

# Rules and Regulations

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

20 CFR Parts 404 and 416

RIN 0960-AC59

### Federal Old-Age, Survivors, and Disability Insurance Supplemental Security Income for the Aged, Blind and Disabled; Representation of Parties—Suspension and Disqualification of Representatives

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final Rules.

**SUMMARY:** These final rules amend the regulations governing the suspension and disqualification of persons who represent claimants in dealings with the Social Security Administration (SSA). The regulations update organizational designations and establish the framework for more efficient processing of possible violations of our rules. The regulations also require that a panel of three Appeals Council members, rather than a single member, will consider a request for review of an administrative law judge's (ALJ) decision on the issue of suspension or disqualification of a representative. The procedures for initiating and processing complaints are largely unchanged but the regulations designate the Deputy Commissioner for Programs, or his or her designee, as the official responsible for issuing complaints.

**EFFECTIVE DATE:** These final regulations are effective May 29, 1991.

**FOR FURTHER INFORMATION CONTACT:** Philip Berge, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 (301) 965-1769.

**SUPPLEMENTARY INFORMATION:** On February 1, 1990, we published a notice

of proposed rulemaking (NPRM) to provide that, when it appears that a person who represents claimants in dealings with SSA has violated one of our rules, SSA's Associate Commissioner for Hearings and Appeals, or his or her designee, will initiate proceedings to suspend or disqualify the representative. This differed from the regulations then in effect, which provided that the Deputy Commissioner (Operations) or the Director (or Deputy Director), Office of Insurance Programs, would prepare a notice containing a statement of charges that constituted the basis for a proceeding against the representative.

The NPRM also provided that a request for review of the decision issued by the ALJ designated to act as hearing officer would be decided by a panel of three Appeals Council members rather than a single member, as is presently the case. In addition, the NPRM updated organizational designations and clarified the functional responsibility of the designated officials.

### Final Regulations

The final regulations:

1. Update organizational designations and establish a framework for more efficient processing of matters involving the possible suspension or disqualification of a representative;

2. Authorize the establishment of a panel of three Appeals Council members who will consider a request for review of an ALJ's decision on the issue of suspension or disqualification of a representative, and

3. Provide that the Deputy Commissioner for Programs, or his or her designee, will initiate proceedings to suspend or disqualify a representative.

The only substantive change in these final regulations from the NPRM is that the Deputy Commissioner for Programs, or his or her designee, will initiate proceedings to suspend or disqualify the representative, rather than the Associate Commissioner for Hearings and Appeals, or his or her designee.

The Deputy Commissioner for Programs has direct authority over the Office of Hearings and Appeals. That office will investigate alleged violations and forward its findings and recommendations to the Deputy Commissioner for Programs who will independently decide whether to issue a notice of charges against a

representative. The Deputy Commissioner for Programs will also consider any answer filed in response to the complaint, and determine whether the complaint should be withdrawn. If the complaint is not withdrawn, the Deputy Commissioner for Programs will request the Associate Commissioner for Hearings and Appeals to designate an ALJ who will serve as hearing officer to hold a hearing on the charges. The Office of Hearings and Appeals' Special Counsel Staff which investigated the alleged violations, will represent the Deputy Commissioner for Programs during all phases of the proceeding.

These procedures will not only have the advantages of efficiency and economy, but will also provide for direct review and oversight of the activities of the Office of Hearings and Appeals by the senior SSA official responsible for overall management of this area of the program. Moreover, the process will allow SSA personnel familiar with the facts to represent the Agency during proceedings on charges and thereby eliminate the duplication of effort that would result from separation of the investigative and prosecutorial functions.

### Public Comments and Responses

We received 19 letters in response to the NPRM containing comments from attorneys, claimant representatives, private individuals, and legal aid organizations. We have carefully considered all the comments and, below, have attempted to address all of the significant comments we received, including those that resulted in changes to the rules and those that were rejected. For ease of reference we have grouped the comments according to the issues raised.

