amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201 (b), (i) and (o), 2232 and 2233), Secs. 201, 202, and 206, Pub. L. 93–438, 88 Stat. 1242 as amended, 1244, and 1246 (42 U.S.C. 5841, 5842 and 5846).

For the purposes of Sec. 223, Pub. L. 83–703, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 71.61–71.63 issued under Sec. 161o, 68 Stat. 950 as amended (42 U.S.C. 2201(o)). Secs. 71.4 (r) and (s), 71.5a and 71.5b also issued under Sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

3. In § 71.4, new paragraphs (r) and (s) are added to read as follows:

§ 71.4 Definitions.

* * * * *

(r) "Nuclear waste" as used in §§ 71.5a–71.5b means:

(1) Any large quantity of source, by-product, or special nuclear material required by this part to be in Type B packaging while transported to, through, or across state boundaries to a disposal site, or to a collection point for transport to a disposal site, or

(2) Any large quantity of irradiated fuel required by this part to be in Type B packaging while transported to, through, or across state boundaries irrespective of destination if the quantity of irradiated fuel is less than that subject to advance notification requirements of 10 CFR Part 73.

(s) "State" as used in §§ 71.5a–71.5b means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

4. Immediately following § 71.5, a new centerhead and new §§ 71.5a and 71.5b are added to read as follows:

Advance Notification to States of Transport of Nuclear Waste

§ 71.5a Transport of nuclear waste—advance notification requirement.

Prior to the transport of any nuclear waste outside of the confines of the licensee's plant or other place of use or storage, or prior to the delivery of any nuclear waste to a carrier for transport, each licensee shall comply with the procedures in § 71.5b for advance notification to the governor of a state or the governor's designee for the transport of nuclear waste to, through, or across the boundary of the state.

§ 71.5b Advance notification of shipment of nuclear waste; revision notice; cancellation notice.

(a) *Where, when, and how advance notification must be sent.* The notification required by § 71.5a must be made in writing to the office of each appropriate governor or governor's designee and to the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of Part 73 of this chapter. A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. A notification delivered by messenger must reach the office of the governor or of the governor's designee at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. A list of the mailing addresses of the governors and governors' designees is available upon request from the Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the notification shall be retained by the licensee as a record for one year.

(b) *Information to be furnished in advance notification of shipment.* Each advance notification of shipment of nuclear waste must contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the nuclear waste shipment.

(2) A description of the nuclear waste contained in the shipment as required by the regulations of the U.S. Department of Transportation in 49 CFR §§ 172.202 and 172.203(d);

(3) The point of origin of the shipment, and the seven-day period during which departure of the shipment is estimated to occur;

(4) The seven-day period during which arrival of the shipment at state boundaries is estimated to occur;

(5) The destination of the shipment, and the seven-day period during which arrival of the shipment is estimated to occur; and

(6) A point of contact with a telephone number for current shipment information.

(c) *Revision notice.* A licensee who finds that schedule information previously furnished to a governor or governor's designee in accordance with § 71.5b(b) will not be met, shall telephone a responsible individual in the office of the governor of the state or of the governor's designee and inform that individual of the extent of the delay relative to the schedule originally reported in writing under the provisions of § 71.5b(b). The licensee shall maintain a record of the name of the individual contacted for one year.

(d) *Cancellation notice.* (1) Each licensee who cancels a nuclear waste shipment for which advance notification has been sent as required by § 71.5a shall send a cancellation notice to the governor of each state or the governor's designee previously notified and to the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of Part 73 of this chapter.

(2) The notice shall state that it is a cancellation and shall identify the advance notification which is being cancelled. A copy of the notice shall be retained by the licensee as a record for one year.

Dated at Washington, D.C. this 30th day of December 1981.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-259 Filed 1-5-82; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 73

Advance Notification to Governors Concerning Shipments of Irradiated Reactor Fuel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to implement a federal statute which requires the NRC to promulgate regulations regarding notification to state governors of the transport of spent fuel through a state. This notification will provide the governor advance information, not otherwise available to the governor, related to spent fuel transportation in his state. Shipment of certain other forms of nuclear waste is covered under a separate amendment to the Commission's regulation 10 CFR Part 71. Separate amendments are needed because information regarding spent fuel shipments contains sensitive safeguards data which must be protected. The information pertaining to the other waste shipments is not sensitive.

EFFECTIVE DATE: July 6, 1982.

ADDRESS: The comments received may be examined at the NRC Public Document Room at 1717 H Street, NW, Washington D.C.

FOR FURTHER INFORMATION CONTACT: Tom R. Allen, Regulatory Improvements Branch, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301-427-4181).

SUPPLEMENTARY INFORMATION:

Background

Section 301(a) of Pub. L. 96–295 states: "The Nuclear Regulatory Commission, within 90 days of enactment of this Act, shall promulgate regulations providing for timely notification to the Governor of any State prior to the transport of nuclear waste, including spent nuclear fuel, to, through, or across the boundaries of such State. Such notification requirements shall not apply to nuclear waste in such quantities and of such types as the Commission specifically determines do not pose a potentially significant hazard to the health and safety of the public."

On December 9, 1980, the NRC published a **Federal Register** notice (45 FR 81060) inviting public comments on a proposed rule providing for advance notification to governors of states of the transportation of spent fuel. The 90-day comment period expired March 9, 1981. Copies of the proposed rule, with a request for comments, were also sent to state governors. The final rule is essentially the same as the proposed rule except that it has been modified to permit notification of a governor's designee (rather than the governor).

The Rule

The amendment to 10 CFR Part 73 will require licensees to supply the following information: the name, address, and telephone number of the shipper, carrier and receiver of the shipment, a description of the material to be transported, point of origin, estimated date and time of departure, estimated date and time of arrival at state boundaries, and a description of the shipment route to be used within the state. This information would be provided by mail, postmarked at least seven days or delivered by messenger at least four days in advance of the estimated date of departure, to the offices of the governors (or governors' designees) of affected states. Any person receiving schedule information would be required to protect it against unauthorized disclosure. The information protection measures are set forth in § 73.21 of 10 CFR Part 73 and are the subject of a separate rulemaking notice (46 FR 51718, October 22, 1981). Schedule information would be downgraded a short time after completion of the shipment, so that protection need not be continued. The state official would be renotified in the event of schedule changes in excess of six hours.

The Comments

NRC received 60 letters containing more than 300 comments on the proposed rule. Comments were received from these entities as follows:

	Commenters
State governors or state agencies	24
Individuals from public sector	23
Nuclear industry	9
Federal agencies	3
City mayor	1
Total	60

Some of these comments resulted in minor changes to the rule or in changes in the way the NRC will administer the rule. These comments relate to three general groupings.

The first such group of comments resulted in modification of the rule. A number of comments requested that the regulation be modified to require advance notifications be sent to a state official designated by the governor, rather than being sent to the governor himself. The Commission has decided that notification of a governor's designee has significant information handling and information protection advantages. Accordingly, the final rule has been modified to provide for notification of a governor's designee.

One comment requested that the advance notification information include the telephone number of the shipper and receiver. This suggestion is being adopted because during times of emergencies it would allow quick access to additional technical information about a shipment at insignificant additional cost. For completeness, the rule modification has been expanded to include the telephone number of the carrier.

A final comment requested that the regulation make clear that renotification can be done routinely by telephone. Paragraph § 73.37(f)(4) in the regulation has been modified to make this point clear.

In addition to the revisions resulting from public comment revisions were also made to simplify the information protection provisions of § 73.37(f)(3) and to clarify that they apply to intrastate shipments as well as to interstate shipments.

The second such group of comments made suggestions that were adopted but did not result in modification of the rule. Rather, these suggestions will be carried out by the NRC in the administration of the rule.

One comment in this group stressed the importance of a governor's right to decline to receive notifications and suggested that the regulations make this right explicit, while opposing comments insisted that a governor should not be given the option of declining to receive the notifications. The Commission continues to believe that in view of the information protection requirements of § 73.21, a governor should have the option to decline to receive advance notification information relevant to spent fuel shipments. If requested by a governor, the NRC will remove that governor's name from the list of governors to be notified.

