petition.

DEPARTMENT OF AGRICULTURE,
Washington, D. C., June 5, 1957.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR CONGRESSMAN CELLER: This is in reply to your letter of May 16, requesting the views of this Department with respect to H. R. 6788, 85th Congress, 1st session. We recommend the enactment of the bill provided that it is amended as herein suggested.

The main purpose of the bill is to authorize administrative agencies to abbreviate the administrative records to be reviewed in courts of appeals. We believe, on the basis of our experience, that generally it is more practicable to certify to the court the entire administrative record in a case. Unless a substantial portion of the administrative record can be omitted, e. g., a large block of pages in sequence from the transcript of the evidence, an attempt to abbreviate the record is wasteful of effort and productive only of relatively inconsequential results. Also in some cases the relevancy of substantial parts of the record cannot be known until the appellant's brief has been filed on appeal, setting forth the appellant's points or questions

on which judicial review is sought. Haggling by the parties with respect to the material to be included in the record, on appeal, may result in the need for extensions of time, for filing the record, and resultant delays in the enforcement of the agency's order. In view of these circumstances, we believe that an agency and the interested parties should be permitted to stipulate with respect to an abbreviated record on appeal, but that the administrative agency should have the unqualified right to file the entire record in a proceeding if the agency deems that action to be appropriate.

Our views with respect to the provisions for an abbreviation of the record are consonant with the recommendations and report of the Conference on Administrative Procedure called by President Eisenhower on April 29, 1953. The Conference recommended that legislation be adopted authorizing the filing of an abbreviated record by an agency "unless such agency in its sole discretion elects to file the entire record * * *" (recommendation A-2). The Conference further stated, at page 50 of its report, that "[a]lthough perhaps not strictly necessary, paragraph (a) of the recommendation, giving the agency the option of filing the entire record, is designed to make it clear beyond any doubt that no abbreviation will be required where the effort and expense involved in segregating those parts not necessary to be filed from the rest of the record is disproportionate to the benefits gained by a shortened record, or where, for any other reason, the agency considers it undesirable to abbreviate the record."

The bill provides that if the correctness of a finding of fact is in question, all of the evidence shall be included in the record unless the parties stipulate for the omission of certain evidence. However, we have had experience with a number of cases involving statutory construction where the issues had their rootage in extensive testimony, e. g., *Grant v. Benson* (229 F. 2d 765 (C. A. D. C.), certiorari denied, 350 U. S. 1015), and in such cases, as well as those involving evidentiary issues, we believe that it is essential that the agency have the right to certify the entire record.

The bill further provides on page 4, lines 15-21, that "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation." We recommend that the qualifying words, "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court," be deleted. The courts do not require the printing of the entire record and, therefore, we do not believe that the qualifying language serves any useful purpose. Also, inasmuch as the judiciary is in favor of reducing the size of administrative records, there would seem to be no basis for a rule requiring the printing of the entire record. The relevant or material parts of the record, as selected or designated by the parties, are printed on appeal, but the rules are somewhat different with respect to the procedure to be followed in arriving at that result.

If the bill is amended to permit the agency, without qualification, to file the entire administrative record, we recommend the enactment of section 2 of the bill providing for abbreviated records and, also, section 6 of the bill relating to the Packers and Stockyards Act, sec-

tion 7 of the bill relating to the Commodity Exchange Act, section 20 (b) of the bill relating to the Federal Food, Drug, and Cosmetic Act, section 24 of the bill relating to the Federal Seed Act, section 28 of the bill relating to the Sugar Act of 1948, and section 31 of the bill relating to the act of December 29, 1950.

Our further recommendations relate to clarifying amendments.

We suggest that the word "uniform" be inserted just prior to the word "rules" on page 2, line 8, of the bill and that the words "applicable in all courts of appeals" be inserted after the word "rules." The preamble to the bill states that its purpose is to make "uniform" the law relating to the record on review or enforcement of administrative orders and, therefore, we believe that the bill should make it plain that the rules are to be "uniform."

We recommend that a comma be inserted after the word "shall" on page 3, line 1, of the bill and that the following phrase be inserted: "irrespective of any other applicable statutory provisions." In view of the first sentence in paragraph (a) on page 2, i. e., that the courts of appeals shall have power to prescribe the time and manner of filing and the contents of the record where the "applicable statute does not specifically prescribe such time or manner of filing or contents of the record," we are not sure, under the present language of the bill, whether the provisions for transferring the proceedings to a single court where two or more actions are instituted in different courts of appeals would apply where the applicable statute contains some provisions in this respect. Our recommendation is designed to obviate that uncertainty.

We recommend that the word "or" on page 3, lines 13 and 20, be changed to "and." We believe that the material in subsections (1), (2), and (3) on page 3 of the bill would all be included in the record on appeal, and, therefore, subsections (1), (2), and (3) should not be in the disjunctive.

We recommend that the word "stipulation" on page 3, lines 16 and 17, be changed to "designation." Otherwise, if the rules of the court do not "require" that certain material be included in the record, and if all of the parties do not stipulate with respect to the inclusion of certain material, it would require a motion in court to include the matter in the record, unless, of course, the material happened to be included within the category of material which could be designated irrespective of the provisions of subsections (1), (2), and (3) of section 2 (b) of the bill. If this change is adopted, then we recommend that the sentence beginning on page 3, line 23, be amended to provide that "Such an order, or a stipulation by the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding filed with the agency, board, commission or officer concerned or in the court in any such proceeding may provide in an appropriate case that no record need be filed in the court of appeals."

We recommend that the word "necessary" on page 4, line 11, of the bill be changed to "desirable" or "appropriate" so that the court will not be unduly restricted in permitting additional portions of the record to be certified.

We recommend that "Subsections (b) and (c)" on page 9, line 16, of the bill be changed to "Subsections (b), (c) and (d)," and that the following paragraph be inserted after line 8 on page 10: "(d) The

evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way." The purpose of this recommendation is to eliminate, in paragraph (d) of section 204 of the Packers and Stockyards Act, the reference to the record being "duly certified * * * as aforesaid" inasmuch as H. R. 6788 would eliminate the prior reference in the act to the certification of the record.

We recommend that the words "third sentence" on page 10, line 20, of the bill be changed to "third and fourth sentences", that the word "is" on page 10, line 21, be changed to "are", and that the following sentence be inserted following the sentence ending on page 11, line 3: "The testimony and evidence taken or submitted before the said commission, duly filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case." The purpose of this recommendation is to eliminate the words "duly certified * * * as aforesaid" from the fourth sentence of section 6 (a) of the Commodity Exchange Act, inasmuch as H. R. 6788 would eliminate the prior reference in the act to the certification of the record.

We recommend that the phrase "the weight of evidence, shall in like manner be conclusive" on page 11, line 15, of the bill be changed to the terminology appearing on page 8, lines 12 to 15, i. e., "substantial evidence, determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive." We believe that the original phrase "the weight of evidence" was intended by Congress to mean the "substantial weight of evidence" rather than the "greater weight of evidence." The United States Court of Appeals for the Seventh Circuit has applied the phrase "the weight of evidence" substantially the same as the familiar substantial evidence test. (See *Great Western Food Distributors v. Brannan*, 201 F. 2d 476, 479-480, certiorari denied, 345 U. S. 997.) The court held that it "would seem, then, that the function of this court is something other than that of mechanically reweighing the evidence to ascertain in which direction it preponderates; it is rather to review the record with the purpose of determining whether the finder of the fact was justified, i. e., acted reasonably, in concluding that the evidence, including the demeanor of the witnesses, the reasonable inferences drawn therefrom and other pertinent circumstances, supported his findings" (ibid). Although we do not believe that this clarifying amendment is essential, we believe that inasmuch as this section is to be amended in other respects, it would be appropriate to enact this proposed amendment at the same time. Also, the phrase "the weight of the evidence" in the seventh sentence of section 6 (a) of the Commodity Exchange Act (42 Stat. 1001) should be amended in the same manner.