**Comment:** All of the commenters objected in some form to the consolidation within the Office of Hearings and Appeals of all phases of the process involved in the suspension or disqualification of representatives. Some of the commenters believed that the proposed change would violate statutory provisions or deny the representatives due process of law. Each of the commenters cited several of the following factors as representing actual or apparent conflicts of interest because of the perception that there was intermingling of the investigative,

prosecutorial, and adjudicative functions:

1. The Office of Hearings and Appeals would conduct the investigation of suspected violations of the rules governing representatives' conduct;

2. The Associate Commissioner for Hearings and Appeals would issue the notice of charges against a representative;

3. The Associate Commissioner for Hearings and Appeals would assign an ALJ employed by the Agency to conduct the hearing and issue a decision on the charges;

4. Personnel assigned to the Office of Hearings and Appeals would represent the Agency in proceedings to suspend or disqualify representatives;

5. Both the representative and the Office of Hearings and Appeals personnel who prosecuted the charges filed against the representative could request review of the decision issued by the ALJ; and,

6. The Appeals Council, which is a part of the Office of Hearings and Appeals, would consider the request for review of the ALJ's decision.

**Response:** To avoid even the appearance of impropriety or unfairness, we have modified the proposed regulations to indicate that the Deputy Commissioner for Programs will be the official with the authority to issue notices of charges against representatives. The Deputy Commissioner for Programs has authority over employees working at the Office of Hearings and Appeals, as well as several other components within SSA, with responsibility for formulating the regulations and policies by which SSA administers its benefit programs. As such, the Deputy Commissioner for Programs has the knowledge necessary to evaluate whether a representative has committed a violation with regard to any Social Security program. Further, the broad responsibilities and wider scope of authority of the Deputy Commissioner for Programs emphasize the gravity of a decision to issue a notice of charges. Assigning this authority to the Deputy Commissioner for Programs retains the function at its current organizational placement level.

The propriety of a system in which both investigation/prosecution and adjudication are the responsibility of a single entity, was settled by the United States Supreme Court in *Withrow v. Larkin*, 421 U.S. 35 (1975). In *Withrow*, a state medical board which investigated physician misconduct was also empowered to prosecute and adjudicate in an adversarial proceeding the issue of whether the physician's medical license should be suspended. The primary issue

in the case was whether the combination of investigative and adjudicative functions within a single agency created an unconstitutional risk of bias in the adjudication. The Court advised that mere exposure to evidence obtained during an investigative procedure was insufficient, in itself, to impugn the fairness of the adjudicators at a later adversary proceeding. Without a showing to the contrary, adjudicators were assumed to be persons of "conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances" (421 U.S. at 55). The Court found that the medical board's practice of receiving investigative results, approving the filing of charges or formal complaints, and participating in the ensuing hearings was "very typical" of administrative agencies, and held that such procedures do not violate the Administrative Procedure Act or due process of law.

The American Bar Association has also approved the use of such systems for regulating professional misconduct, as indicated by its formulation and adoption of the model Standards for Lawyer Discipline and Disability Proceedings.

In its 1984 Survey of Lawyer Disciplinary Procedures in the United States, the American Bar Association revealed that lawyer disciplinary procedures in the majority of jurisdictions (36) utilized disciplinary counsel to perform all of the following functions:

1. Screening information;
2. Investigating allegations;
3. Recommending dispositions;
4. Prosecuting matters at all stages;
5. Investigating facts relating to petitions for reinstatement; and
6. Maintaining records of the agency's operations and individual matters processed by the agency.

Accordingly, it is a widely utilized and accepted organizational concept to avoid segmentation of the investigative and prosecutorial functions in dealing with matters involving professional conduct.