One of these comments suggested that the notification should be made to a single contact within each state, and that localities within the state that need the information would obtain it from that contact. Another suggested that the NRC should make available to licensees a list of the responsible persons in each state to be notified in the event of a change of schedule. The Commission has decided that it is consistent with the intent of Congress that notifications should be made to a single designated individual within each state who is to receive notifications and renotifications. The NRC will make available a list of these individuals.

One comment requested that the list of governors to receive advance notifications should include the executives of certain Pacific Island territories and the U.S. Secretary of Interior (for shipments that would stop over at these Pacific Island territories). This suggestion is consistent with the language of the statute, which includes territories as states. The list of governors will be so modified.

One comment requested that a standardized advance notification form be used. The NRC adopted the suggestion and will issue a suggested format as a guidance document.

The Commission also received comments which were evaluated but not adopted. Some of these were in the form of suggestions, while others provided information for consideration. Some dealt with matters beyond the scope of this regulatory action or with matters beyond the authority of the Commission. These comments are discussed below:

1. *Scope of the Rule.* Several comments made suggestions concerned with the scope of the rule. These suggestions were rejected because they would modify the scope of the rule in ways that are inconsistent with NRC understanding of law or inconsistent with the aims of this particular rulemaking.

a. *Application to other than NRC licensees or to non-radioactive materials.* One comment suggested that the rule should apply to all transporters of radioactive fuel, rather than being limited to NRC licensees. Another comment expressed concern that the rule would be unjustifiably extended to include vast numbers of shipments of nonradioactive waste. These comments were rejected because the NRC has no authority to apply the rule to persons other than NRC licensees.

b. *Promulgation of the rule by DOT, rather than NRC.* One comment contended that the DOT, rather than the NRC, should promulgate the rule. However, since Congress specifically directed the NRC to issue the rule, DOT has not undertaken the promulgation of such a rule.

c. *Emergency response and other state actions.* Some comments requested that the NRC identify state actions needed for optimum utilization of the information and provide more information on emergency response. Apart from information protection rules, which was required by Pub. L. 96–295, the NRC does not regulate state use of advance notification information. Accordingly, it would be inappropriate to incorporate advice concerning state use of notification information in a regulation. Although emergency response by states is a timely and important subject, these issues are already being addressed outside this rulemaking action, and therefore do not require further discussion here. As the Commission noted on April 13, 1981 in its withdrawal of advance notice of rulemaking (46 FR 21619):

> In another separate action, the NRC in cooperation with the Federal Emergency Management Agency and other federal agencies is currently developing guidance material to be used by state agencies in developing emergency response plans for transportation accidents involving radioactive material.

d. *State and local authority.* A group of comments pointed out differences between the proposed rule and existing state laws and asked whether the rule would preempt the existing state laws. In that regard, local regulations that call for the advance disclosure of spent fuel shipment schedule information could be affected by new NRC requirements for the protection of such schedule information. In accordance with a separate rulemaking, NRC licensees as well as any other person who has advance schedule information will be prohibited from furnishing it to any local official other than a member of a local enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies (see § 73.21(c) in 46 FR 51718, October 22, 1981). It should be noted that the protection provisions of § 73.21(c) do not apply to any of the other information provided to governors or the designees in accordance with this regulation.

Other comments requested that the rule provide for advance notification of citizens along spent fuel shipment routes. The NRC has not adopted this suggestion because it is beyond the scope of Pub. L. 96–295, and because a local official could obtain such information from his state governor's office as appropriate.

e. *Routing.* Some comments suggested that the rule require that shipments be routed on interstate highways and that the NRC consult with state police before approving a route. The issue of whether to route shipments only on interstates is outside the scope of the advance notification rule. Routing of spent fuel shipments is covered in 10 CFR 73.37 and in DOT regulation 49 CFR 173 and 177. However, it should be noted that the NRC encourages the use of interstate highways and, routinely consults with state police before approving a route.

2. *Impacts.* Some comments contended that the rule was unsupported and would be burdensome and ineffective. Congress has decided that, rather than being burdensome and ineffective, advance notification to states is beneficial because it enables states to contribute to the security, safety, and ease of transport of shipments. Therefore, Congress directed the NRC to issue requirements for its licensees to carry out advance notification.

3. *Administrative.* Comments in this group generally requested clarification of how various details of the rule would be interpreted and administered or set forth alternatives to the measures proposed. The specific comments are discussed below.

a. *Waterborne and airborne shipments.* One comment asked how the rule will apply to waterborne and airborne shipments. Notifications for waterborne shipments would be given as for highway shipments. There are no airborne shipments of spent fuel.

b. *Shipper-carrier division of responsibility.* Some comments asked whether the shipper or the carrier is intended to be responsible for notification under various conditions. Generally two licensees, a shipper and a carrier, are involved in each spent fuel shipment. Both are responsible for physical protection, including advance notification. As a practical matter, division of responsibility for carrying out the physical protection requirements is a subject of agreement between the shipper and the carrier.

c. *Series shipments.* One comment requested clarification concerning the way in which series of shipments are related with respect to protection of schedule information. Shipments in a series are related in the sense that knowledge of the schedule details of one shipment in the series could aid in predicting the schedule of subsequent shipments in the series. For this reason, schedule information protection is required until after the last shipment in a series is completed.

d. *Documentation to demonstrate compliance.* One comment asked what documentation a licensee must maintain to demonstrate compliance with the regulation. The Commission has decided that maintenance of a recordkeeping system by licensees is not required at this time. For its inspection the NRC will rely on a sampling process wherein NRC records concerning the details of notification will be checked against state records for the same shipment.

e. *Notification lead times.* Some comments inquired about the basis for the proposed lead times for notifications, suggested various alternative lead times, and asked whether there are circumstances under which a shipment could be made with less than four days advance notification. The notification lead times are selected to offer a reasonable compromise between the needs for (1) timely advance notification, (2) avoidance of unnecessarily long periods for protection of schedule information, and (3) avoidance of unnecessary numbers of renotifications stemming from schedule changes. NRC regulations in 10 CFR Part 73 provide for the granting of exceptions to the provisions of Part 73, including the provision for four-day notification lead time, but there must be good cause for the exception to be granted.

f. *Confirmation of receipt of notification.* One comment suggested that, prior to entering a state with a shipment, licensees obtain confirmation from the state that notification has been received. The suggestion was not adopted because it could lead to significant delays of shipments en route and thereby weaken safeguards of the shipments.

g. *Use of registered or certified mail.* One comment suggested that notifications be sent only by certified or registered mail to ensure delivery. The suggestion was not adopted because NRC analysis showed insignificant benefit.

h. *Clearinghouse for notifications.* One comment suggested that the NRC establish a Federal clearinghouse or other centralized unit to transmit notifications to states. The suggestion was not adopted because it is not necessary to the notification process, it would be costly, and it could cause notification delays.

i. *Notification through mutual agreement.* One comment suggested that notifications be carried out through mutual agreement between licensee and state, rather than having the details specified by the NRC in a regulation. The suggestion was rejected because notifications would likely be nonuniform from state to state and would be difficult for the NRC to enforce.

j. *Schedule tolerance.* Several comments suggested various alternatives to the proposed ± 6 hours tolerance be considered. The ± 6 hour tolerance was retained because it appears to be a reasonable compromise between (1) the need for carriers to be allowed to have significant flexibility in schedules for long distance shipments and (2) the need for schedule accuracy in order to assure that states have the opportunity to contribute to the security and safety of transport of shipments.

k. *Relevant state law.* Some comments contended that the NRC should have evaluated all of the relevant advance notification rules now in force in several of the states. The NRC staff reviewed a number but not all of the state advance notification laws and consulted with representatives of some states that have operational advance notification laws. Some provisions of the proposed rule were adopted from state laws.

l. *General rather than specific notifications.* Some comments suggested that states need only general information (routes, number of shipments using that route, typical quantity of material in a shipment, etc.) rather than shipment specific information. The suggestion was rejected because states will have a greater range of alternatives to contribute to the security, safety, and ease of transport of spent fuel shipments if the notifications are in advance and are shipment specific.

4. *Information protection.* Numerous comments were concerned with the information protection provisions in the proposed rule, under which shipment schedule information would be required to be protected.