We recommend that the words "second and third" on page 22, line 13, of the bill be changed to "second, third, and fourth", and that the following paragraph be inserted on page 23, following line 4, of the bill: "The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way." The purpose of this recommendation is to eliminate the words "duly

certified * * * as aforesaid" from the fourth paragraph of section 410 of the Federal Seed Act, inasmuch as H. R. 6788 would eliminate the prior reference in the act to the certification of the record.

We believe that the enactment of the bill would not require any additional appropriation.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

E. T. BENSON, *Secretary.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
June 7, 1957.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in response to your request of May 16, 1957, for a report on H. R. 6788, a bill "To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes."

The provisions of the bill are entirely of a technical legal character and, except for several technical changes not pertinent to this Department, are the same as the provisions of H. R. 6682, 84th Congress, on which bill this Department reported to your committee last year. Our comments on the present bill are therefore the same as our comments on the earlier bill, except for necessary changes in section, page, and line references and except for drawing attention to an omission in the nature of a typographical error. These changes are set forth in a revision sheet attached to the enclosed copy of our last year's comments.

Subject to the committee's consideration of the suggestions made in the enclosed memorandum, we would have no objection to enactment of the bill.

The Bureau of the Budget advises that it perceives no objection to the submission of this report to your committee.

Sincerely yours,

ELLIOT L. RICHARDSON,
Assistant Secretary.

[Revision Sheet to Department of Health, Education, and Welfare's Comments on H. R. 6682, 84th Cong., for H. R. 6788, 85th Cong.]

In comments on H. R. 6682—

(1) On page 3, part 4, second paragraph, delete the second and third sentences of that paragraph and substitute the following in place thereof:

"Line 19 on page 19 contains a typographical error. That portion of the bill should read: '*the court the record, etc.*' It is obvious that the two words italicized were omitted from the printed version of the bill. Also the reference 'subsection (1)' on page 20, line 4, is a typographical error which should read 'subsection (l)'."

(2) On page 4, part 6, first paragraph, delete "17-23" and substitute in place thereof "18-24".

(3) Again on page 4, part 7, change, where used in that part, "33" to "35", "28" to "29", and "34" to "36".

JULY 11, 1956.

COMMENTS ON H. R. 6682

A bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes

We understand that the bill embodies a legislative proposal of the Committee on Revision of the Laws of the Judicial Conference of the United States. It reflects to some extent suggestions made by this Department to Judge Albert B. Maris, Chairman of that Committee, in connection with a preliminary draft of the bill.

The whole matter of records and briefs on review of administrative action has also been under study by the President's Conference on Administrative Procedure. We cooperated with the Conference's Committee on Judicial Review. The Committee's recommendations adopted by the Conference appear on pages 4 and 5, Report of the Conference on Administrative Procedure. These recommendations concern only the filing of an abbreviated record and do not also concern rule-prescribing power of the courts of appeals as to the time and manner of filing, and the contents of, the record, as the bill does. However, the President's Conference, in its comments on this matter, expressly stated that its recommendation "is not intended to constitute an exclusive prescription of the provisions of such a statute, nor is it intended to preclude the addition of other provisions, if such are determined to be desirable or necessary." It then called attention to the preliminary draft statute of the Committee on Revision of Laws of the Judicial Conference. Within their scope the recommendations of the President's Conference are substantially in accord with the provisions of the bill.

Subject to the committee's consideration of the comments and suggestions made below, the provisions of the bill, insofar as they involve the interests of this Department, would seem to constitute desirable steps toward facilitating judicial review of administrative action by courts of appeals and toward the promotion of uniformity in that respect.

Our specific comments on the provisions of the bill of concern to the Department are as follows:

1. Subsection (a) of the proposed title 28, United States Code, section 2112, which is in section 2 of the bill, would empower the United States courts of appeals, with respect to proceedings for judicial review of agency orders by such courts, to adopt rules prescribing the time and manner of filing, and the contents, of the record where the applicable statute does not specifically prescribe these requirements. In the case of this Department, this provision would apply to the following proceedings:

(a) Review—under section 701 (f) (1) of the Federal Food, Drug, and Cosmetic Act, as amended by section 21 of this bill—of orders to

issue, amend, or repeal regulations under section 401, 403 (j), 404 (a), 406 (a) and (b), 501 (b), 502 (d), 502 (h), 504, or 604 of the Federal Food, Drug, and Cosmetic Act;

(b) Review of orders on tolerances for pesticide chemicals in or on raw agricultural commodities (sec. 408 (i) of the Federal Food, Drug, and Cosmetic Act, as amended by sec. 20 of this bill);

(c) Appeals from certain actions of the Surgeon General under the hospital and medical facilities construction program (sec. 632 (b) of the Public Service Health Service Act (42 U. S. C. 291j (b)), as amended by sec. 27 of this bill);

(d) Review of certain actions of the Commissioner of Education relating to the construction of school facilities in areas affected by Federal activities (sec. 207 (b) of the act of Sept. 23, 1950, as amended (20 U. S. C. 277 (b))).

2. Subsection (a) of the proposed section 2112 would, when judicial-review proceedings have been instituted in two or more courts of appeals with respect to the same agency order, require the agency to "file the record in that one of such courts in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved" (presumably including the agency). The other courts would thereupon be required to transfer their cases to the court in which the record was filed. The courts would seem to have no discretion in the matter.

In the light of experience, we believe that provisions for bringing together and in effect consolidating parallel review proceedings in different circuits involving the same administrative action are desirable from the point of view of conserving the time of the courts and administrative agencies, avoiding unnecessary expense in filing two or more copies of the record, and avoiding delay, uncertainty, and confusion, and possible conflicts of opinion among coordinate courts. The committee may, however, wish to consider whether, as proposed by the bill, the provision should be mandatory upon the agency, whether the agency's judgment should be final, and whether the court selected should necessarily be one of the courts in which a review proceeding was theretofore commenced. A complication, moreover, may arise out of the fact that the record may already have been filed in one court, and the case heard and possibly even decided, by that court before judicial-review proceedings are commenced elsewhere.

One possible alternative would be to provide that the court in which a proceeding for judicial review of an agency order is first commenced shall have exclusive jurisdiction and that other courts shall transfer their cases to that court, except that the first court, upon application of the agency or of any other party in interest, may transfer all the proceedings (including those transferred to it from other courts) (a) to any other court of appeals stipulated by the parties or (b), in the absence of such stipulation, to any other court of appeals in which in the deciding court's judgment the convenience of all the parties would be best served.

3. Subsection (b) of the proposed section 2112 would authorize the use of an abbreviated record, in accordance with court rules, stipulation of the parties, or order of the court, but provides that if the rules of the court do not require the printing of the entire record in that court the agency may nevertheless, at its option, file the entire record of the proceedings before it without abbreviation.

These provisions are satisfactory to us in their present form.

4. Section 20 of the bill would amend section 408 (i) (2) and (3) of the Federal Food, Drug, and Cosmetic Act (relating to tolerances for pesticide chemicals in or on raw agricultural commodities) in three respects: A copy of the petition for judicial review filed with the court would have to be forthwith transmitted by the clerk of the court to the Secretary whose order is to be reviewed, instead of being "served" on the Secretary. Secondly, the time, manner, and contents of the administrative record to be filed with the court would have to conform to the proposed section 2112 of title 28 of the United States Code. Thirdly, the jurisdiction of the court would attach upon the filing of the petition for judicial review, not (as under present law) upon the filing of the record with the court.

We believe that these changes would be desirable improvements in the law, though we regard the first change above as largely one of form rather than of substance. The reference to "subsection (1)" on page 19, line 25, however, is a typographical error. It should read "subsection (l)".

5. Section 21 of the bill would amend section 701 (f) of the Federal Food, Drug, and Cosmetic Act to provide in effect that the filing and contents of the administrative record with the court shall be governed by the proposed section 2112 of title 21 United States Code. We believe that, in the interest of uniformity within the Federal Food, Drug, and Cosmetic Act the additional changes contained in section 20 of the bill, above referred to, should also be incorporated in section 21. We therefore suggest that section 21 be changed to read as follows:

"SEC. 21. (a) The second and third sentences of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U. S. C., 371 (f)), are amended to read as follows: 'A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code.'