The Social Security Act and the Administrative Procedure Act also permit the investigative, prosecutorial, and adjudicative functions to be combined within the same agency, providing that adjudicators are able to function independently, outside the direction or supervision of the agency employees involved in investigative and prosecutorial matters. 42 U.S.C. 405 and 1383(c)(1) and 5 U.S.C. 554(d). The Attorney General's Manual on the Administrative Procedure Act, United

States Department of Justice (1947), commented on this required separation of functions, noting that "[a]s a practical matter this means that an agency's hearing examiners [now ALJs] should be placed in an organizational unit apart from those to which investigative and prosecuting personnel are assigned \* \* \*." Attorney General's Manual on the Administrative Procedure Act at 55-56.

The Agency's organizational structure is consistent with the Court's holding in *Withrow* and satisfies the concerns regarding separation of function noted above. ALJs and Appeals Council members exercise independent authority to adjudicate complaints and are assigned to components distinct and separate from the Office of Hearings and Appeals Special Counsel Staff personnel engaged in investigative and prosecutorial functions on behalf of the Deputy Commissioner for Programs.

We believe that the final rules satisfy procedural safeguards and offer a fair and equitable process for addressing circumstances which, if established, warrant suspending or disqualifying a person from representing Social Security claimants.

**Comment:** Some of the commenters objected to authorizing the Associate Commissioner for Hearings and Appeals to assign ALJs to act as hearing officers for suspension/disqualification proceedings. See §§ 404.1765(b) and 416.1565(b), as revised. One commenter characterized this authority as the ability to choose a "hanging judge."

**Response:** ALJs are assigned to cases in rotation so far as practicable. In this type of situation, however, it is not practicable to employ a strict rotation because of variable factors such as: The availability of the ALJ; office workload; individual docket considerations; and the practice of choosing an ALJ stationed outside the geographic area in which the charged representative resides, who does not normally adjudicate cases in which the representative has an interest. Thus, practical concerns mandate a discretionary decision rather than strict mechanical rotation in designating a hearing officer, and officials within the Office of Hearings and Appeals are capable of making this determination.

In addition, the regulations provide a remedy when the representative or any party to the hearing believes that the ALJ who has been assigned to the case is prejudiced against or partial to either party, or has any interest in the matter. The party may file an objection that will be considered by the ALJ. If the ALJ withdraws, another ALJ will be

appointed. If the ALJ refuses to withdraw, the party may upon issuance of the decision present his or her objections to the Appeals Council as a reason why the decision should be revised or assigned to another ALJ for a new hearing. See §§ 404.1765(b) and 416.1565(b), as revised. Accordingly, we do not believe that the authority to designate the ALJ to hear the complaint should be removed from the Associate Commissioner for Hearings and Appeals.

**Comment:** One commenter noted that the Office of Hearings and Appeals does not have authority over applications for supplemental security income benefits, questionable retirement issues, overpayment issues, and continuing disability reviews and thus would not be in a position to monitor the behavior of representatives appearing on behalf of claimants who have problems in these areas.

**Response:** We do not agree. Although these issues are often resolved without the need for an ALJ hearing, they clearly may be decided by an ALJ or the Appeals Council. Since most claimants do not obtain representation until review by an ALJ or Appeals Council is requested, most violations of our rules by representatives occur when the claim is being considered by an ALJ or the Appeals Council. Therefore, the Office of Hearings and Appeals is able to identify possible violations, recognize multiple offenders, and undertake the investigation and prosecution of these matters.

**Comment:** Some commenters were generally critical of the conduct and attitudes of ALJs and expressed concern that the proposed "rules" were not adequately explained, thus allowing ALJs to charge representatives arbitrarily with violations. This in turn, the commenters maintained, would inhibit aggressive representation.

**Response:** We do not agree. The regulations set forth at §§ 404.1740 and 416.1540 as well as §§ 404.1745 and 416.1545 as amended herein, contain the specific rules governing representatives. In addition, §§ 404.1705 and 416.1505 provide the requisite qualifications for a person to serve as a representative. The above cited regulations provide clear and specific notice of conduct which may lead to a suspension or disqualification.