Concerns surrounding the basis for protection of information, and the ways in which such information should be handled, are addressed in a separate rulemaking (see 10 CFR 73.21, 46 FR 51718, October 22, 1981).

After careful consideration of these comments, the Commission has adopted the amendment in final form.

Environmental Impact Statement

In accordance with 10 CFR 51.5(d)(3), an environmental impact statement, negative declaration, or environmental impact appraisal need not be prepared in connection with this rulemaking action because the amendments are nonsubstantive and insignificant from the standpoint of environmental impact.

Paperwork Statement

The Nuclear Regulatory Commission has submitted this rule to the Office of Management and Budget for such review as may be appropriate under the Paperwork Reduction Act, Pub. L. 96-511. The SF-83, "Request for Clearance," Supporting Statement, and other related documentation submitted to OMB have been placed in the NRC Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 for inspection and copying for a fee.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Section 301 of Pub. L. 96-295 (94 Stat. 789-790), and sections 552 and 553 of title 5 of the United States Code, the following amendments to 10 CFR Part 73 are published as a document subject to codification.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 is revised to read as follows:

Authority: Secs. 53, 147, 161b, 161i, 161o, Pub. L. 85-703, 68 Stat. 930, 948-950, as amended, Pub. L. 85-507, 72 Stat. 327, Pub. L. 88-489, Stat. 602, Pub. L. 93-377, 88 Stat. 475, Pub. L. 96-295, 94 Stat. 780 (42 U.S.C. 2073, 2201, 2167); Sec. 201, Pub. L. 93-438, 88 Stat. 1242, 1243, as amended, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841). For the purposes of Sec. 223, 68 Stat. 958, as amended, 42 U.S.C. 2273, 73.37(g) and § 73.55 are issued under Sec. 161b, 68 Stat. 948, as amended, 42 U.S.C. 2201(b); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issed under Sec. 161i, 68 Stat. 949, as amended, 42 U.S.C. 2201(i); and §§ 73.20(c)(i), 73.24(b)(i), 73.26(b)(3), (h)(6), (i)(6) and (k)(4), 73.27(a) and (b), 73.37(f), 73.40(b) and (d), 73.46(g)(6) and (h)(2), 73.50(g)(2), (3)(iii)(B) and (h), 73.55(h)(2), and (4)(iii)(B), 73.70, 73.71 and 73.72 are issued under Sec. 161o, 68 Stat. 950, as amended, 42 U.S.C. 2201(o). Paragraph 73.37(f) also is issued under Section 301 Pub. L. 96-295, 94 Stat. 280.

2. Section 73.37 is amended by adding paragraphs (f) and (g) to read as follows:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

* * * * *

(f) Prior to the transport of spent fuel within or through a state a licensee subject to this section shall notify the governor or the governor's designee. The licensee shall comply with the following criteria in regard to a notification: (1) The notification must be in writing and sent to the office of each appropriate governor or the governor's designee. A notification delivered by mail must be postmarked at least 7 days before transport of a shipment within or through the state. A notification delivered by messenger must reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the state. A list of the mailing addresses of governors and governors' designees is available upon request from the Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) The notification must include the following information:

(i) The name, address, and telephone number of the shipper, carrier and receiver.

(ii) A description of the shipment as specified by the Department of Transportation in 49 CFR § 172.202 and § 172.203(d).

(iii) A listing of the routes to be used within the state.

(iv) A statement that the information described below in § 73.37(f)(3) is required by NRC regulations to be protected in accordance with the requirements of § 73.21.

(3) The licensee shall provide the following information on a separate enclosure to the written notification:

(i) The estimated date and time of departure from the point of origin of the shipment.

(ii) The estimated date and time of entry into the governor's state.

(iii) For the case of a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected in accordance with the provisions of § 73.21 until at least 10 days after the shipment has entered or originated within the state.

(iv) For the case of a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected in accordance with the provisions of § 73.21 until 10 days after the last shipment in the series has entered or originated within the state and an estimate of the date on which the last shipment in the series will enter or originate within the state.

(4) A licensee shall notify by telephone or other means a responsible individual in the office of the governor or in the office of the governor's designee of any schedule change that differs by more than 6 hours from the schedule information previously furnished in accordance with § 73.37(f)(3), and shall inform that individual of the number of hours of

advance or delay relative to the written schedule information previously furnished.

(g) State officials, state employees, and other individuals, whether or not licensees of the Commission, who receive schedule information of the kind specified in § 73.37(f)(3) shall protect that information against unauthorized disclosure as specified in § 73.21.

Dated at Washington, D.C. this 30th day of December 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-216 Filed 1-5-82; 8:45 am]

BILLING CODE 7590-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 298

[Reg. ER-1278; Economic Regulations Amendment No. 20 to Part 298; Docket 40133]

Classification and Exemption of Air Taxi Operators Dual Authority After Domestic Route Deregulation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB's "dual authority" rule includes exemptions that allow certificated air carriers to operate with small aircraft under the air taxi rule as if they were air taxi operators. For passenger service, the exemptions have been limited to flights outside the carrier's certificated route system. The CAB now removes that route limitation, so that all of a certificated carrier's passenger operations with small aircraft will be considered as operations under the air taxi rule. There is a special provision for service within Alaska.

DATES: Adopted: December 22, 1981. Effective: December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Mark Schwimmer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION:

Background

The Board's air taxi rule, 14 CFR Part 298, defines "air taxi operator" essentially as an air carrier that uses only small aircraft (up to 60 seats/18,000 pound payload capacity), does not have a certificate under section 401 of the Federal Aviation Act, and meets certain other conditions. Subpart B of Part 298 exempts air taxi operators from the section 401 certificate requirements, section 403 tariff-filing requirements, and a variety of other provisions of the Act. The exemption is conditioned on compliance with registration, liability insurance, reporting, and other requirements.

A certificated carrier is by definition not an air taxi operator, regardless of the size of its aircraft, and so has not qualified for air taxi operators' Subpart B exemptions. In a series of orders in recent years, however, the Board granted exemptions from this definitional constraint to various carriers, enabling the carriers to hold dual authority. These orders generally enabled a dual authority carrier to conduct small-aircraft operations off its certificated route system as an air taxi operator under Part 298, while performing on-route operations with small or large aircraft under its section 401 certificate.

In a recent final rule, the Board eliminated the need for individual dual authority exemption orders by amending Part 298 to embody the dual authority scheme directly in a new Subpart I of the air taxi regulation (ER-1251; 46 FR 51371; October 20, 1981). The scheme in the rule resulted in a slight change in terminology. A dual authority carrier is no longer both a certificated carrier and an air taxi operator at the same time. Instead, it is simply a certificated carrier, and Subpart I gives it the exemptions set out in Subpart B for air taxi operators *as if it were* an air taxi operator. The dual authority carrier's exemptions are conditioned on compliance with Subparts C through H, as they are for true air taxi operators, and further conditioned on the terms of Subpart I itself. In § 298.90(a), Subpart I provides that the exemptions cover small aircraft operations outside the carrier's certificated route system and, for cargo-only service, all the carrier's small aircraft operations, regardless of whether they are on- or off-route. These operations of a dual authority carrier are considered as "operations under Part 298" or "air taxi *operations*" rather than as operations under its certificate, even through the carrier is not an air taxi *operator.*

The Proposed Rule (EDR-433)

Under section 1601(a)(1)(C) of the Federal Aviation Act, the Board will have no authority after December 31, 1981, to specify terminal or intermediate points in certificates authorizing domestic passenger air transportation. The practical effect of this change is to give most certificated carriers virtually unlimited domestic route authority. As a result, the provision in § 298.90(a) established by ER-1251 that limits the Subpart I exemption for passenger service to operations outside a carrier's "certificated route system" will lose its meaning and some type of change in the regulatory scheme will be necessary.