"(b) The first sentence of paragraph (3) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 371 (f)) is amended to read as follows: 'Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently'."

6. Similarly, we suggest that, in line with the above-mentioned changes, section 27 (a) of the bill (p. 24, lines 17-23), be changed to read as follows:

"SEC. 27. (a) Paragraph (1) as amended, of section 632 (b) of the Public Health Service Act (42 U. S. C. 291j (b) (1)) is amended to read as follows:

"(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of

such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose, and thereupon the Surgeon General shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code'."

7. Again, in order to make the section on review of actions of the Commissioner of Education consistent with these changes, we suggest the following changes which we believe are largely clarifying rather than additive of substantive law. Change section 33 in the bill (p. 28, lines 11-12) to section 34 and add a new section to read as follows:

"SEC. 33. Section 207 (b) of the Act of September 23, 1950, as amended (20 U. S. C. 277 (b)) is amended by adding at the end of that subsection the following: 'A copy of a notice of appeal shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. Upon the filing of a notice of appeal with it, the court shall have jurisdiction to affirm or set aside the decision of the Commissioner in whole or in part.'"

FEDERAL MARITIME BOARD,
Washington, D. C., June 5, 1957.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in reply to your request of May 16, 1957, for the views of the Federal Maritime Board with respect to H. R. 6788, a bill To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

The bill would amend chapter 133 of title 28 of the United States Code by adding a new section 2112, which would govern the time and manner of filing, and the contents of, the record to be filed in United States courts of appeals, and the venue of such courts, in proceedings instituted in such courts to review or enforce orders of United States agencies, boards, commissions, and officers. The bill would also amend statutes conferring jurisdiction on such courts to review and enforce such orders to make the time of filing the petition to review or enforce the order the uniform time for the attaching of jurisdiction. Under some such statutes, jurisdiction does not now attach until the record is filed.

The new section 2112 (which the bill would add to title 28 of the United States Code) would provide that the record to be filed in courts of appeals in proceedings to review or enforce orders of United States agencies, boards, commissions, or officers shall consist of—

(a) The contents prescribed by the statute conferring jurisdiction on courts of appeals to review or enforce the order if such statute prescribes such contents; or

(b) The order to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer, if (1) the

statute conferring jurisdiction does not prescribe the contents of the record, and (2) the rules of the courts of appeals with venue do not require the printing of the entire record to be filed, and (3) the agency, board, commission, or officer elects to file all of the foregoing; or

(c) If the agency, board, commission, or officer is not eligible under (b) above to elect, or does not elect, to file all of the material there specified, such portions thereof as (1) the rules of the court of appeals with venue require, or (2) the parties by written stipulation, consistent with such rules, designate, or (3) the court upon motion of any party, or on its own motion, designates, but if the correctness of a finding of fact is in question, all the evidence shall be included except such portion thereof as the parties agree to omit.

The bill would authorize the courts of appeals, with the approval of the Judicial Conference of the United States, to make rules, not inconsistent with the foregoing provisions, with respect to the content of the record to be filed, and with respect to the time and manner of filing the record if the statute conferring jurisdiction does not prescribe the time and manner of filing. Since the foregoing provisions authorize the parties to abbreviate the record by stipulation consistent with the rules of the court, and authorize the court by order to designate the contents of the record, the possible area for the operation of such rules with respect to the contents of the record appear to be to limit abbreviation of the record by the parties and to state the limits within which the court would require abbreviation if the agency, board, commission, or officer is not eligible to elect, or does not elect, to file the entire record of the proceedings before it without abbreviation.

The new section would further provide that the agency, board, commission, or officer may transmit to the court of appeals either the original papers comprising the record to be filed or certified true copies of such papers. The apparent purpose of this provision is to authorize the agency, board, commission, or officer to file the original papers in those circumstances in which it considers that the expense of preparing copies would be unjustified. It is evidently intended, nevertheless, that if the bill is enacted the Judicial Conference of the United States might approve rules of court which might under some circumstances require the printing of the entire record to be filed, because subsection (b) of the new section provides that, if the rules of court require the printing of the entire record to be filed, the agency, board, commission, or officer shall not have the option of filing the entire record of the proceedings before it without abbreviation.

Sections 29 and 30 of the Shipping Act, 1916, as amended (46 U. S. C. 828-829), make orders issued by the Federal Maritime Board under that act enforceable in the United States district courts. The bill, therefore, would not apply to proceedings to enforce such orders.

Public Law 901, 81st Congress (the act of December 29, 1950, 64 Stat. 1129; 5 U. S. C. 1031-1042), however, confers on the United States courts of appeals jurisdiction to review orders issued by the Federal Maritime Board under the Shipping Act, 1916, and provides (sec. 6) that the record to be filed in the court of appeals in such proceedings shall consist of the pleadings, evidence, and proceedings before the agency or such portions thereof as the rules of court require

or such portions as the parties, with the approval of the court of appeals, agree upon in writing.

The bill would amend section 6 of Public Law 901 to provide that the record to be filed shall be the record provided for in section 2112 of title 28, United States Code. This amendment would change existing statutory law in the following respect: (1) It would require that all of the evidence be included in the record if the correctness of a finding of fact is in question; and (2) it would give the Board the option of filing the entire record of the proceedings before it without abbreviation in those cases in which the rules of court do not require the printing of the entire record to be filed.

The bill would amend section 611 of the Merchant Marine Act, 1936, as amended, which provides that, if an operating-differential subsidy contractor believes that the United States has without just cause defaulted upon, or canceled, his operating-differential subsidy contract, he may apply to the Maritime Commission, setting forth his contentions, for permission to transfer his vessels to foreign registry, and if the Commission, after hearing, finds affirmatively on the issue, it shall grant the application, but otherwise deny it. Section 611 further provides that, if the application is denied, the contractor may obtain a review of the order of denial in the United States Court of Appeals for the District of Columbia by filing in that court a written petition, a copy of which shall be served upon any member of the Commission, or upon any officer thereof designated for that purpose, and the Commission shall thereupon file in the court a transcript of the record upon which the order was entered, and upon such filing the court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause and to affirm or set aside such order.

Section 17 of the bill would amend this section 611 of the 1936 act to provide that a copy of the petition for review shall be served on a member of the Board rather than on a member of the Commission, that the record provided for in section 2112 of title 28 of the United States Code shall be filed in the court rather than a transcript of the record upon which the order was entered, and that the jurisdiction of the court shall attach when the petition for review is filed rather than when the record is filed.

Reorganization Plan No. 21 of 1950 abolished the Maritime Commission, created the Federal Maritime Board, and divided between the Federal Maritime Board and the Secretary of Commerce the functions the Maritime Commission had under various statutes. Under the plan, the functions under section 611 of the Merchant Marine Act, 1936, would be exercised in some cases by the Federal Maritime Board and in others by the Secretary of Commerce. Under section 905 (e) of the Merchant Marine Act, 1936, as amended (Public Law 586, 82d Cong.; 66 Stat. 760), the word "Commission," as used in the Merchant Marine Act, 1936, means the Federal Maritime Board or the Secretary of Commerce, as the context may require to conform to Reorganization Plan 21 of 1950. Section 17 should be amended to let this definition operate properly under Reorganization Plan No. 21. This can be accomplished simply by restoring in section 17 of the bill the word "Commission" in place of the word "Board" wherever it appears in the section.

The bill would provide for abbreviated records to be filed in courts of appeals in proceedings in those courts to review or enforce orders of agencies, boards, commissions, or officers of the United States and for review or enforcement of such orders on the basis of the original papers, and would make the time of the filing of the petition for review the time for the attaching of the court's jurisdiction.

If section 17 of the bill is amended as suggested, the Federal Maritime Board would have no objection to enactment of the bill.

