Related Definitions: * * *
Items: * * *

Dated: June 10, 2003.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03–15189 Filed 6–16–03; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–8240; 34–48018; 35–27686; 39–2408; IA–2137; IC–26074; File No. S7–04–03]

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to its Rules of Practice to formalize new policies designed to improve the timeliness of its administrative proceedings. The changes include specifying in all orders instituting proceedings a maximum time period for completion by an administrative law judge of the initial decision in the proceeding, establishing policies disfavoring requests that would delay proceedings once instituted and creating time limits for the negotiation and submission of offers of settlement to the Commission. The Commission has taken additional steps to reduce delay in its internal deliberations on appeals from hearing officer's initial decisions and from final determinations of self-regulatory organizations and, accordingly amends current guidelines for issuance of Commission opinions.

EFFECTIVE DATE: July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Scot E. Draeger, Counsel to Commissioner Campos at (202) 942–0500. Margaret H. McFarland, Deputy Secretary, or J. Lynn Taylor, Assistant Secretary, at (202) 942–7070, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rules 161, 230, 360, 450, and 900 of its Rules of Practice [17 CFR 201.161, 201.230, 201.360, 201.450, and 201.900].

I. Discussion

The Commission adopted, after notice and comment (Release No. 33–8190 (February 12, 2003) 68 FR 8137 (February 19, 2003), comprehensive revisions to its Rules of Practice that became effective on July 24, 1995. These revisions were the result of an approximately two-and-a-half year study by the Commission's Task Force on Administrative Proceedings that culminated in a comprehensive report. The Task Force found that the fundamental structure of the Commission's administrative process was sound and successfully protected the essential interests of respondents, investors, and the public, but that some changes were necessary. The Task Force recommended changes to the Rules of Practice in an effort to set forth applicable procedural requirements more completely, in a format easier to use, and to streamline procedures that had become burdensome.

Promoting the timely adjudication and disposition of administrative proceedings was one of the principal goals of this project. While many of the rule amendments were designed to improve efficiency and timeliness, the Commission as part of this project did not impose firm deadlines for completion of the proceedings. Instead it included, as Rule 900, a series of non-binding goals for the completion of each step in the administrative process. Rule 900 included a ten-month guideline for completion of the hearing and issuance of the initial decision by the administrative law judge and it contained an eleven-month target for completion of deliberations by the Commission when it reviews appeals of administrative law judges' initial decisions and appeals of determinations of the securities self-regulatory organizations. In the seven years since the adoption of these non-binding targets, the Commission and its administrative law judges have generally failed to meet these goals.

Based upon this experience with non-binding completion dates, the Commission has determined that timely completion of proceedings can be achieved more successfully through the adoption of mandatory deadlines and procedures designed to meet these deadlines. Because there is a wide variation in the subject matter, complexity and urgency of administrative proceedings, the Commission believes that a ''one-size-fits-all'' approach to timely disposition is not feasible. Instead the Commission is adopting procedures in which it will specify, in the order instituting proceedings, a deadline for completion of the hearing process and the issuance of an initial decision. In every non-settled administrative proceeding, the Commission's Order Instituting Proceedings will specify the maximum time for completion of the hearing and issuance of the initial decision. This deadline will be either 120, 210, or 300 days, in the Commission's discretion, after consideration of the type of proceeding, the complexity of the matter, and its urgency. Certain commenters expressed concern that setting one time period with only an outside deadline for the issuance of an initial decision by the hearing officer would create an irresistible incentive for the hearing officer to set very short timelines for the litigants to prepare for hearing and for post hearing briefing, and to reserve the majority of the overall time period for the hearing officer to draft the initial decision.[1] In response to this concern, the Commission has provided in Rule 360(a)(2), that each of these periods is further broken down into three parts to ensure fairness to both the litigants and the administrative law judges by providing sufficient time: (1) For the litigants and the judge to prepare for hearing, (2) for the litigants to obtain the transcript and prepare briefs, and (3) for the administrative law judge to prepare an initial decision.