The Board therefore proposed in EDR-433 (46 FR 51390; October 20, 1981) to remove the route limitation, effective December 31, 1981, so that all of a dual authority carrier's passenger operations with small aircraft would come under Part 298. Even if such a change were not compelled by the impending changes in domestic route regulation, this would be the next logical step in the Board's efforts to align regulatory requirements with the nature of a carrier's operations instead of the less significant criterion of whether the carrier holds a certificate. The proposal noted, for example, that the Board had already granted unlimited domestic fare flexibility to certificated carriers for their small aircraft operations, to provide parity with Part 298 operations (PS-92, 45 FR 24115, April 9, 1980). Similarly, the Board had recently amended the denied boarding compensation rule to exclude coverage of small aircraft entirely (ER-1237, 46 FR 42442, August 21, 1981). And the smoking rule had been amended to apply uniformly to U.S. carriers' operations of aircraft with 30 or more seats, without regard to whether a carrier holds a certificate (ER-1245, 46 FR 45934, September 16, 1981).

The main practical effect of the proposal would be to extend the tariff-filing exemption. The reason for this is that the main exemptions that part 298 provides to air taxi operators (subpart B) and dual authority certificated carriers for their covered operations (Subpart I, incorporating Subpart B) are from the section 401 certificate requirement and the section 403 tariff-filing requirement. The proposed extension of Subpart I coverage from off-route small aircraft operations to all small aircraft operations would have no substantive effect with regard to the section 401 exemption, because a section 401 exemption for operations already authorized by the carrier's section 401 certificate would merely be redundant.

Under the proposed scheme there would be no change in §§ 298.93 or 298.11(b), the provisions that directly address tariff filing. But the proposed change in § 298.90 from a route criterion to an aircraft-size criterion would change the effect of those provisions, to result in the following scheme: A certificated carrier would continue to file tariffs for all its large aircraft operations. For its small aircraft operations, tariffs would not be required except for joint fares that it had agreed to with another carrier where the other carrier used large aircaft. For connecting service on its own system that involved both large and small aircraft, tariff filing would be optional domestically, and optional internationally except for through fares that were less than the sum of the local fares.

The other main feature of EDR-433 was the Board's proposal to eliminate the air taxi registration requirement for most dual authority carriers. The main purpose of the registration scheme has been to provide the Board with certificates of insurance and a list of the air taxi operator's aircraft that can be used to verify that the insurance covers all of them. Under the Board's new insurance rules (Part 205; ER-1253; 46 FR 52572; October 27, 1981), all carriers will be filing certificates of insurance, and certificated carriers will not have to file lists of their aircraft. Any certificated carrier with unlimited domestic route authority beginning January 1, 1982, therefore, will have all the authority of an air taxi operator, except for the tariff-filing exemption and international small-aircraft route freedom, even without having to register for Part 298 operations. The proposal noted that there appears to be no reason to require a certificated carrier to register merely to obtain the tariff exemption and that remaining route authority. The effect of this amendment would be that most certificated carriers would become dual authority carriers automatically, without registering under § 298.21.

The proposal to eliminate the registration requirement for dual authority carriers included an exception for those carriers whose only section 401 certificate authority was obtained under the unused authority program, section 401(d)(5). Referring to an interpretation of section 1601(a)(1)(C) that it was about to announce in Order 81-11-23, the Board stated that those carriers would not have unlimited domestic route authority. Without such unlimited authority, the above reasoning would be inapplicable to them.

Additional features of the notice of proposed rulemaking were as follows:

Antitrust provisions. Sections 408 and 409 of the Act generally require prior Board approval of merger and other control transactions and interlocking relationships involving air carriers. Exemptions from the prior approval requirements in certain cases are provided by §§ 298.11(g), 298.14, and 298.92. The exemptions were explained in detail in ER-1251. The basic scheme is as follows: To determine whether the exemption is available for a specific transaction or relationship, examine the transaction or relationship but ignore certain operations, to be discussed below. If section 408 or 409 still applies to what is left in the picture, Part 298 provides no exemption. If, on the other hand, section 408 or 409 does not apply to what is left (*i.e.*, it applied to the original transaction or relationship only by virtue of the involvement of the ignored operations), than Part 298 does provide an exemption.

In the scheme established in ER-1251, the operations to be ignored in performing the above analysis of a transaction or relationship are as follows: "operations under this part, or under section 401(d)(5) (unused authority) or 401(d)(7) (automatic entry) of the Act." The references to section 401(d)(5) and (d)(7) were included so that a carrier whose only certificate authority came from those provisions would be treated like an air taxi operator. The Board proposed in EDR-433 to eliminate those references. This would simplify the rule. It would have little or no substantive effect, however, because the meaning of "operations under this part" would be broadened, by the main amendment proposed in EDR-433, to include all small-aircraft operations. Most, if not all, carriers whose only certificate authority is under section 401(d)(5) use small aircraft exclusively, so their section 401(d)(5) operations would continue to be ignored in the exemption analysis even without a specific reference to that provision. And the reference to section 401(d)(7) is no longer necessary, because the automatic market entry program has ended and all the carriers that obtained authority under it also have authority under section 401(d)(1) or (d)(3) of the Act.

Joint fares and 90-day notice of service suspensions. Section 37(c) of the Airline Deregulation Act (49 U.S.C. 1482a) entitles commuter air carriers—air taxi operators that perform at least five scheduled round trips per week between a pair of points—to participate in any uniform joint fare system established by the Board. It also requires that a participating commuter give 90 days' notice before terminating its service in a market in which joint fares are offered. Failure to give the notice makes the commuter ineligible to participate in the joint fare system. The Board proposed in EDR-433 to amend § 298.94 to interpret section 37(c) as applying to none of the operations of a dual authority carrier.

Elimination of large-aircraft reporting. An air taxi operator is required by § 298.32 to report to the Board any proprietary interest in, and operations with, large aircraft. A dual authority carrier is required by § 298.96 to file the same reports, but not for aircraft that are used exclusively in its section 401 operations. The Board tentatively concluded in EDR-433 that these reports have outlived their usefulness, and proposed to eliminate both § 298.32 and § 298.96.

Schedule filing. Under § 298.99, a dual authority carrier files schedules for its commuter operations under § 298.60 and for its section 401 operations under Part 231, *Transportation of Mail; Mail Schedules.* To avoid forcing certificated carriers to switch their schedule-filing routines for small-aircraft service that until December 31, 1981, had been on-route, the Board proposed to amend § 298.99 to give carriers the option of filing schedules under either § 298.60 or Part 231.

Airports. Under section 612 of the Act, the Federal Aviation Administration issues "airport operating certificates" to certain airports. Section 610 requires an airport to have an airport operating certificate if it serves any "air carriers certificated by the Civil Aeronautics Board." These provisions raise the following question: Must an airport have a section 612 airport operating certificate if it receives service from a dual authority carrier pursuant to that carrier's air taxi authority, but does not otherwise receive any service from a carrier that holds a certificate from the Board? The Board noted in EDR-433 that the FAA had interpreted the Act and the existing dual authority scheme as not requiring airports to have section 612 certificates in such cases. The Board expressed its understanding that if the dual authority amendments were adopted as proposed, the FAA interpretation would continue, so that the requirement for a section 612 certificate would depend simply on whether the airport receives service from large aircraft.

International markets; duration of exemptions. In some international markets, such as New York-Ottawa, where bilateral agreements or public interest considerations call for some type of government oversight of market entry or terms of service, the needed U.S. government control could be compromised by the unlimited small-aircraft international route authority afforded to air taxi operators and dual authority carriers by Part 298. In some of these markets the Board may need to withdraw or condition the Part 298 exemptions. The rule already includes a provision, §298.13, that enables the Board to terminate an exemption with respect to an air taxi operator or class of air taxi operators, upon an appropriate finding. The Board proposed in EDR-433 to revise § 298.13 in three ways: (1) to clarify that exemptions can be withdrawn or conditioned on a market-by-market basis; (2) to reflect the fact that Part 298 now affords exemptions not only to air taxi operators but also to other persons such as certificated carriers, persons controlling air carriers, and officers and directors of air carriers; and (3) to reflect the Airline Deregulation Act's elimination of the "undue burden" standard for exemptions under section 416 of the Federal Aviation Act.