Sincerely yours,

CLARENCE G. MORSE, *Chairman.*

FEDERAL COAL MINE SAFETY BOARD OF REVIEW,
Washington, D. C., June 4, 1957.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: Reference your letter dated May 16, 1957, relating to H. R. 6788, the Board has requested that I inform you as to its views on this proposed legislation.

The Board fully agrees with the general purposes of the bill, that is, to reduce the costs and simplify the procedures in connection with appellate review. However, for the reasons indicated below, the Board seriously questions the language of the provisions applicable to this agency.

As you will recall, the Board is a completely independent agency created by title II of the Federal Coal Mine Safety Act (66 Stat. 692 et seq.). Its sole duty is quasi-judicial in nature, namely, to hear and determine applications filed with it by coal-mine operators seeking annulment or revision of, and temporary relief from, orders issued by inspectors or the Director of the United States Bureau of Mines, under the Federal Coal Mine Safety Act. The immediate parties to the adversary proceeding before the Board are the coal-mine operator who files the application and the Director of the United States Bureau of Mines. Either the operator or the Director can appeal directly from a Board order to the United States court of appeals for the circuit in which the mine affected is located, and then to the Supreme Court of the United States. The Board itself is not a party to, nor does it participate in any manner in, the appellate proceeding.

Functionally, the Board is thus closely analogous to United States district court judges who, like the Board, are not parties to appeals from their own decisions. The Board is unlike most, if not all, the other agencies subject to H. R. 6788, such as the National Labor Relations Board, the Civil Aeronautics Board, and the Subversive Activities Control Board, which themselves participate in the appeals for review or enforcement of their own decisions and orders.

As to the record to be filed on appeal from a Board order, section 208 (b) of the Federal Coal Mine Safety Act (66 Stat. 702) now reads as follows:

"(b) The party making such appeal shall forthwith send a copy of such notice of appeal, by registered mail, to the other party and to the Board. Upon receipt of such copy of a notice of appeal the Board shall promptly certify and file in such court a complete transcript of

the record upon which the order complained of was made. The costs of such transcript shall be paid by the party making the appeal."

Section 32 of H. R. 6788 would amend the second and third sentences of section 208 (b) to read as follows: "Upon receipt of such copy of a notice of appeal the Board shall file in such court the record upon which the order complained of was made, as provided in section 2112 of title 28, United States Code. The costs of certifying and filing such record shall be paid by the party making such appeal."

Section 2112 of title 28, United States Code, referred to above, is added by section 2 of H. R. 6788 and provides among other things:

"(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be necessary for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation.

The above language in section 2112, while not completely clear in its application to this agency, appears to imply that the Board would be required to participate in determining the scope or nature of the record to be filed on appeal. Such activity would, of course, directly conflict with the statutory position and functions of this agency. The Board, as already mentioned, is not a party to the appellate proceeding and, like United States district court judges, should not therefore be required to determine the record to be filed on appeal from its own order. Although a determination of the appellate court record may be consistent with the statutory duties of other agencies covered by

H. R. 6788, it is wholly inconsistent with the status and functions of this Board under the Federal Coal Mine Safety Act.

It is also significant that section 32 of H. R. 6788 would amend the time within which the Board must file the record in the appellate court. As section 208 (b) of our act now reads, the Board must certify and file the complete transcript of record "promptly" upon receipt of notice of appeal. However, under section 32 of H. R. 6788, the word "promptly" would be deleted and the time for filing would be determined, as provided in the proposed section 2112 (a) of title 28, United States Code, by the rules of the several courts of appeal.

Needless to say, Congress emphasized the need for promptness in the Board's filing of the record on appeal (as well as in other Board actions) to assist in effectuating the basic purpose of the Federal Coal Mine Safety Act; that is, the prevention of major coal-mine disasters. While the provisions of H. R. 6788 might not prevent expeditious action by the Board, the specific mandate in the present law would have been deleted and, to that extent, the congressional purpose might be impaired.

The Board has considered whether any limited changes in the language of H. R. 6788 could be suggested, which would adequately resolve the problems discussed above. However, the core of this bill is set forth in the proposed section 2112 of title 28, United States Code; and that section appears to be broadly framed with reference to agencies differing in status from this Board. Therefore, rather extensive recasting would seem to be required.

In any event, it appears doubtful that the present operation of section 208 (b) of our act requires amendment in order to achieve the results sought by the proposed legislation. For example, there is little possibility that an appeal from a Board order would be filed in more than one appellate court, because section 208 (a) of the present act expressly limits "judicial review" to "the United States Court of Appeals for the circuit in which the mine affected is located."

As to excessive financial burdens on the parties, the cost of certifying the complete transcript of Board records has been so insignificant in each case appealed to date, that no charges have been assessed by the Board for this service. As to the burden on the courts, the size of Board records has been relatively small compared with those of other agencies, so that few, if any, storage difficulties have arisen in this regard. Moreover, under such existing rules as those in the Court of Appeals for the Fourth Circuit, the Board has recently filed merely a certified list of the materials in the record. And the abbreviation of the actual portions of the record considered by the court has likewise been accomplished under present court rules.

In view of the foregoing, you may wish to consider excepting this Board from the application of H. R. 6788. This result could be accomplished simply by deleting section 32 of the proposed bill.

The Board hopes that the above comments may prove of value to you.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

ROBERT J. FREEHLING, *General Counsel.*

CIVIL AERONAUTICS BOARD,
Washington, D. C., June 6, 1957.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D C.*

DEAR CONGRESSMAN CELLER: This is in further reply to your letter of May 16, 1957, acknowledged May 22, 1957, requesting our comment on H. R. 6788, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

The Board believes that the preparation and filing of the complete transcript of the record of the administrative proceeding often involves needless work and expense and sometimes serves to delay the review proceeding. Accordingly, the Board looks with favor upon any proposal which will serve to eliminate these burdens and delays. While we note that many of the changes suggested by the bill have already been incorporated into the existing rules of the various circuit courts of appeals, those rules would appear to be applicable only to the extent that an underlying statutory provision will permit. Legislation along the lines of H. R. 6788 will provide the necessary statutory authority and further will provide for various contingencies not covered by the existing rules.

H. R. 6788 has been examined from the standpoint of its relation to review proceedings involving Civil Aeronautics Board orders, and in general we endorse the objectives and provisions of the bill. However, we have one change to suggest. While the Board favors a procedure which permits the filing of an abbreviated record either by stipulation or by court order, we recommend that the bill be amended so as to permit an administrative agency when it believes it advisable to file a complete record. Since the burden and expense of preparing and filing the record customarily is placed on the agency, it is believed that it should be left to agency option whether a complete record should be filed with the reviewing court, whether negotiations should be entered into looking toward a stipulated record, or whether an order should be sought from the court for leave to file less than the full record. Experience indicates that, in many of the Board's cases, greater time and effort may be required on the part of all concerned in attempting to determine the content of an abbreviated record than would be expended in the present procedure of certifying the entire transcript. Further, negotiation or other procedures looking toward an abbreviated record could be used for purposes of delay. The agency's own interest in eliminating needless work and expense will serve to insure that stipulations will be entered into whenever feasible, or application made to the reviewing court for leave to file less than the complete record in an appropriate case.

Accordingly, the Board recommends that the sentence beginning on line 15, page 4 of H. R. 6788 and ending on line 21, page 4, be stricken and the following substituted:

"The agency, board, commission or officer concerned shall have an option without regard to the foregoing provisions of this subsection, to file in the court in which a proceeding is pending the entire record of the proceedings before it without abbreviation."

Subject to the above recommendation for amendment, the Board endorses the enactment of H. R. 6788.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

JAMES R. DURFEE, *Chairman.*

JUNE 10, 1957.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 6788) to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes.

This bill would authorize the several courts of appeals to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies, boards, commissions and officers, in which the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. It would also provide for abbreviation of such records pursuant to rules of court, stipulation of the parties, or court order. The bill would permit an agency which issued an order to file the original papers in lieu of a transcript and to regain possession of them upon completion of the proceedings in the court of appeals. It would also incorporate the foregoing provisions in a number of existing statutes dealing with review of administrative orders by courts of appeals.