As provided in Rule 360(a)(3), if during the proceeding the presiding hearing officer were to decide that the proceeding could not be concluded in the time specified, the hearing officer could request an extension of the stated deadline. To obtain an extension, the hearing officer would first consult with the Chief Administrative Law Judge (ALJ). If the Chief ALJ concurs in the need for an extension, the Chief ALJ would file a motion with the Commission on behalf of the hearing officer explaining why circumstances require an extension and specifying the length of the extension. An extension could be granted by the Commission, in its discretion, on the basis of the motion filed by the Chief ALJ. Parties to the proceeding would be provided copies of the motion and could separately or jointly file in support of or in opposition to the request. Any such motion by the Chief ALJ would have to be filed no later than thirty days prior to the expiration of the time period specified in the order instituting proceedings.

To complement this new procedure, the Commission has amended Rule 161 to make explicit a policy of strongly disfavoring extensions, postponements or adjournments except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case. This amendment to Rule 161 effects a

[1] See comments on the Section of Business Law of the American Bar Association at 3.

significant change in administrative cease-and-desist proceedings. Section 21C(b) of the Securities Exchange Act of 1934 (and parallel provisions in the other Federal securities laws) requires that the notice instituting proceedings ''shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.'' Under current practice, parties routinely request extensions of the 60-day deadline, and the hearing officers routinely grant such requests. To the extent that the Commission has chosen a timeline under which the hearing would occur beyond the statutory 60-day deadline, the amendment exempts these requests from the policy of strongly disfavoring such requests, absent a strong showing of substantial prejudice. This would typically be the case under both the 300-day and 210-day timelines articulated in new Rule 360(a)(2).

We requested comment on the impact of the proposed changes to the scheduling of cease and desist proceeding hearings. The Commission received very few comments on the proposal. However, most of the comments were supportive.[2] Certain commenters did express concern that respondents will have less time to meet the charges against them.[3] In response to this concern, the Commission has amended Rule 230(d) to provide for earlier production of the Commission staff's investigative record.

In addition to the adopted amendments to the Commission's Rules of Practice, the Commission has provided guidance to its staff that they should not seek or support extensions or stays not consistent with the standards set forth above. Similarly, staff have been instructed to adopt new procedures to ensure that settlement negotiations do not delay the hearing process. These procedures are consistent with those described in Rule 161(c)(2). Under that rule, if the Commission staff and one or more respondents in the proceeding file a joint motion notifying the hearing officer that they have agreed in principle to a settlement on all major terms, then the hearing officer shall stay the proceeding as to the settling respondent(s), or in the discretion of the hearing officer as to all respondents, pending completion of Commission consideration of the settlement offer. Any such stay will be contingent upon: (1) The settling respondent(s) submitting to the Commission staff, within fifteen business days of the stay, a signed offer of settlement in conformance with Rule 240, and (2) within twenty business days of receipt of the signed offer, the staff submitting the settlement offer and accompanying recommendation to the Commission for consideration. If the parties fail to meet either of these deadlines, or if the Commission rejects the offer of settlement, the hearing officer must be promptly notified and, upon notification of the hearing officer, the stay shall lapse and the proceeding will continue.

Because unnecessary delays may result from multiple ''agreements in principle'' that do not result in an actual signed offer, this procedure will be limited. In the circumstance where (1) a hearing officer has granted a stay because the parties have ''agreed in principle to a settlement,'' (2) the agreement in principle does not result in the submission of a signed settlement offer in conformance with Rule 240 within 15 business days of the stay, and (3) the stay lapses, the ALJ will not be required to grant another stay related to the settlement process until both parties have notified the ALJ in writing that a signed settlement offer has been prepared, received by the enforcement staff, and will be submitted to the Commission.

Finally, the Commission recognizes that it too must shoulder responsibility for delays in its appellate review process. In fact, some comment letters suggested that delay in the Commission's appellate review is a more significant problem than delay in the hearing process. Accordingly, during the past year, the Commission has changed certain internal processes to reduce delay in its deliberations and substantially reduce the time taken to complete its appellate review duties. Accordingly, the Commission has amended Rule 900, reducing the guideline for issuance of Commission opinions from eleven months to seven months from the date of an appeal.