Comments and Response

Comments on EDR-433 were filed by the Air Line Pilots Association, the Alaska Transportation Commission, CAS Aviation, Hawaiian Airlines, and the Regional Airline Association, and jointly by the following seven Alaskan carriers, which either hold section 401 certificates or have certificate applications pending before the Board: Cape Smythe Air Service, Channel Flying, Harold's Air Service, Hermens Air, L.A.B. Flying Service, Southeast Alaska Airlines, and Tyee Airlines.

With exceptions related to Alaska and the antitrust provisions, the comments generally supported the proposed rule. The Board has decided to amend Part 298 essentially as proposed, except that dual authority carriers will not be exempted from tariff filing or price regulation for service within Alaska. The specific comments and the Board's responses are as follows:

Hawaiian Airlines. Hawaiian, a certificated carrier, supported the proposal without qualification. It noted that the elimination of tariff filing for its small aircraft operations would give it the flexibility that its air taxi rivals already have to undertake and respond to pricing initiatives.

Alaskan carriers. These commenters also supported the proposal, but pointed out a potential ambiguity in terminology. They referred to section 105(a) of the Federal Aviation Act, in which paragraph (1) generally preempts State regulation of air carriers that have authority from the Board, and paragraph (2) states:

> Except with respect to air transportation (other than charter air transportation) *provided pursuant to a certificate issued by the Board under section 401 of this Act*, the provisions of [paragraph (1)] shall not apply to any transportation by air of persons, property, or mail conducted wholly within the State of Alaska. (emphasis added)

The effect of section 105(a)(2) is that for air transportation wholly within Alaska, State regulation is preempted only for scheduled service "provided pursuant to" a section 401 certificate. Thus, the State may regulate Part 298 air taxi operators and the charter service of certificated carriers.

The Alaskan carriers then referred to proposed § 290.90(b), which states:

> All of a certificated carrier's operations with small aircraft shall be considered as operations "under this part" and not under its section 401 certificate.

These commenters were concerned that the combined effect of section 105(a)(2) and § 290.90(b) would be to subject Alaskan certificated carriers operating small aircraft to possible regulation by the State of Alaska. This could arguably result from considering such operations as "under Part 298" rather than under a certificate. The carriers stated that such a result would be contrary to both the stated purpose of the notice of proposed rulemaking and the Act's preemption provision. They pointed out that Munz Northern and Kodiak Western, for example, are certificated carriers that have not been subject to regulation by the State over their scheduled routes at all.

In proposing these amendments, the Board did not intend to deprive Federally-certificated Alaskan carriers of the benefits of State preemption. The Board is therefore adding a sentence to § 298.90(b) to clarify that, for the purposes of section 105(a)(2) of the Act, a certificated carrier's operations "under Part 298" are nonetheless considered as "provided pursuant to" its certificate.

Regional Airline Association (RAA). The RAA sought a clarification or change in the proposal to eliminate the Part 298 registration requirement for most dual authority carriers but retain it for those whose only certificate authority was obtained under the section 401(d)(5) unused authority program. Continued registration for those carriers was based on the interpretation that after December 31, 1981, their domestic route authority would still be limited. The RAA pointed out that under Order 81-11-23, some of them will also have unlimited domestic route authority, namely, those whose section 401(d)(5) certificates were originally awarded by January 1, 1981. The rationale for eliminating the registration requirement therefore applies to this subgroup of carriers as well, and the rule has been revised accordingly.

The RAA also expressed a concern that the Federal Aviation Administration's interpretation of the section 612 airport certification requirements would not continue, especially for those airports that have already been certificated but would no longer need certificates as a result of the Board's expanded definition of operations "under Part 298." It is the Board's understanding, however, that the FAA interpretation will continue. For further information about that interpretation, interested persons may contact the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591.

Alaska Transportation Commission (ATC). The ATC strongly supported the effect of the proposed rule on section 612 airport certification requirements. It objected, however, to changes affecting fares and tariffs. It referred to the Board's reasoning in EDR-433 that little was to be gained from retaining tariffs for certificated carriers' small-plane service since the Board had already deregulated fares for such service in PS-92. It pointed out that this argument is inapplicable to service within Alaska, because PS-92 did not affect that service. Intra-Alaska passenger service, regardless of aircraft size, is still subject to the statutory fare flexibility zone that ranges from 50 percent below to 5 percent above the standard industry fare level. The ATC suggested that retention of this limited flexibility is in the public interest in Alaska because most service there is with small aircraft, many markets are thin, and, even through there is now competition on many routes, the number of single-carrier markets is likely to increase significantly in the near future.

The Board has already recognized that intra-Alaska service presents unusual circumstances that might call for special regulatory treatment, and has deferred action on broadening certificated carriers' fare flexibility there (PS-96; 45 FR 48600; July 21, 1980). True air taxi operators, moreover, are subject to regulation by the ATC. While the Board takes no position now on the merits of ATC's argument that greater fare flexibility is unwise, it agrees that such a change should not be made inadvertently in this rulemaking proceeding, which focused more on tariff filing than on fare levels themselves. Also, if certificated carriers' intra-Alaska fares will continue to be subject to some Board regulation, tariff filing needs to be retained.

The final rule therefore includes in § 298.90(c) an exception for intra-Alaska service. Certificated carriers will be exempted from the Act as if they were air taxi operators, except that for service wholly within Alaska they will not have the exemptions from sections 403 and 404 that are available to air taxi operators under §§ 298.11 (b), (c), and (d). Although the ATC comment referred only to passenger fares, this exception also covers cargo rates. The combined effect of the Air Cargo Deregulation Act (Pub. L. 95-163), the Board's implementing rule (14 CFR Part 291), and the Alaska preemption provision (section 105(a)(2)) is that cargo rates for intra-Alaska service have continued to be subject to regulation by either the Board or the ATC, and decisions concerning that policy are outside the scope of this proceeding.

A conforming change is made in § 298.93, which sets out carriers' tariff-filing options for through service that includes one segment that is subject to tariff filing and another that is not.

The ATC also questioned the proposal to eliminate the Part 298 registration requirement for most dual authority carriers. It stated that the registration provides an up-to-date list of a carrier's aircraft, which enables the Board to make sure that the carrier has proper insurance coverage. It argued that this is especially important for smaller carriers, regardless of whether they hold certificates, because smaller carriers change aircraft often, do not usually have fleet policies, and often have limited assets to satisfy potential damage claims.

In EDR-433, however, the Board stated that there is little point in retaining a registration procedure when, even without registering, a certificated carrier with unlimited domestic route authority will already have most of the benefits of registering. The ATC has not refuted this argument, which applies with even greater force in Alaska because the Board's decision to retain tariff filing and statutory fare flexibility for dual authority carriers operating there means that the main benefit of registering would only be small-aircraft international route freedom. Moreover, eliminating the registration does not change the underlying requirement of Part 205 that a carrier always have insurance coverage in force, so the aircraft list provided by the Part 298 registration is at most an enforcement tool. And that tool is not as important for certificated carriers that have been found fit by the Board as it is for true air taxi operators, because the fitness determination includes an examination of a carrier's compliance disposition. The Board would consider the failure to maintain required insurance coverage as an especially serious violation, and as possible grounds for revocation of a carrier's certificate, a risk that a carrier would not undertake lightly. If experience does show a problem in this area, however, the Board will consider further remedies in a future rulemaking proceeding.

Air Line Pilots Association (ALPA). ALPA supported the proposed broadening of the scope of Subpart I to cover all small-aircraft operations of certificated carriers. It objected, however, to the exemptions from prior approval for mergers and acquisitions (section 408) and interlocking relationships (section 409). It argued that exempting certificated carriers' acquisitions of large commuter operators that compete with them directly conflicts with the Airline Deregulation Act of 1978 and constitutes unsound policy. It suggested that for certain city-pairs, there is no relation between the size of aircraft used and the likely effect that a consolidation between two actual competitors would have on competition. ALPA also suggested that, especially in small markets, elimination of a competitor could raise the public interest concerns that the Board must consider in section 408 prior approval proceedings. It suggested further that if such acquisitions bring "two sets of heterogeneous employment structures . . . under common control," they raise public interest concerns about their effects on employees. ALPA also advocated retention of the requirement that air taxi operators report their interests in large aircraft, to avoid compounding these problems by "eliminating a valuable cross-check." It concluded that these acquisitions should be reviewed by the Board in a manner that allows for notice and comment on all potential competitive and public interest consequences.