The Department of Justice considers the proposal a laudable effort to eliminate unnecessary expenditures in time and money in the review of agency orders by the courts of appeals. Accordingly, it recommends enactment of the measure. It is noted that at its annual meeting in September 1956, the Judicial Conference reaffirmed its previously expressed approval of this legislation with a minor amendment.

Some concern has been expressed that the broad language of the proposed section 2112 (a) may possibly be construed to apply to certain proceedings not intended to be covered, for example, decisions of the Tax Court and administrative orders for the exclusion and deportation of aliens entered under the provisions of the Immigration and Nationality Act of 1952 (66 Stat. 1166, 8 U. S. C. A. (1101 et seq.)). As you know, Tax Court decisions are presently subject to review by the courts of appeals pursuant to section 7482 of the Internal Revenue Code of 1954 (26 U. S. C. 7482); exclusion and deportation orders, to the extent that judicial review is permissible, are uniformly reviewable in the first instance in the district courts. The apprehension arises because of the broad language of section 2112 (a) that it shall apply

to "all proceedings instituted in the courts of appeals to * * * review * * * orders of administrative agencies, boards, commissions and officers * * *." In this connection it might be both desirable and appropriate to incorporate in the committee reports express language that the bill is not intended to apply to decisions of the Tax Court or to exclusion and deportation orders. Although there would appear to be little basis for believing that the bill in its present form could reasonably be construed to extend to such proceedings, it may nevertheless be wise to dispel any possible ambiguity in this regard.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

INTERSTATE COMMERCE COMMISSION,
June 3, 1957.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR CHAIRMAN CELLER: Your letter of May 16, 1957, requesting an expression of views on a bill, H. R. 6788, introduced by you, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the court of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes, has been referred to our committee on legislation. After consideration by that committee, I am authorized to submit the following comments in its behalf:

The purpose of H. R. 6788 is clearly stated in its title as quoted above. Except for an occasional case arising under section 11 of the Clayton Antitrust Act (15 U. S. C. 21), this bill would not affect the review of orders of the Interstate Commerce Commission. The majority of the orders of this Commission are issued under the Interstate Commerce Act, and, under the provisions of section 1336, title 28, of the United States Code, are reviewable by three-judge United States district courts instead of by United States courts of appeals as in the case of orders of many of the other administrative agencies.

It is noted that section 2 of the bill would provide, among other things, that where proceedings have been instituted in two or more courts of appeal with respect to the same order of the administrative agency, the agency concerned shall file the record in that one of such courts in which, in its judgment, the proceedings may be carried on with the greatest convenience to all of the parties involved. This section would further provide that the other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed by the agency concerned.

While we wholeheartedly favor having such multiple actions determined by a single court, we do not believe that it would be desirable, in such cases, for the defendant agency to have the privilege and duty of determining in which court actions against it shall be determined. It would seem preferable that some arrangement be devised whereby such a determination shall be made by the judiciary.

Subject to the foregoing reservation, we believe that enactment of H. R. 6788 would be desirable.

Respectfully submitted.

OWEN CLARKE, *Chairman,*
ANTHONY ARPAIA,
ROBERT W. MINOR,
Committee on Legislation.

FEDERAL TRADE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, June 11, 1957.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your letter of May 16, 1957, inviting an expression of the views of this Commission upon H. R. 6788, 85th Congress, 1st session, a bill "To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes."

This bill would add a new section to chapter 133 of title 28 of the United States Code and would amend the acts of various administrative agencies, thereby making uniform the law relating to the record on review or enforcement of orders of such agencies. The Commission generally is in accord with the purposes of the bill, but desires to call your attention to an inconsistency in the proposed amendments to the Federal Trade Commission Act and the Clayton Act, contained in sections 3 and 4 of the bill.

Section 3 (a) of the bill, amending the sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112), would provide that "until the record in the proceeding has been filed in a court of appeals of the United States," the Commission may at any time modify or set aside its report or order to cease and desist. Section 3 (c) of the bill, amending subsection (d) of section 5, would provide that the jurisdiction of the court of appeals shall be exclusive upon the filing of the record with the court. These provisions, in substance, are the same as the corresponding provisions of the present statute. They contemplate that the jurisdiction of the court will not attach until the record is filed. But section 3 (b) of the bill, amending the third sentence of subsection (c) of section 5, would provide that the jurisdiction of the court of appeals would attach "Upon such filing of the petition," without reference to the filing of the record. The comparable provision of the present statute provides that such jurisdiction shall attach "upon such filing of the petition and transcript * * *." We think that to remove this inconsistency the third sentence of subsection (c) of section 5 of the Federal Trade Commission Act should be modified so as to provide as follows, the italicized words having been added to the language of the proposed bill: "Upon such filing of the petition *and record, or upon the filing of a stipulation or the entry of an order to the effect that no record need be filed in the court of appeals,* the court shall have jurisdic-

tion of the proceeding and of the question determined therein and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*."

We consider the present provisions of law, which afford the Commission an opportunity to consider an act upon petitions for reconsideration before court review, to be very desirable. They enable the Commission to correct inadvertent errors that occasionally occur, and are quite valuable in preventing unnecessary litigation through the opportunity for careful reconsideration in appropriate instances. We think it would be regrettable to have any inconsistency in, or uncertainty about, the continuance of these useful provisions of existing law.

For the same reasons, like observations are pertinent with reference to section 4 of the bill, amending section 11 of the Clayton Act, as amended (64 Stat. 1127). Section 4 (a) would amend the sixth sentence of the second paragraph of section 11 of the act so as to provide that "Until the record" is filed with a court of appeals the Commission may modify or set aside its report or order to cease and desist. Section 4 (d) would amend the fifth paragraph of section 11 of the act so as to provide that the jurisdiction of the court of appeals shall be exclusive upon the filing of the record with the court. These provisions are substantially the same as the corresponding provisions of the present statute, and contemplate that the jurisdiction of the court will not attach until the record is filed. Section 4 (c) of the bill, however, would amend the third sentence of the fourth paragraph of section 11 of the act so as to provide that the jurisdiction of the court of appeals would attach "Upon the filing of such petition," without reference to the filing of the record.

In order to remove this apparent inconsistency, we think the third sentence of the fourth paragraph of section 11 of the Clayton Act should be modified so as to provide as follows, the italicized words having been added to the language of the proposed bill:

"Upon the filing of such petition *and record, or upon the filing of a stipulation or the entry of an order to the effect that no record need be filed in the court of appeals*, the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive."

We have only one further comment, which relates to the last sentence of subsection (b) of proposed section 2112 of title 28 of the United States Code, contained in section 2 of the proposed bill. That sentence is in the following language: "*If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court* the agency, board, commission or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation." [Italic supplied.]

The Commission is anxious to preserve the option of filing a transcript of the entire record in the court of appeals. While we believe the above language may accomplish this purpose, we see no need for the portion underscored above and suggest that it be stricken.

By direction of the Commission.

JOHN W. GWYNNE, *Chairman.*

N. B.—The Bureau of the Budget advises there is no objection to the submission of this report.

FEDERAL POWER COMMISSION,
Washington, June 7, 1957.

H. R. 6788, 85th Congress, "To authorize the abbreviation of the record * * *".

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: In response to your request of May 16, 1957, there are enclosed copies of the report of the Federal Power Commission on the subject bill.

Sincerely yours,

JEROME K. KUYKENDALL, *Chairman.*

Enclosure No. 104405 (three copies report).