As part of this initiative to expedite appellate review, the Commission has amended Rule 450 to provide that opening briefs must be filed within 30 days of the date of a briefing schedule order rather than the current 40 days.

Any and all deadlines and timelines established by these amendments to the Commission's Rules of Practice confer no substantive rights on respondents.

II. Administrative Procedure Act and Regulatory Flexibility Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this revision relates solely to agency organization, procedures, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, also does not apply. Nonetheless, the Commission previously determined that it would be useful to publish the proposed rule changes for notice and comment before adoption. The Commission has considered all comments received.

III. Statutory Basis and Text of Amendment

These rule amendments are adopted pursuant to section 19 of the Securities Act, 15 U.S.C. 77s; section 23 of the Securities Exchange Act, 15 U.S.C. 78w; section 20 of the Public Utility Holding Company Act, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

■ For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

■ 1. The authority citation for part 201, subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12.

■ 2. Section 201.161 is amended by:
■ a. Revising the phrase ''paragraph (b)'' in paragraph (a) to read ''paragraphs (b) and (c)'';
■ b. Revising the introductory text of paragraph (b) and paragraph (b)(1);
■ c. Redesignating paragraph (b)(2) as paragraph (c)(1); and

[2] See comments of NASD and Mary L. Schapiro at 2 (''NASD staff believes that the proposed deadlines contained in the Release are an appropriate mechanism to focus the parties and ALJs on achieving timely resolution of cases.''). See also comments of Barbara Mortensen and John Polanskey, two individual investors who wrote separately to support the proposal. (''Please move toward all rule changes that will improve the timeliness of your administrative proceedings * * *.'' Polanskey at 1.)

[3] See comments of Corporation, Finance, and Securities Law Section, District of Columbia Bar at 1, 4–8. See also comments of the Section of Business Law of the American Bar Association at 3.

■ d. Adding new paragraph (b)(2) and paragraph (c)(2).

The revisions and additions read as follows:

§ 201.161 Extensions of time, postponements and adjournments.

* * * * *

(b) *Considerations in determining whether to extend time limits or grant postponements, adjournments and extensions.* (1) In considering all motions or requests pursuant to paragraph (a) or (b) of this section, the Commission or the hearing officer should adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case. In determining whether to grant any requests, the Commission or hearing officer shall consider, in addition to any other relevant factors:

(i) The length of the proceeding to date;

(ii) The number of postponements, adjournments or extensions already granted;

(iii) The stage of the proceedings at the time of the request;

(iv) The impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and

(v) Any other such matters as justice may require.

(2) To the extent that the Commission has chosen a timeline under which the hearing would occur beyond the statutory 60-day deadline, this policy of strongly disfavoring requests for postponement will not apply to a request by a respondent to postpone commencement of a cease and desist proceeding hearing beyond the statutory 60-day period.

(c)(1) * * *

(2) *Stay pending Commission consideration of offers of settlement.* (i) If the Commission staff and one or more respondents in the proceeding file a joint motion notifying the hearing officer that they have agreed in principle to a settlement on all major terms, then the hearing officer shall stay the proceeding as to the settling respondent(s), or in the discretion of the hearing officer as to all respondents, pending completion of Commission consideration of the settlement offer. Any such stay will be contingent upon:

(A) The settling respondent(s) submitting to the Commission staff, within fifteen business days of the stay, a signed offer of settlement in conformance with § 201.240; and

(B) Within twenty business days of receipt of the signed offer, the staff submitting the settlement offer and accompanying recommendation to the Commission for consideration.

(ii) If the parties fail to meet either of these deadlines or if the Commission rejects the offer of settlement, the hearing officer must be promptly notified and, upon notification of the hearing officer, the stay shall lapse and the proceeding will continue. In the circumstance where:

(A) A hearing officer has granted a stay because the parties have ''agreed in principle to a settlement;''

(B) The agreement in principle does not materialize into a signed settlement offer within 15 business days of the stay; and

(C) The stay lapses, the hearing officer will not be required to grant another stay related to the settlement process until both parties have notified the hearing officer in writing that a signed settlement offer has been prepared, received by the Commission's staff, and will be submitted to the Commission.