ALPA's comment is not relevant to the amendments of the antitrust provisions (§§ 298.11(g) and 298.92) that were proposed in EDR-433. Those amendments are merely technical and conforming in nature, as discussed above. Rather, ALPA's comment addresses the final rule adopted in ER-1251, for which the Board had previously published notice of proposed rulemaking EDR-412 (45 FR 73087; November 4, 1980). The Board has nonetheless considered the comment on its merits, and finds it unpersuasive. Acquisition by a certificated carrier of even a large commuter that competes with it directly is not likely to reduce competition substantially. The large number of commuter carriers and free entry into the industry, coupled with after-the-fact Board scrutiny under antitrust principles, militate against that result. As for the labor and other public interest considerations, ALPA has not shown that that type of consolidation would raise issues that would be unique to it and not arise in consolidations involving only Part 298 carriers, which have long been covered by the exemption. In view of the remoteness of the likelihood of serious anticompetitive problems in the cases covered by the exemptions adopted in ER-1251, the benefits of prior Board review under sections 408 and 409 are outweighed by the burden on the Board's and carriers' resources. The Board also sees no reason to retain the requirement that air taxi operators report their interests in large aircraft. It has outlived its orginal purpose, and as a means of alerting the Board to competitive problems it would be an inefficient method at best.

The Board is therefore adopting the amendments of §§ 298.11(g) and 298.92 as proposed, but with one editorial change. As proposed, § 298.92 would read:

> Certificated carriers *operating under this part* are exempted from sections 408(a) and 409 of the Act for transactions and relationships to which those sections apply only because of the involvement of operations under this part. (emphasis added)

The final rule omits the underscored words, to correct a drafting error and eliminate the suggestion that a certificated carrier, in order to avail itself of the exemption for an acquisition or interlock with an air taxi operator, must itself be performing some small-aircraft operations. The Board never intended such a result, as is clear from the discussion in the supplementary information sections of EDR-412, ER-1251, and EDR-433.

CAS Aviation. This air taxi operator stated that the Board should delay this rulemaking pending a Congressional review, because "airline operations under Part 298 FAR Part 135 on-demand are not qualified to conduct this type of flight activity as it presently exists." It stated further that the proposal discriminates against non-scheduled operators because they, unlike scheduled carriers, must have reservations under the General Aviation Reservations Program. The commenter appears to have misunderstood the Board's proposal. Moreover, the reservations program is administered by the FAA and is not affected by this rulemaking.

Miscellaneous

The Board has recently issued ER-1279, adopted December 21, 1981. That rule amends Part 231, the schedule-filing rule for certificated carriers, to reflect the Board's interpretation that after December 31, 1981, these carriers are required to file domestic schedules only for freighter service that is provided within Alaska or Hawaii. This rule makes a conforming change in § 298.99(a), the schedule-filing provision for dual authority carriers.

Regulatory Flexibility Act

In accordance with 5 U.S.C. § 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–534, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. The small air carriers that are affected by this rule are the dual authority carriers that use only small aircraft. For them, the primary result is merely to extend to all their routes (except in Alaska) a tariff-filing exemption that already covers most of their routes.

The Final Rule

PART 298—EXEMPTION FOR AIR TAXI OPERATIONS

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 298, *Classification and Exemption of Air Taxi Operators,* as follows:

1. The authority for Part 298 is:

Authority: Secs. 101(3), 204, 401, 404, 407, 416, 418, 419, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 760, 766, 771, 91 Stat. 1284, 92 Stat. 1732; 49 U.S.C. 1301, 1324, 1371, 1374, 1377, 1386, 1388, 1389.

PART 298 [HEADING REVISED]

2. Part 298 is retitled *Exemptions for Air Taxi Operations.*

PART 298 [AMENDED]

3. The Table of Contents is amended by removing §§ 298.32 and 298.96.

4. In § 298.2, a new paragraph (v) is added, to read:

§ 298.2 Definitions.

* * * * *

(v) "Small aircraft" means any aircraft that is not a large aircraft, as defined in this section.

5. In § 298.11, paragraph (g) is amended by removing the last clause, so that as revised it reads:

298.11 Exemption authority.

Air taxi operators are hereby relieved from the following provisions of Title IV of the Act only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to conduct air taxi operations:

* * * * *

(g) Sections 408(a) and 409, for transactions and relationships to which those sections apply only because of the involvement of operations under this part.

6. Section 298.13 is revised to read:

§ 298.13 Duration of exemption.

The exemption from any provision of title IV of the Act provided by this part shall continue in effect only until such time as the Board shall find that enforcement of that provision would be in the public interest, at which time the exemption shall terminate or be conditioned with respect to the person, class of persons, or service (*e.g.*, limited-entry foreign air transportation market) subject to the finding.

§ 298.32 [Removed]

7. Section 289.32, *Requirements relating to interests in large aircraft or their operations,* is removed and reserved.

8. In Subpart I, § 298.90 is revised to read:

§ 298.90 Exemption for certificated carriers.

(a) Each certificated carrier is exempted from the Act in the manner set forth in Subpart B, subject to the terms of this subpart and Subparts C through H, as if it were an air taxi operator, for operations that are performed with small aircraft. However, a certificated carrier need not comply with the registration provisions of Subpart C (§§ 298.21–24) unless its only section 401 certificate authority was obtained—

(1) After January 1, 1981, and

(2) Under section 401(d)(5) of the Act (unused authority).

(b) All of a certificated carrier's operations with small aircraft shall be considered as operations "under this part" and not under its section 401 certificate. However, for the purposes of section 105(a)(2) of the Act (limiting Federal preemption of State regulation for certain intra-Alaska service), a certificated carrier's operations under this part shall be considered as "provided pursuant to" its certificate.

(c) Notwithstanding §§ 298.11 (b), (c), or (d), certificated carriers operating under this part are not exempted from section 403 or 404 of the Act with respect to air transportation conducted wholly within the State of Alaska.

9. In § 298.92, the words "operating under this part" and the last clause are removed so that the section as revised reads:

§ 298.92 Antitrust provisions.

Certificated carriers are exempted from sections 408(a) and 409 of the Act for transactions and relationships to which those sections apply only because of the involvement of operations under this part.

10. Section 298.93 is amended to read:

§ 298.93 Through service options.

(a) *Interstate and overseas air transportation.* If a certificated carrier provides interstate or overseas air transportation that includes a segment for which tariff filing is required and another segment for which tariff filing is not required, then for through service over that routing the carrier has the option of filing or not filing a tariff. If the carrier files a tariff for through service, it is not exempt from section 403 or section 404(b) of the Act for that air transportation, except to the extent set forth in § 221.3(e) of this chapter (domestic tariff flexibility).

(b) *Foreign air transportation.* If a certificated carrier provides foreign air transportation that includes a segment for which tariff filing is required and another segment for which tariff filing is not required, then for through service over that routing the carrier has the option of filing a tariff or charging the sum of the applicable local rates, fares, or charges. If the carrier files a tariff for through service, it is not exempt from section 403 or section 404(b) of the Act for that air transportation.

11. Section 298.94 is revised to read:

§ 298.94 Joint fares and 90-day notice of service modifications, suspensions or terminations.

The 90-day notice requirement in section 37(c) of the Airline Deregulation Act of 1978, 49 U.S.C. 1482a, does not apply to a certificated carrier's operations under this part.

§ 298.96 [Removed]

12. Section 298.96, *Special reporting requirements relating to large aircraft,* is removed and reserved.

13. In § 298.99, paragraph (a) is revised to read:

§ 298.99 Scope of filing and reporting requirements.

(a) For its operations under this part, a certificated carrier shall file flight schedules for its service in foreign air transportation and for cargo-only air transportation within the States of Alaska or Hawaii. It may file the schedules in accordance with either § 298.60 *(Filing of flight schedules by commuter air carriers)* or Part 231 of this chapter *(Transportation of Mail; Mail Schedules).*

* * * * *

By the Civil Aeronautics Board.
Phyllis T. Kaylor,
Secretary.
[FR Doc. 82-203 Filed 1-5-82; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371, 373, 376, 378, 385 and 399

Extension of Foreign Policy Export Controls

AGENCY: International Trade Administration, Office of Export Administration, Commerce.