FEDERAL POWER COMMISSION REPORT ON H. R. 6788, 85TH CONGRESS

A bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes

Section 2 of this bill, which is drafted as an amendment to the United States Code, would authorize the courts of appeals (with the approval of the Judicial Conference of the United States) to adopt rules prescribing "the time and manner of filing and the contents of the record" on review of orders of administrative agencies, including the Federal Power Commission; empower the agencies, when petitions for review of the same order are filed in two or more courts, to select the court in which the record shall be filed and the proceeding heard and decided; authorize abbreviation of the record by court rule, or stipulation of all parties, or by court order; permit transmittal of certified lists of materials comprising the record or certified true copies in lieu of originals, and provide for the holding of the originals by the agencies and the ultimate return to such agencies of any originals or copies which may have been filed.

Sections 16 and 19 would respectively amend the review sections of the Federal Power Act and Natural Gas Act¹ to provide expressly that until the filing of the record in a court of appeals the Federal Power Commission can modify or set aside any order "in such manner as it shall deem proper."

Other sections of the act relating mostly to review provisions of statutes administered by other agencies will not be reported on herein.

¹ These sections, unlike sec. 2 of the bill, are drafted as amendments to the statutes, not the United States Code.

In general this Commission is in sympathy with the apparent objectives of sections 2, 16, and 19 of the bill. However, it is not convinced of the necessity for express statutory authority as carried in those sections of the bill. In any event, the Commission believes that they should not be enacted unless certain of their provisions are amended. Our specific comments follow, in the order of the provisions to which they relate:

Page 2, lines 1-5: The bill should be redrafted as an amendment to an existing statute (or as a new statute), not as an amendment to the United States Code. The code is merely evidence of the statutes.

Page 2, lines 6-8: The advisability of making this part of the rule-making power of the several courts of appeals dependent upon approval of the Judicial Conference, which is an extrajudicial advisory body, seems questionable.

Page 2, lines 8, 9 and 14: The bill should not authorize court rule-making on (1) "time * * * of filing," (2) "manner of filing," and (3) "contents of," the record, where existing statutory law covers 1 or 2 but not all three of those matters, for that would authorize court rules to supersede existing statutes which cover 1 or 2 but not all 3 topics. The need for clarification in this regard would seem to be indicated.

Page 2, line 20: The bill would require "the record" (which would mean the original and full record) to be certified and filed or held for the court of appeals. Some clarification of this particular language would seem to be necessary in order to eliminate any possible conflict with the provisions giving the courts power to prescribe rules on the same subject (p. 2, lines 6-14), particularly the provision for rules authorizing the filing of a certified list describing the materials comprising the record in lieu of filing the record itself (p. 2, lines 14-20), and also with the provision (p. 4, line 22, to p. 5, line 13) permitting true copies of the whole or parts of records to be filed in lieu of the original papers. This should be amended by permitting the agency to file in court only lists of the papers and documents comprising the record rather than either the original or a copy.

The Commission believes that it is particularly desirable that legislation on this subject facilitate the shortening of the record by agreement as provided in section 2 (c) of this bill (p. 3, line 24, to p. 4, line 8). In this connection the Commission believes that it would be desirable to further provide, where any question of the sufficiency of the evidence to support the findings or order is raised, that the party raising the question must bear the burden and expense of printing the record for the court except insofar as opposed parties are willing and able to agree to abbreviation of the portions to be printed.

With respect to sections 16 and 19 of the bill (relating to the Federal Power Act and the Natural Gas Act), it is the Commission's view that they are unnecessary and that their omission (and the omission of any corresponding provisions in other sections relating to other court review statutes which may be no more necessary) would greatly simplify the bill. With specific reference to these sections it is presumed that the purported grant of power to this Commission to modify or set aside any finding or order "in such manner as it shall deem proper" is intended to be tied in with the other provisions of those statutes. Consequently, on page 17, line 5, and page 18, line 21.

the words "under the provisions of this act," should be inserted after the words "in part,". The word "find" on page 17, line 5, should be amended to read "finding."

However, legislation on this subject may not be necessary at this time because the entire matter can be handled adequately by court rules. For example, a number of the courts (Court of Appeals 2d, 3d, 4th, 5th, 10th, and the District of Columbia Circuit) have promulgated rules to facilitate the filing of agency records for review. There could readily be opportunity for further experimentation, which is possible under the statutes as they now stand, but in any event the present degree of flexibility in such matters should be preserved.

FEDERAL POWER COMMISSION,
By JEROME K. KUYKENDALL, *Chairman.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed, with matter proposed to be stricken out enclosed in black brackets, and new matter proposed to be added shown in italics:

TITLE 28. UNITED STATES CODE

CHAPTER 133. REVIEW—MISCELLANEOUS PROVISIONS

* * * * *
 2112. *Record on review and enforcement of agency orders.*
 * * * * *

§ 2112. *Record on review and enforcement of agency orders.*

(a) *The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, to the extent that the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts*

in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district court.

SEC. 3. (a) The sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112): "Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until [the transcript of] the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The second and third sentences of subsection (c) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112-113): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission*, and thereupon the Commission [forthwith] shall [certify and] file in the court [a transcript of] the [entire] record in the proceeding, [including all the evidence taken and the report and order of the Commission] *as provided in section 2112 of title 28, United States Code*. Upon such filing of the petition [and transcript] the court shall have jurisdiction of the proceeding and of the question determined therein *concurrently with the Commission until the filing of the record and shall have power to make and enter [upon the pleadings, evidence, and proceedings set forth in such transcript] a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite.*"

(c) Subsection (d) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 113):

"(d) [The] *Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify or set aside orders of the Commission shall be exclusive*" (15 U. S. C., § 45, Federal Trade Commission).

SEC. 4. (a) The sixth sentence of the second paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127): "Until [a transcript of] the record in such hearing shall have been filed in a United States court of appeals, as hereinafter provided, the Commission or Board may at any time, upon such notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The first and second sentences of the third paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127):

"If such person fails or neglects to obey such order of the Commission or Board while the same is in effect the Commission or Board may apply to the United States court of appeals, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall [certify and] file [with its application a transcript of] the [entire] record in the proceeding, [including all the testimony taken and the report and order of the Commission or Board] *as provided in section 2112 of title 28, United States Code*. Upon such filing of the application [and transcript] the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein,

concurrently with the Commission or Board until the filing of the record and shall have power to make and enter [upon the pleadings, testimony, and proceedings set forth in such transcript] a decree affirming, modifying, or setting aside the order of the Commission or Board."

(c) The second and third sentences of the fourth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission or Board and thereupon the Commission or Board [forthwith] shall [certify and] file in the court [a transcript of] the record in the proceeding, as [hereinbefore] provided in section 2112 of title 28, United States Code. Upon the filing of [the transcript] such petition the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence, determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive."*

(d) The fifth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128):

"[The] *Upon the filing of the record with it the jurisdiction of the United States court of appeals to enforce, set aside, or modify orders of the Commission or Board shall be exclusive*" (15 U. S. C., sec. 21, Interstate Commerce Commission, Federal Communications Commission, Civil Aeronautics Board, Board of Governors of the Federal Reserve System).

SEC. 5. The fourth and fifth sentences of the first paragraph of section 2 of the Act of July 28, 1916 (39 Stat. 425): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Post Office Department and thereupon the said department [forthwith] shall [certify and] file in the court [a transcript of] the record [and testimony], as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition the court shall have jurisdiction to affirm, set aside, or modify the order of the department*" (39 U. S. C., sec. 576, Postmaster General (District of Columbia Circuit only)).

SEC. 6 (a) Subsection (c) of section 203 of the Packers and Stockyards Act, 1921 (42 Stat. 162):

"(c) Until [a transcript of] the record in such hearing has been filed in a court of appeals of the United States, as provided in section 204, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer to be heard, may amend or set aside the report or order, in whole or in part" (7 U. S. C., sec. 193, Secretary of Agriculture).

(b) Subsections (b), (c) and (d) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162):

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall [forthwith prepare, certify, and] *thereupon file in the court [a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, and the report and order] as provided in section 2112 of title 28, United States Code. If before such [transcript] record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.*

“(c) At any time after such [transcript] *petition* is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.”

“(d) The evidence so taken or admitted [duly certified] and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.” (7 U. S. C., sec. 194, Secretary of Agriculture.)