Apparently, the commenters thought that the proposed regulations, if adopted, would create a new process or establish new procedures permitting ALJs to suspend or disqualify representatives arbitrarily. This is not the case. Other than authorizing the Deputy Commissioner for Programs in

place of the Deputy Commissioner for Operations or the Director or Deputy Director for the Office of Insurance Programs to issue notices of charges, the procedures essentially are not changed by these final rules. As before, ALJs may bring allegations of misconduct to the attention of appropriate Agency officials, but they have no authority under either the amended or prior regulations to issue formal charges or to suspend or disqualify representatives without following the procedures prescribed by the regulations.

#### Regulatory Procedures

##### Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the issuance of these regulations is not expected to result in significant costs. Therefore, a regulatory impact analysis is not required.

##### Paperwork Reduction Act

These final regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

##### Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.773 and 93.774, Medicare; 93.802-93.805 Social Security; and 93.807 Supplemental Security Income)

#### List of Subjects

##### 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors and Disability Insurance.

##### 20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs; Supplemental Security Income (SSI).

Dated: December 28, 1990.

Gwendolyn S. King,  
Commissioner of Social Security.

Approved: March 27, 1991.

Louis W. Sullivan,  
Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart R of part 404 and subpart O of part 416 of chapter III of

title 20 of the Code of Federal Regulations are amended as follows:

#### PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

1. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 406, and 1302.

2. The introductory paragraph in § 404.1745 is revised to read as follows:

##### § 404.1745 What happens to a representative who breaks the rules.

The Deputy Commissioner for Programs, or his or her designee, may begin proceedings to suspend or disqualify a person from acting as a representative in dealings with us if it appears that he or she—

3. Paragraphs (a), (d) and (e)(2) of § 404.1750 are revised to read as follows and the cross-reference in paragraph (f) of § 404.1750 is changed from § 404.1765(f) to § 404.1765(g):

##### § 404.1750 Notice of charges against a representative.

(a) The Deputy Commissioner for Programs, or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

(d) The Deputy Commissioner for Programs, or his or her designee, may extend the 30-day period for good cause.

(e) The representative must—

(2) File the answer with the Social Security Administration, Office of Hearings and Appeals, Attention: Special Counsel Staff, within the 30-day time period.

##### § 404.1760 [Removed]

4. Section 404.1760 is removed.

5. In § 404.1765, paragraphs (a) through (n) are redesignated as paragraphs (b) through (o), and a new paragraph (a) is added to read as follows:

##### § 404.1765 Hearing on charges.

(a) *Scheduling the hearing.* If the Deputy Commissioner for Programs, or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

6. In § 404.1765, the paragraphs newly redesignated as (b)(1), (c) and (e) are revised to read as follows:

**§ 404.1765 Hearing on charges.**

(b)(1) *Hearing officer.* The Associate Commissioner for Hearings and Appeals, or his or her designee, shall assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

(c) *Time and place of hearing.* The hearing officer shall mail the parties a written notice of the hearing at their last known addresses, at least 20 days before the date set for the hearing.

(e) *Parties.* The representative against whom charges have been made is a party to the hearing. The Deputy Commissioner for Programs, or his or her designee, shall also be a party to the hearing.

7. Paragraph (a) (3) of § 404.1770 is revised to read as follows:

**§ 404.1770 Decision by hearing officer.**

(a) \* \* \*

(3) The hearing officer shall mail a copy of the decision to the parties at their last known addresses. The notice will inform the parties of the right to request the Appeals Council to review the decision.

8. A new § 404.1776 is added to read as follows:

**§ 404.1776 Assignment of request for review of the hearing officer's decision.**

Upon receipt of a request for review of the hearing officer's decision, the matter will be assigned to a panel consisting of three members of the Appeals Council none of whom shall be the Chair of the Appeals Council. The panel shall jointly consider and rule by majority opinion on the request for review of the hearing officer's decision, including a determination to dismiss the request for review. Matters other than a final disposition of the request for review may be disposed of by the member designated chair of the panel.