ACTION: Notice of rule related action.

SUMMARY: As authorized in section 6 of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. app. 2401 *et seq.*) (hereinafter "the Act") the Secretary of Commerce determined on December 31, 1981, that all export controls maintained for foreign policy purposes should continue beyond December 31, 1981, until February 28, 1982.

DATE: Effective as of January 1, 1982.

FOR FURTHER INFORMATION CONTACT: James Nobel, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 377-3205.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the Federal Register (46 FR 43842, September 1, 1981) the Department sought comments on how controls imposed or extended effective January 1, 1981 and those subsequently imposed had affected exporters and the general public. We received numerous comments.

All current foreign policy controls, except those imposed on December 30, 1981, which do not require extension at this time, are extended until February 28, 1982. Controls are extended in their present form for a two month period so that they may be considered in a deliberate and comprehensive manner, especially in view of the situation in Eastern Europe. The comments received as a result of the September 1, 1981, request will be considered in this review.

At the same time, nuclear nonproliferation controls are continued in effect pursuant to section 17(d) of the Act and section 309(c) of the Nuclear Nonproliferation Act of 1978.

The public record concerning comments is maintained in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 3102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. The records may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records within the facility may be obtained from Patricia L. Mann, the International Trade Administration's Freedom of Information Officer, at the above address or by calling (202) 377-3031.

Accordingly, the foreign policy controls are extended.

Authority: Secs. 6, and 13, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order 12214, 45 FR 29783 (May 6, 1980); Department Organization Order 10-3, 45 FR 6141 (January 25, 1980); International Trade Administration Organization and Function Order 41-1, 45 FR 11862 (February 22, 1980) and 41-4 (45 FR 65003, October 1, 1980).

Dated: December 31, 1981.
Bohdan Denysyk,
Deputy Assistant Secretary for Export Administration.
[FR Doc. 81-37475 Filed 12-31-81; 1:00 pm]
BILLING CODE 3510-25-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33-6368; 34-18349; 35-22324; 39-680; IC-12114 and IA-787; File No. S7-917]

Equal Access to Justice Act Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission is promulgating and requesting comments upon procedural rules implementing the Equal Access to Justice Act. The Act, which took effect October 1, 1981, provides for the award of attorney fees and other expenses to certain parties who prevail over the federal government in certain administrative and court proceedings.

DATES: Effective January 6, 1982. Comments should be received by the Commission on or before January 6, 1983.

ADDRESSES: All communications concerning this matter should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Such communications should refer to File No. S7-917 and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, NW, Washington D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Harlan W. Penn, Office of the General Counsel, Securities and Exchange Commission, 500 N. Capitol St., Washington, D.C. 20549; (202) 272-2454.

SUPPLEMENTARY INFORMATION: On June 18, 1981, the Chairman of the Administrative Conference of the United States issued model regulations for Federal agency implementation of the Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2325 (46 FR 32900, June 25, 1981). The Act authorizes the award of attorney fees and other expenses to certain parties who prevail against the United States in adversary adjudications (under section 554 of the Administrative Procedure Act, 5 U.S.C. 554), in which the position of the United States is represented by counsel or otherwise, conducted by Federal agencies and in civil court proceedings other than tort actions. Eligible parties include individuals with a net worth of no more than $1 million; sole owners of unincorporated businesses, partnerships, corporations, associations or organizations with a net worth of no more than $5 million and no more than 500 employees; and tax-exempt charitable, educational or religious organizations and agricultural cooperative associations with no more than 500 employees, regardless of net worth. The Act became effective on October 1, 1981, and applies to proceedings pending on that date.

The Act permits an award of fees and expenses to prevailing parties other than the federal government where the federal agency could not show that its position in the proceeding was "substantially justified or that special circumstances make an award unjust." (Sections 203(a)(1), 204(a)). Thus, as to certain cases involving agencies of the federal government, and individuals or entities subject to net worth tests, the Act creates an exception to the longstanding "American Rule" under which attorney fees ordinarily are not recoverable by the prevailing party in federal litigation. *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1975). Specifically, unless the agency establishes that its position as party to the proceeding was "substantially justified or that special circumstances make an award unjust," the Act permits awards of "fees and expenses" to private parties in:

(a) on-the-record agency adjudications subject to 5 U.S.C. 554 [of the Administrative Procedure Act ("APA")], in which the party prevails in a proceeding brought by or against the agency (Section 203(a)(1));

(b) civil actions brought by or against an agency in which the party prevails (Section 204(a)); and

(c) actions for judicial review of an agency adjudication conducted pursuant to 5 U.S.C. 554 in which the party prevails (Section 204(a)).

The Commission believes that it will have no difficulty in establishing substantial justification for the positions taken in proceedings and that, under the Act, the class of claimants who may seek an award of fees and expenses will not be large. While the number of claims for awards will vary from agency to agency, it is apparent that responding to and determining such requests will be a significant obligation of agencies including the Securities and Exchange Commission.

The Act directs agencies to establish procedures for the award of fees in their administrative proceedings, after consultation with the Chairman of the Administrative Conference. To facilitate this process, the Administrative Conference developed the model regulations with the help of a task force of volunteers from numerous Federal agencies. The Model Rules have proven to be a helpful guide in drafting the rules promulgated today. The Model Rules take an approach designed to permit determination of requests promptly and without excessive diversion of government resources. The Commission's rules take the same approach but tailor it to Commission needs. As required by the Act the Commission has consulted with the Chairman of the Administrative Conference in the preparation of these rules. A copy of the comment letter received from Stephen L. Babcock, Executive Director, Administrative Conference of the United States, will be placed in the public file. Those interested are also urged to examine the Model Rules and accompanying commentary. 46 FR 32900 (June 25, 1981); 46 FR 15895 (March 10, 1981).

The Commission's rules, which follow its Rules of Practice (17 CFR 201.1 *et seq.*), specify the proceedings and applicants covered and the fees and expenses allowable and set forth the procedures for processing of applications. The significant differences between the Commission's rules and the Model Rules are highlighted below, with the corresponding designations of the Model Rules and the Commission's Rules found in 17 CFR:

1. *When the Act applies.* Section 201.32 includes a sentence not found in Model Rule 0.102. This change is made to clarify that some proceedings which are technically open on October 1, 1981, are not subject to the Act. The phrase "substantially concluded" is meant to exclude proceedings open but only awaiting completion of remedial action or formal closing or similar action. A change of this type was suggested in the discussion which accompanied the Model Rules. (46 FR 32900, 32901.)

2. *Proceedings covered.* Section 201.33 has been altered from the text of Model Rule 0.103 to reflect the fact that the Commission does not conduct rate-making or licensing proceedings. It has also been altered to reflect the Commission's view that the Act does not authorize an agency to award fees against another agency or department of government as set forth in the Model Rules. Similar changes have been made in other parts of the Model Rules. Commission proceedings which are covered by the Act include those listed in the Appendix to the rules. Model Rule 0.103(b) provides for designation of a proceeding as an adversary adjudication for purposes of the Act even though not listed. It has been omitted. There is serious question whether the Act would permit payment of fees if the proceedings are not required to be under 5 U.S.C. 554 but are nonetheless voluntarily so conducted. In addition, the Commission recognizes that the Act does not apply to proceedings before self-regulatory organizations, to review thereof by the Commission, or to Commission investigations.

3. *Rulemaking on maximum rates for attorney fees.* Model Rule 0.107 has been omitted. It provides for raising the $75 per hour limit on attorney fees by rule. The Commission may, of course, amend these rules when appropriate and will also consider requests from affected persons or the public that the rules be amended. *See* 17 CFR 202.6.

4. *Net worth exhibit.* The Commission's Office of the General Counsel opposed the provision in the proposed Model Rules requiring fee award applicants to submit a detailed statement of their net worth. This was viewed as unduly burdensome on eligible applicants and creating administrative problems since confidential financial information was sought. The Administrative Conference therefore simplified the requirement and gave applicants greater leeway in structuring the submission. The exhibit will be helpful in considering applications. Therefore § 201.42(a) is identical with Model Rule 0.202(a). Section 201.42(b) is simplified from the corresponding Model Rule in that it refers to the Commission's provision for requesting confidential treatment under its Rules of Practice. *See* 17 CFR 201.25.