(iii) The granting of any stay pursuant to this paragraph (c) shall not affect any deadline set pursuant to § 201.360.

■ 3. Section 201.230 is amended by revising the phrase ''14 days after the respondent files an answer'' to ''7 days after service of the order instituting proceedings'' in the first sentence of paragraph (d).

■ 4. Section 201.360 is amended by:

■ a. Redesignating paragraph (a) as paragraph (a)(1); and

■ b. Adding paragraphs (a)(2) and (a)(3).

The additions read as follows:

§ 201.360 Initial decision of hearing officer.

(a)(1) * * *

(2) *Time period for filing initial decision.* In the order instituting proceedings, the Commission will specify a time period in which the hearing officer's initial decision must be filed with the Secretary. In the Commission's discretion, after consideration of the nature, complexity, and urgency of the subject matter, and with due regard for the public interest and the protection of investors, this time period will be either 120, 210 or 300 days from the date of service of the order. Under the 300-day timeline, the hearing officer shall issue an order providing that there shall be approximately 4 months from the order instituting the proceeding to the hearing, approximately 2 months for the parties to obtain the transcript and submit briefs, and approximately 4 months after briefing for the hearing officer to issue an initial decision. Under the 210-day timeline, the hearing officer shall issue an order providing that there shall be approximately 2½ months from the order instituting the proceeding to the hearing, approximately 2 months for the parties to review the transcript and submit briefs, and approximately 2½ months after briefing for the hearing officer to issue an initial decision. Under the 120-day timeline, the hearing officer shall issue an order providing that there shall be approximately 1 month from the order instituting the proceeding to the hearing, approximately 2 months for the parties to review the transcript and submit briefs, and approximately 1 month after briefing for the hearing officer to issue an initial decision. These deadlines confer no substantive rights on respondents.

(3) *Motion for extension.* In the event that the hearing officer presiding over the proceeding determines that it will not be possible to issue the initial decision within the specified period of time, the hearing officer should consult with the Chief Administrative Law Judge. Following such consultation, the Chief Administrative Law Judge may determine, in his or her discretion, to submit a motion to the Commission requesting an extension of the time period for filing the initial decision. This motion must be filed no later than 30 days prior to the expiration of the time specified in the order for issuance of an initial decision. The motion will be served upon all parties in the proceeding, who may file with the Commission statements in support of or in opposition to the motion. If the Commission determines that additional time is necessary or appropriate in the public interest, the Commission shall issue an order extending the time period for filing the initial decision.

* * * * *

■ 5. Section 201.450 is amended by revising the phrase ''within 40 days'' to read ''within 30 days'' in the second sentence of paragraph (a).

■ 6. Section 201.900 is amended by:

■ a. Removing paragraph (a)(1)(i);

■ b. Redesignating paragraphs (a)(1)(ii) through (a)(1)(iv) as paragraphs (a)(1)(i) through (a)(1)(iii); and

■ c. Revising newly redesignated paragraph (a)(1)(iii).

The revision reads as follows:

§ 210.900 Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings.

(a) * * *

(1) * * *

(iii) Ordinarily, a decision by the Commission with respect to an appeal from the initial decision of a hearing officer, a review of a determination by

a self-regulatory organization, or a remand of a prior Commission decision by a court of appeals should be issued within seven months from the date the petition for review, application for review, or mandate of the court is filed, unless the Commission determines that the matter presents unusual complicating circumstances, in which case a decision by the Commission on the matter may be issued within 11 months from the date the petition for review, application for review, or mandate of the court is filed. The Commission retains discretion to take additional time to dispose of an appeal from the initial decision of a hearing officer, a review of a determination by a self-regulatory organization, or a remand of a prior Commission decision by a court of appeals when the Commission determines that extraordinary facts and circumstances of the matter so require. The deadlines in § 201.900 confer no substantive rights on the parties.