9. Paragraph (e) of § 404.1790 is revised to read as follows:

**§ 404.1790 Appeals Council's decision.**

(e) The Appeals Council shall make its decision in writing and shall mail a copy of the decision to the parties at their last known addresses.

10. Paragraphs (c) and (e) of § 404.1799 are revised to read as follows:

**§ 404.1799 Reinstatement after suspension or disqualification—period of suspension not expired.**

(c) The Appeals Council shall allow the Deputy Commissioner for Programs, or his or her designee, upon notification of receipt of the request, 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council shall make available to the suspended or disqualified person a copy of the report.

(e) The Appeals Council shall mail a notice of its decision on the request to the suspended or disqualified person. It shall also mail a copy to the Deputy Commissioner for Programs.

**PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED**

1. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 1102 and 1631(d) of the Social Security Act; 42 U.S.C. 1302 and 1383(d).

2. The introductory paragraph in § 416.1545 is revised to read as follows:

**§ 416.1545 What happens to a representative who breaks the rules.**

The Deputy Commissioner for Programs, or his or her designee, may begin proceedings to suspend or disqualify a person from acting as a representative in dealings with us if it appears that he or she—

3. Paragraphs (a), (d) and (e)(2) of § 416.1550 are revised to read as follows and the cross-reference in paragraph (f) of § 416.1550 is changed from § 416.1565(f) to § 416.1565(g):

**§ 416.1550 Notice of charges against a representative.**

(a) The Deputy Commissioner for Programs, or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

(d) The Deputy Commissioner for Programs, or his or her designee, may extend the 30-day period for good cause.

(e) The representative must—

(2) File the answer with the Social Security Administration, Office of Hearings and Appeals, Attention:

Special Counsel Staff, within the 30-day time period.

**§ 416.1560 [Removed]**

4. Section 416.1560 is removed.

5. In § 416.1565 paragraphs (a) through (n) are redesignated as paragraphs (b) through (o), and a new paragraph (a) is added to read as follows:

**§ 416.1565 Hearing on charges.**

(a) *Scheduling the hearing.* If the Deputy Commissioner for Programs, or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

6. In § 416.1565, the paragraphs newly redesignated as (b)(1), (c) and (e) are revised to read as follows:

**§ 416.1565 Hearing on charges.**

(b)(1) *Hearing officer.* The Associate Commissioner for Hearings and Appeals, or his or her designee, shall assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

(c) *Time and place of hearing.* The hearing officer shall mail the parties a written notice of the hearing at their last known addresses, at least 20 days before the date set for the hearing.

(e) *Parties.* The representative against whom charges have been made is a party to the hearing. The Deputy Commissioner for Programs, or his or her designee, shall also be a party to the hearing.

7. Paragraph (a)(3) of § 416.1570 is revised to read as follows:

**§ 416.1570 Decision by hearing officer.**

(a) \* \* \*

(3) The hearing officer shall mail a copy of the decision to the parties at their last known addresses. The notice will inform the parties of the right to request the Appeals Council to review the decision.

8. A new § 416.1576 is added to read as follows:

**§ 416.1576 Assignment of request for review of the hearing officer's decision.**

Upon receipt of a request for review of the hearing officer's decision, the matter will be assigned to a panel consisting of three members of the

Appeals Council none of whom shall be the Chair of the Appeals Council. The panel shall jointly consider and rule by majority opinion on the request for review of the hearing officer's decision, including a determination to dismiss the request for review. Matters other than a final disposition of the request for review may be disposed of by the member designated chair of the panel.

9. Paragraph (e) of § 416.1590 is revised to read as follows:

**§ 416.1590 Appeals Council's decision.**

(e) The Appeals Council shall make its decision in writing and shall mail a copy of the decision to the parties at their last known addresses.