(c) The first sentence of subsection (h) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162):

“(h) The court of appeals shall have [exclusive] jurisdiction, *which upon the filing of the record with it shall be exclusive*, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section [240 of the Judicial Code] *1254 of title 28*, if such writ is duly applied for within sixty days after entry of the decree” (7 U. S. C., sec. 194, Secretary of Agriculture).

SEC. 7. (a) The third and fourth sentences of paragraph (a) of section 6 of the Commodity Exchange Act (42 Stat. 1001): “The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, Chairman of said Commission, or any member thereof, and the said Commission shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in such proceedings [including the notice to the board of trade, a copy of the charges, the evidence, and the report and order], *as provided in section 2112 of title 28, United States Code*. The testimony and evidence taken or submitted before the said Commission, duly [certified and] filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case.” (7 U. S. C., sec. 8, Contract Market Commission.)

(b) The seventh and eighth sentences of paragraph (b) of section 6 of the Commodity Exchange Act (42 Stat. 1002), as amended: “A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court* to the Secretary of Agriculture [by delivering such copy to him] and thereupon the Secretary of Agriculture shall [forthwith certify and] file in the court [a transcript of] the record theretofore made, [including evidence received] *as provided in section 2112 of title 28, United States Code*. Upon the filing of the [transcript] *petition* the court shall have jurisdiction to affirm, to set aside, or modify the order of the Secretary of Agriculture, and the findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall in like manner be conclusive” (7 U. S. C., sec. 9, Secretary of Agriculture).

SEC. 8. The third and fourth sentences of the second paragraph of subsection (b) of section 641 of the Tariff Act of 1930, as amended (49 Stat. 865): “A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court* to the Secretary of the Treasury, or [upon] any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall [certify and] file in the court [a transcript of] the record upon which the order complained

of was entered, *as provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (19 U. S. C., sec. 1641, Secretary of the Treasury).

SEC. 9. The second sentence of subsection (a) of section 9 of the Securities Act of 1933 (48 Stat. 80): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court* to the Commission, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*" (15 U. S. C., sec. 77i, Securities and Exchange Commission).

SEC. 10. The second and third sentences of subsection (a) of section 25 of the Securities Exchange Act of 1934 (48 Stat. 901): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court* to any member of the Commission, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] petition such court shall have [exclusive jurisdiction] *jurisdiction, which upon the filing of the record shall be exclusive*, to affirm, modify, and enforce or set aside such order, in whole or in part."

SEC. 11. The third sentence of subsection (c) of section 18 of the Act of June 18, 1934 (48 Stat. 1002): "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in the proceedings held before it under this section, [the charges, the evidence, and the order revoking the grant] *as provided in section 2112 of title 28, United States Code*" (19 U. S. C., sec. 81r, Foreign Trade Zone Board).

SEC. 12. The second sentence of subsection (d) of section 402 of the Communications Act of 1934, as amended (66 Stat. 719): "Within thirty days after the filing of an appeal, the Commission shall file with the court [a copy of the order complained of, a full statement in writing of the facts and grounds relied upon by it in support of the order involved upon said appeal, and the originals or certified copies of all papers and evidence presented to and considered by it in entering said order] *the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code* (47 U. S. C., sec. 402, Federal Communications Commission (District of Columbia Circuit only)).

SEC. 13. (a) Section (d) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147):

"(d) Until [a transcript of] the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside; in whole or in part, any finding or order made or issued by it."

(b) The first, second, fifth, and seventh sentences of subsection (e) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147):

"(e) The Board shall have power to petition any court of appeals of the United States [(including the United States Court of Appeals for the District of Columbia)], or if all the courts of appeals to which

application may be made are in vacation, any district court of the United States [(Including the District Court of the United States for the District of Columbia)], within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall [certify and] file in the court [a transcript of] the [entire] record in the proceedings [including the pleadings and testimony upon which such order was entered and the findings and order of the Board], as provided in section 2112 of title 28, United States Code. Upon [such] the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter [upon the pleadings, testimony, and proceedings set forth in such transcript] a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its [members] member, agent, or agency, and to be made a part of the [transcript] record. * * * [The] Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in [sections 239 and 240 of the Judicial Code, as amended [(U. S. C., title 28, secs. 346 and 347)] section 1254 of title 28.]

(c) The second and third sentences of subsection (f) of section 10 of the National Labor Relations Act, as amended (61 Stat. 148): "A copy of such petition shall be forthwith [served upon] transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court [a transcript of] the [entire] record in the proceeding, certified by the Board [including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board] as provided in section 2112 of title 28, United States Code. Upon [such] the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same [exclusive] jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive" (29 U. S. C., sec. 160, National Labor Relations Board).

SEC. 14. The third and fourth sentences of subsection (h) of section 4 of the Federal Alcohol Administration Act (49 Stat. 980), as amended: "A copy of such petition shall be forthwith [served upon]

transmitted by the clerk of the court to the Secretary, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (27 U. S. C., sec. 204, Secretary of the Treasury).

SEC. 15. The second and third sentences of subsection (a) of section 24 of the Public Utility Holding Company Act of 1935 (49 Stat. 834): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission, or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have [exclusive jurisdiction] jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part* (15 U. S. C., sec. 79x, Securities and Exchange Commission).

SEC. 16. (a) Subsection (a) of section 313 of the Federal Power Act, as amended, (49 Stat. 860), last sentence: "*Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at anytime, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act.*"

(b) The second and third sentences of subsection (b) of section 313 of the Federal Power Act, as amended (49 Stat. 860): "A copy of such petition shall forthwith be [served upon] *transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall [certify and] file with the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have [exclusive] jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part"* (16 U. S. C., sec. 825 1, Federal Power Commission).

SEC. 17. The second and third sentences of subsection (b) of section 611 of the Merchant Marine Act, 1936, as amended (52 Stat. 961): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the [Board] Commission, or [upon] any officer thereof designated by the [Board] Commission for that purpose, and thereupon the [Board] Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such order."* (46 U. S. C., sec. 1181 (b), Federal Maritime Board (District of Columbia Circuit only)).

SEC. 18. Subsection (c) of section 1006 of the Civil Aeronautics Act of 1938 (52 Stat. 1024):

"(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board by the clerk of the court; and the Board shall

thereupon [certify and] file in the court [a transcript of] the record, if any, upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*" (49 U. S. C., sec. 646, Civil Aeronautics Board).

SEC. 19. (a) Subsection (a) of section 19 of the Natural Gas Act (52 Stat. 831), last sentence: "*Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act.*"

(b) The second and third sentences of subsection (b) of section 19 of the Natural Gas Act (52 Stat. 831): "A copy of such petition shall forthwith be [served upon] *transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall [certify and] file with the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition [transcript] such court shall have [exclusive] jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part*" (15 U. S. C., sec. 717r, Federal Power Commission).

SEC. 20. (a) The first and second sentences of paragraph (2) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515):

"(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript] the record of the proceedings [and the record] on which he based his order, as provided in section 2112 of title 28, United States Code. Upon [such] the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part.*"

(b) The first and second sentences of paragraph (3) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515):

"(3) In the case of a petition with respect to an order such subsection (1), a copy of the petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary of Agriculture, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript] the record of the proceedings [and the record] on which he based his order, as provided in section 2112 of title 28, United States Code. Upon [such] the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part*" (21 U. S. C., sec. 346a, Secretary of Health, Education, and Welfare, Secretary of Agriculture).

SEC. 21. (a) The second and third sentences of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended: *A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. [The summons and petition may be served at any place in the United States.] "The Secretary [promptly upon service of the summons and petition] thereupon shall [certify and] file in the court the [transcript] record of the proceedings [and*

the record] on which the Secretary based his order, *as provided in section 2112 of title 28, United States Code.*" (21 U. S. C., sec. 371, Secretary of Health, Education, and Welfare).