Effective Date of Rules; Request for Additional Comments

The rules are procedural within the meaning of 5 U.S.C. 552(b)(A); thus publication of the rules in preliminary proposed form is not required. The rules will be effective January 6, 1982. The Commission intends to review the rules after approximately one year. Comments received prior to January 6, 1983, will be considered by the Commission during this review.

Authority

This rulemaking is effected under the authority of section 19 of the Securities Act of 1933, 15 U.S.C. 77r; sections 23 and 24 of the Securities Exchange Act of 1934, 15 U.S.C. 78w and 78x; section 20 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; section 319 of the Trust Indenture Act of 1939, 15 U.S.C. 77sss; section 38 of the Investment Company Act of 1940, 15 U.S.C. 80a-37; section 211 of the Investment Advisers Act of 1940, 15 U.S.C. 80b-11; and section 203(a)(1) of the Equal Access to Justice Act, 5 U.S.C. 504(c)(1).

Regulatory Flexibility Act

No regulatory flexibility analysis (or certification that one is not required) is necessary because the rules are procedural, and thus not within the definition of "rule" for purposes of Chapter 6, Title 5, U.S.C.

Conclusion

PART 201—RULES OF PRACTICE

Part 201 of Chapter II, Title 17, Code of Federal Regulations is amended by designating §§ 201.1 through 201.28 as "Subpart A—Rules of Practice" and by adding Subpart B, to read as follows:

§§ 201.1 through 201.28 [Redesignated as Subpart A]

Subpart B—Regulations Pertaining To The Equal Access To Justice Act

Authority: Sec. 19, Securities Act of 1933, 15 U.S.C. 77r; Sections 23 and 24, Securities Exchange Act of 1934, 15 U.S.C. 78w and 78x; Section 20, Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; section 319, Trust Indenture Act of 1939, 15 U.S.C. 77sss; section 38, Investment Company Act of 1940, 15 U.S.C. 80a-37; section 211, Investment Advisers Act of 1940, 15 U.S.C. 80b-11; and section 203(a)(1), Equal Access to Justice Act, 5 U.S.C. 504(c)(1).

§ 201.31 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use in ruling on those applications. These rules do not impose a burden on competition

§ 201.32 When the Act applies.

The Act applies to adversary adjudications described in § 201.33 pending before the Commission at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final agency action occurs. Proceedings which have been substantially concluded before October 1, 1981, are not covered although officially pending for purposes such as concluding remedial actions found in Commission orders or private undertakings.

§ 201.33 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Commission. These are on the record adjudications under 5 U.S.C. 554 in which the position of an Office or Division of the Commission as a party, not including *amicus* participation, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. *See* Appendix, 17 CFR 201.60.

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 201.34 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the administrative law judge determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the administrative law judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 201.35 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Office or Division over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on counsel for an Office or Division of the Commission, which must show that its position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 201.36 Allowable fees and expenses.

(a) Subject to the limitation of paragraph (b), awards will be based on rates customarily charged, in the locale of the hearing, by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the reasonable rate at which the Commission pays witnesses with similar expertise. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses. No award may include fees and expenses for preparation of or proceedings related to an application under this subpart.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 201.37 Delegations of authority.

The Commission may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases.

§ 201.41 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant, the proceeding for which an award is sought and contain the information required in this subpart. The application shall show that the applicant has prevailed and specify the position(s) of the opposing Office or Division in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 201.42 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 201.34(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The administrative law judge or the Commission may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that exhibit in accordance with 17 CFR 201.25.

§ 201.43 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The applicant may be required to provide vouchers, receipts, or other substantiation for any fees or expenses claimed.

§ 201.44 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of (1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an administrative law judge becomes administratively final; (2) issuance of an order disposing of any petitions for reconsideration of the Commission's final order in the proceeding; (3) if no petition for reconsideration is filed, the last date on which such a petition could have been filed; or (4) issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

§ 201.51 Filing and service of documents.

Any application for an award or other document related to an application shall be filed and served in the same manner as other papers in proceedings under the Commission's Rules of Practice. In addition, a copy of each application for fees and expenses shall be served on the General Counsel of the Commission.

§ 201.52 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Office or Division of the Commission may file an answer to the application. Unless the Office or Division of the Commission counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If counsel for the Office or Division of the Commission and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted upon request by agency counsel and the applicant.

(c) The answer shall explain any objections to the award requested and identify the facts relied on in support of that position. If the answer is based on any alleged facts not already in the record of the proceeding, it shall include supporting affidavits or a request for further proceedings under § 201.55.

§ 201.53 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 201.55.

§ 201.54 Settlement.

The applicant and counsel for the Office or Division of the Commission may agree on a proposed settlement of the award before final action of the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with the Commission's standard settlement procedure. *See* 17 CFR 201.8. If a prevailing party and counsel for the Office or Division of the Commission agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 201.55 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Office or Division of the Commission, or on his or her own initiative, the administrative law judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request for further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 201.56 Decision.

The administrative law judge shall issue an initial decision on the application promptly after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§ 201.57 Commission review.

In accordance with the procedures set forth in 17 CFR 201.17, either the applicant or counsel for the Office or Division of the Commission may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative. If neither the applicant nor counsel for the Division or Office of the Commission seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the administrative law judge for further proceedings.

§ 201.58 Judicial review.

Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 201.59 Payment of award.

An applicant seeking payment of an award shall submit to the Comptroller of the Commission a copy of the Commission's final decision granting the award, accompanied by a sworn statement that the applicant will not seek review of the decision in the United States courts. The Commission will pay the amount awarded to the applicant as authorized by law, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

§ 201.60 Appendix—Adversary adjudications conducted by the Commission under 5 U.S.C. 554.

Securities Exchange Act of 1934

Section 11A(b)(6), 15 U.S.C. 78k–1(b)(6) (suspension or revocation of registration, or censure of a securities information processor).

Section 12(j), 15 U.S.C. 78l(j) (suspension of effective date or revocation of registration of a security).

Section 15(b)(4), 15 U.S.C. 78o(b)(4) (suspension or revocation of registration, or censure of a broker or dealer).

Section 15(b)(6), 15 U.S.C. 78o(b)(6) (censure, suspension or bar of an associate of a broker or dealer).

Section 15(B)(c)(2), 15 U.S.C. 78o–4(c)(2) (suspension or revocation of registration, or censure of a municipal securities dealer).

Section 15(B)(c)(4), 15 U.S.C. 78o–4(c)(4) (censure, suspension or bar of an associate of a municipal securities dealer).

Section 15B(c)(8), 15 U.S.C. 78o–4(c)(8) (removal or censure of member of the Municipal Securities Rulemaking Board).

Section 17A(C)(3)(A), 15 U.S.C. 78q–1(c)(3)(A) (denial of registration or postponement of effective date of registration of a transfer agent).

Section 197h(1), 15 U.S.C. 78s(h)(1) (suspension or revocation of registration, or censure of a self-regulatory organization).

Section 19(h)(2), 15 U.S.C. 78s(h)(2) (suspension or expulsion of a member of a self-regulatory organization).

Section 19(h)(3), 15 U.S.C. 78s(h)(3) (suspension or bar of a person from being associated with a national securities exchange or registered securities association).

Section 19(h)(4), 15 U.S.C. 78s(h)(4) (removal or censure of a director or officer of a self-regulatory organization).

Investment Advisers Act of 1940

Section 203(e), 15 U.S.C. 80b–3(e) (suspension or revocation of registration, or censure of an investment adviser).

Section 203(f), 15 U.S.C. 80b–3(f) (censure, suspension or bar of an associate of an investment adviser).

By the Commission.

December 18, 1981.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82–304 Filed 1–5–82; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

49 CFR Chapter X

Notice of References for Information Collection Requirements

Issued December 31, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Technical amendments.

SUMMARY: The Federal Energy Regulatory Commission is providing, as