* * * * *

Dated: June 11, 2003.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–15262 Filed 6–16–03; 8:45 am]

BILLING CODE 8010–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NOS. CO–001–0052, CO–001–0032, CO9–3–5603; FRL–7503–4]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; State Implementation Plan Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: When EPA approved the Denver-Boulder metropolitan carbon monoxide (CO) area redesignation to attainment, maintenance plan and amendments to Colorado's Regulation No. 11, ''Motor Vehicle Emissions Inspection Program,'' on December 14, 2001, we inadvertently removed the appendices to Regulation No. 11 from the State Implementation Plan (SIP). When EPA approved the Colorado Springs carbon monoxide area redesignation to attainment and maintenance plan on April 25, 1999, we inadvertently failed to indicate that a control measure had been removed from the SIP. Finally, when EPA approved revisions to the Colorado Ozone SIP along with amendments to Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds,'' on May 30, 1995, we inadvertently submitted extraneous pages for incorporation by reference into the SIP and referenced incorrect state rules. EPA is correcting these errors with this document.

DATES: This rule is effective on July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312–6437.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'' or ''our'' is used it means the EPA.

Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting incorrect text in previous rulemakings. Thus notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

I. Correction

A. Correction to ***Federal Register*** *Document Published on December 14, 2001 (66 FR 64751)*

When we approved the Denver-Boulder metropolitan carbon monoxide (CO) area redesignation to attainment, maintenance plan and amendments to Colorado's Regulation No. 11, ''Motor Vehicle Emissions Inspection Program,'' on December 14, 2001 (66 FR 64751), we inadvertently removed the appendices to Regulation No. 11. Specifically, we approved Regulation No. 11 at 40 CFR 52.320(c)(96)(i)(A) and indicated that Regulation No. 11, part A, part B, part C, part D, part E and part F, effective March 1, 2000, superseded and replaced all earlier versions of the Regulation. However, on March 10, 1997 (62 FR 10690), we approved revisions to Regulation No. 11, including Appendices A and B (*see* 40 CFR 52.320(c)(80)). The December 14, 2001, approval should not have superseded and replaced Appendices A and B of Regulation No. 11 approved on March 10, 1997, because the December 14, 2001, approved version of Regulation No. 11 did not contain revisions to Appendices A and B. Therefore, we are correcting the introductory text of 40 CFR 52.320(c)(96) to indicate that the version of Regulation No. 11 being approved supersedes and replaces all earlier versions of Regulation No. 11 except for Appendices A and B to Regulation No. 11 as approved at 40 CFR 52.320(c)(80).

B. Correction to ***Federal Register*** *Document Published on April 25, 1999 (64 FR 46279)*

On April 25, 1999 (64 FR 46279), we approved the Colorado Springs carbon monoxide area redesignation to attainment and maintenance plan. In the notice approving that plan we chronicled the history of **Federal Register** actions that had been completed for the Colorado Springs carbon monoxide area. Among other things we indicated that we approved the Clean Air Campaign into the SIP on May 30, 1989 (54 FR 22893), because of its underlying benefits for the area (*see* our April 25, 1999, document, 64 FR 46281, right column). However, in our April 25, 1999, document, we failed to mention that the maintenance plan being approved removes the Clean Air Campaign from the SIP. Therefore, we are correcting 40 CFR 52.349(c) to indicate that the Clean Air Campaign, approved at 40 CFR 52.320(c)(43)(i)(A), has been removed from the SIP.

C. Correction to ***Federal Register*** *Document Published on May 30, 1995 (60 FR 28055)*

When we approved revisions to the Colorado Ozone State Implementation Plan (SIP) along with amendments to Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds,'' on May 30, 1995 (60 FR 28055), we inadvertently submitted extraneous pages for incorporation by reference into the SIP. Therefore, we are correcting this error by resubmitting the incorporation by reference material in 40 CFR 52.320(c)(70)(i)(A) to the Air and Radiation Docket and Information Center and the Office of the Federal Register. Additionally, the regulatory text in 40 CFR 52.320(c)(70)(i)(A) incorrectly referenced two state rules. The reference to ''7.IX.N.'' and ''7.IX.O.'' should have been ''7.IX.M.'' and ''7.IX.N.'' We are correcting the references to the state rules. This correction only impacts our May 30, 1995, approval and does not supersede subsequent actions on Regulation No. 7 that have been approved since May 30, 1995.