(b) The first sentence of paragraph 3 of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended: "*Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently.*"

SEC. 22. The second and third sentences of subsection (a) of section 10 of the Fair Labor Standards Act of 1938 (52 Stat. 1065), as amended: "A copy of such petition shall forthwith be [served upon] *transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall [certify and] file in the court [a transcript of] the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] *petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner.*" (29 U. S. C., sec. 210; Secretary of Labor.)

SEC. 23. The fourth, fifth, sixth, and eighth sentences of subsection (f) of section 5 of the Railroad Unemployment Insurance Act, as amended (52 Stat. 1100): "Within fifteen days after receipt of service, or within such additional time as the court may allow, the Board shall [certify and] file with the court in which such petition has been filed [a transcript of] the record upon which the findings and decision complained of are based, *as provided in section 2112 of title 28, United States Code.* Upon [such] *the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence. It shall have power to enter [upon the pleadings and transcript of the record,] a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. * * * No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court [a transcript of] the additional record"* (45 U. S. C., sec. 355, Railroad Retirement Board).

SEC. 24. (a) Subsection (c) of section 409 of the Federal Seed Act (53 Stat. 1287):

"(c) Until [a transcript of] the record in such hearing has been filed in a court of appeals as provided in section 410, the Secretary of Agriculture at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the person to be heard, may amend or set aside the report or order, in whole or in part" (7 U. S. C., sec. 1599, Secretary of Agriculture).

(b) The second, third, and fourth paragraphs of section 410 of the Federal Seed Act (53 Stat. 1288):

"The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in such proceedings, [including

the complaint, the evidence, and the report and order] *as provided in section 2112 of title 28, United States Code.* If before such [transcript] record is filed, the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"At any time after such [transcript] petition is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the person and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal."

"The evidence so taken or admitted [duly certified] and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way." (7 U. S. C., sec. 1600, Secretary of Agriculture.)

(c) The first and second sentences of section 411 of the Federal Seed Act (53 Stat. 1288):

"SEC. 411. If any person against whom an order is issued under section 409 fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall [certify and] file [with its application a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, the report, and the order] *as provided in section 2112 of title 28, United States Code.* Upon such filing of the application [and transcript] the court shall cause notice thereof to be served upon the person against whom the order was issued" (7 U. S. C., sec. 1601, Secretary of Agriculture).

Sec. 25. The second and third sentences of subsection (a) of section 43 of the Investment Company Act of 1940, as amended (54 Stat. 844): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] petition such court shall have [exclusive jurisdiction] *jurisdiction, which upon the filing of the record shall be exclusive,* to affirm, modify, or set aside such order, in whole or in part" (15 U. S. C., sec. 80a-42, Securities and Exchange Commission).

SEC. 26. The second and third sentences of subsection (a) of section 213 of the Investment Advisers Act of 1940, as amended (54 Stat. 855): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission, or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] petition such court shall have [exclusive jurisdiction] *jurisdiction, which upon the filing of the record shall be exclusive,* to affirm, modify, or set aside such order,

in whole or in part" (15 U. S. C., sec. 80b-13, Securities and Exchange Commission).

SEC. 27. (a) Paragraph (1) of subsection (b) of Section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048):

"(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located [the summons and notice of appeal may be served at any place in the United States] *by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose. The Surgeon General shall [forthwith certify and] thereupon file in the court the [transcript] record of the proceedings [and the record] on which he based his action, as provided in section 2112 of title 28, United States Code.*

(b) The first sentence of paragraph (2) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048):

"(2) The findings of fact by the Surgeon General, unless substantially contrary to the weight of the evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall [certify to] *file in the court the [transcript and] record of the further proceedings*" (42 U. S. C., sec. 291j, Public Health Service).

SEC. 28. The fourth sentence of subsection (c) of section 205 of the Sugar Act of 1948 (61 Stat. 927): "Within thirty days after the filing of said appeal the Secretary shall file with the court the [originals or certified copies of all papers and evidence presented to him upon the hearing involved, a like copy of his decision thereon, a full statement in writing of the facts and grounds for his decisions as found and given by him] *record upon which the decision complained of was entered, as provided in section 2112 of title 28, United States Code, and a list of all interested persons to whom he has mailed or otherwise delivered a copy of said notice of appeal*" (7 U. S. C., sec. 1115, Secretary of Agriculture (District of Columbia Circuit only)).

SEC. 29. The second and third sentences of subsection (a) of section 14 of the Internal Security Act of 1950 (64 Stat. 1001): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Board, and thereupon the Board shall [certify and] file in the court [a transcript] of the [entire] record in the proceeding, [including all evidence taken and the report and order of the Board] as provided in section 2112 of title 28, United States Code. [Thereupon] Upon the filing of such petition the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides*" (50 U. S. C., sec. 793, Subversive Activities Control Board).

SEC. 30. (a) Subsection (e) of section 110 of the Internal Security Act of 1950 (64 Stat. 1028):

“(e) Until [a transcript of] the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it” (50 U. S. C., sec. 820, Detention Review Board).

(b) The third and fifth sentences of subsection (c) of section 111 of the Internal Security Act of 1950 (64 Stat. 1028): “The Board shall thereupon file in the court [a duly certified transcript of] the [entire] record of the proceedings before the Board with respect to the matter concerning which judicial review is sought [including all evidence upon which the order complained of was entered, the findings and order of the Board] *as provided in section 2112 of title 28, United States Code.* * * * [Thereupon] *Upon the filing of such petition* the court shall have jurisdiction of the proceeding, *which upon the filing of the record with it shall be exclusive*, and shall have power to affirm, modify, or set aside, or to enforce or enforce as modified the order of the Board” (50 U. S. C., sec. 821, Detention Review Board).

(c) The first sentence of subsection (d) of section 111 of the Internal Security Act of 1950 (60 Stat. 1029):

“(d) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board or its hearing examiner the court may order such additional evidence to be taken before the Board or its hearing examiner and to be made a part of the [transcript] record” (50 U. S. C., sec. 821, Detention Review Board).

SEC. 31. (a) Section 6 of the Act of December 29, 1950 (64 Stat. 1130):

“SEC. 6. [Within the time prescribed by, and in accordance with the requirements of, rules promulgated by the court of appeals in which the proceeding is pending, unless] *Unless* the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, [duly certified, consisting of the pleadings, evidence, and proceedings before the agency, or such portions thereof as such rules shall require to be included in such record, or such portions thereof as the petitioner and the agency, with the approval of the court of appeals, shall agree upon in writing] *as provided in section 2112 of title 28, United States Code*” (5 U. S. C., sec. 1036, Federal Communications Commission, Secretary of Agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission).

(b) The second sentence of subsection (c) of section 7 of the Act of December 29, 1950 (64 Stat. 1131): “The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file [a certified transcript of] *in the court* such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order” (5 U. S. C., sec. 1037, Federal Communications Commission, Secretary of Agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission).

SEC. 32. Subsection (b) of section 207 of the Act of September 23, 1950, as amended (64 Stat. 974) last three sentences: "*The local educational agency affected may file with the court a petition to review such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. Upon the filing of the petition the court shall have jurisdiction to affirm or set aside the action of the Commissioner in whole or in part.*"

SEC. 33. The fifth and sixth sentences of subsection (b) of section 207 of the International Claims Settlement Act of 1949, as amended (69 Stat. 564):

"Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy [shall forthwith be transmitted to] *must be served* on the said designee *by the clerk of the court.* Within forty-five days [after receipt] *after service* of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall certify and file with the court [the] *a transcript of the entire record of the proceedings with respect to such claim as provided in section 2112 of title 28, United States Code.*"

SEC. 34. The second and third sentences of section 9, of the Bank Holding Company Act of 1956 (70 Stat. 138):

"A copy of such petition shall be forthwith [transmitted to] *served upon* the Board, *by the clerk of the court* and thereupon the Board shall [file] *certify and file in the court a transcript of the record made before the Board as provided in section 2112 of title 28 United States Code. Upon the filing of the transcript the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper.*"

SEC. 35. This Act shall not be construed to repeal or modify any provision of the Administrative Procedure Act.