10. Paragraphs (c) and (e) of § 416.1599 are revised to read as follows:

**§ 416.1599 Reinstatement after suspension or disqualification—period of suspension not expired.**

(c) The Appeals Council shall allow the Deputy Commissioner for Programs, or his or her designee, upon notification of receipt of the request, 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council shall make available to the suspended or disqualified person a copy of the report.

(e) The Appeals Council shall mail a notice of its decision on the request to the suspended or disqualified person. It shall also mail a copy to the Deputy Commissioner for Programs.

[FR Doc. 91-12565 Filed 5-28-91; 8:45 am]

BILLING CODE 4190-29-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Chapter I

#### Freedom of Information and Privacy Acts; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

**SUMMARY:** This document transfers 32 CFR parts 284 and 285 from subchapter M to subchapter O and revises the headings of subchapters N and O in order to place the Freedom of Information Program and the Privacy Act Program parts in separate subchapters.

**EFFECTIVE DATE:** May 29, 1991.

**ADDRESSES:** Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Ms. L. Bynum, telephone (703) 697-4111.

Accordingly, by the authority of 5 U.S.C. 552 and 552a, title 32, chapter I, of the Code of Federal Regulations is amended as follows:

#### PARTS 284 and 285—[AMENDED]

1. Subchapter M is amended by transferring parts 284 and 285 to subchapter O.

2. Subchapter N, which is currently reserved is amended by revising the heading to read as follows:

#### SUBCHAPTER N—PRIVACY PROGRAM—[RESERVED]

3. Subchapter O, consisting of newly transferred parts 284 and 285, is amended by revising the heading to read as follows:

#### SUBCHAPTER O—FREEDOM OF INFORMATION ACT PROGRAM

Dated: May 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12592 Filed 5-28-91; 8:45 am]

BILLING CODE 3810-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-3956-6]

#### Approval and Promulgation of State Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** By this notice, EPA is approving an amendment to the State of Washington sulfur dioxide emission limitation as a revision to the Washington state implementation plan (SIP). This amendment was submitted to EPA on April 28, 1983, by the Washington Department of Ecology (WDOE) to satisfy the requirements of section 110 of the Clean Air Act (hereinafter the Act). This amendment clarifies the averaging time for the sulfur dioxide emission limitation in WAC 173-400-040(6).

**EFFECTIVE DATE:** July 29, 1991.

**ADDRESSES:** Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Air Programs Branch, Docket #10A-88-4, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

Air Programs, Washington Department of Ecology, 4226—6th Avenue SE., Rowe Six, Building #4, Lacey, Washington 98504.

**FOR FURTHER INFORMATION CONTACT:** David C. Bray, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, telephone: (206) 553-4253, FTS: 399-4253.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On April 27, 1979, the State of Washington Department of Ecology (WDOE) submitted a general emission limitation for sulfur dioxide as a revision to the Washington state implementation plan (SIP). On June 5, 1980 (45 FR 37821), EPA approved this emission limitation on the condition that WDOE submit source test and compliance procedures for enforcing the emission limitation. On July 31, 1980, and January 13, 1981, WDOE submitted source test methods and compliance procedures as revisions to the Washington SIP. EPA approved these revisions to the Washington SIP on September 14, 1981 (45 FR 45607).

On April 28, 1983, WDOE submitted amendments to the regulation for control of sulfur dioxide emissions (WAC 173-400-040(6)) as a revision to the Washington SIP. These amendments clarified the averaging time for the sulfur dioxide emission limitation, and updated, rearranged, and recodified the regulation. On November 7, 1988 (53 FR 44911), EPA proposed to approve the portion of the amendments which clarified the averaging time of the sulfur dioxide emission limitation. However, EPA proposed to take no action on the remaining provisions which provided for the granting of an exception to the general emission limitation and furthermore, proposed to rescind its June 5, 1980, approval of the exception provisions.

##### II. Response to Comments

EPA received numerous comments on its proposal from state and local air pollution authorities, the National Park Service, and the owners of a large coal-fired power plant. In general, the comments fall into two general categories—the appropriateness of a 60-minute averaging time, and the need for the exception provisions.