

guaranteed mortgage-backed securities with tax exempt obligations, had never been implemented by HUD.

Accordingly, the preamble to the April 1, 1996 final rule stated that HUD was removing this subpart. However, the regulatory text of the final rule did not contain an amendatory instruction removing 24 CFR part 811, subpart B. This document makes the necessary correction.

Accordingly, FR-Doc. 7949, a final rule published in the Federal Register on April 1, 1996 (61 FR 14456) is corrected by adding an amendatory instruction number 13 to the end of the document on page 14463 to remove subpart B of 24 CFR part 811, to read as follows:

Subpart B—[Removed]

13. Subpart B, consisting of §§ 811.201 through 811.211, is removed.

Dated: April 5, 1996.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 96-8975 Filed 4-10-96; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 865

RIN 0701-AA43

Personnel Review Boards

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force has revised Part 865, Subpart A of Subchapter G, Title 32 of the Code of Federal Regulations, which provides for making application, and the consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for Correction of Military Records.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John J. D'Orazio, Chief Examiner, (301) 981-3502.

SUPPLEMENTARY INFORMATION: On July 26, 1994, the Department of the Air Force published (at 59 FR 37953) a proposed rule changing the procedures for making applications, and consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for Correction of Military Records. The

following summarizes the major comments received and action taken:

Two commentators stated that the rule should be amended to include specific references concerning other administrative remedies which must be exhausted prior to the submission of an application to the Board (§ 865.4(l)(3)). Information related to this rule is contained in Air Force Pamphlet (AFP) 36-2607, Applicant's Guide to the Air Force Board for Correction of Military Records (AFBCMR), dated 3 November 1994. In addition, it is normally expected that an active member would be made aware of any available administrative remedies by seeking advice from personnel at their local Military Personnel Flight (MPF). Furthermore, exhausting administrative remedies also refers to cases where an application for correction of records is submitted by members or former members and authorities at the MPF or the Air Force Personnel Center, Randolph AFB, Texas, determine that an error exists and that administrative relief may be effected by the Air Force office of primary responsibility without referring the appeal to the Board. The only other organization to which a former member must apply prior to submitting an application to the AFBCMR is the Air Force Discharge Review Board (AFDRB), which operates under its own statute (10 U.S.C. 1553) and Air Force Instruction (AFI) 36-2023, dated 14 October 1994. In view of the above, and, since the cited information is already available through other sources and would be made known to applicants who are inquiring about the Board process, amendment of the rule to include this information is deemed unnecessary.

Two commentators suggested that the rule should be amended to state that time spent exhausting administrative remedies tolls the three-year time limit (§ 865.3(f)). The Board takes the position that, for practical reasons, efforts to seek other administrative remedies should not toll the three-year statute of limitations found at 10 U.S.C. 1552(b). This rule works no hardship on potential applicants since the Board may waive the failure to file within the three-year period if it determines it is in the interest of justice to do so. Whether to waive an untimely filing is a discretionary judgment to be made by the Board.

One commentator complained that the page limitation on briefs and rebuttals was too severe, was unrealistic, and did not define "brief" (§ 865.3 (i) and (j)). The Board considers the term "brief" to be self-explanatory. The rule already states that the limitation does not apply

to evidence submitted in support of the appeal. The Board does not believe that the page limitations on briefs in support of an application and in rebuttal to the Air Staff evaluations are too severe. This rule was established to ensure that applicants and their counsels briefly and succinctly state their cases; prolixity hinders, rather than helps, the Board. In recognition that there exist cases of unusual complexity, the rule allows for a waiver of the page limitations by the Executive Director of the Board. Since the page limitation requirement was established in 1985, the authority to approve requests for waivers of this requirement has been liberally exercised to ensure adequate briefing of issues the Board considers important.

Two commentators stated that the rule should be changed (at § 865.8c) to provide for the payment of attorney's fees, with interest, asserting that such payments are authorized by 5 U.S.C. 5596(b). 5 U.S.C. 5596(b) applies to employees as defined in 5 U.S.C. 2105. The cited provision of law does not apply to members of the Armed Forces.

One commentator recommended that the rule be amended to place limitations on the writers of advisory opinions with respect to the number of pages, type of spacing, and "unprofessional" comments (§ 865.8(a)(2)). Air Staff advisories rarely exceed more than two or three pages except in cases where the issues are extremely complicated. Furthermore, while the applicant has two opportunities to state his or her case (in the initial submission and rebuttal), ordinarily, the staff must state their position all at once. What constitutes "Unprofessional comments" is in the eye of the beholder. The Board requires that the Air Staff provide unfettered opinions. If the Air Staff provides information not relevant to the case, the Board can and does elect not to rely on that information in making its final determination, in the same way it does when similar information is provided by an applicant or counsel.

Two commentators suggested that the rule be amended to include (at § 865.9) advice concerning appeals to Federal courts. The AFBCMR was established to correct military records. A discussion of Post-Board avenues of relief is not required by law nor would it be appropriate in a rule pertaining to nonadversarial proceedings for the purpose of securing administrative relief.

One commentator recommended that the rule be changed to include a statement that, during its consideration of the case in executive session, the Board gave genuine consideration to

permitting the applicants the opportunity to be heard (§ 865.4(d)) and requiring that the Board reply in a meaningful fashion to meritorious issues raised by an applicant (§ 865.4(f)). Any decision to grant an applicant's request for a personal appearance is at the discretion of the Board. The Board gives careful and meaningful consideration to every request made by an applicant, including a request for a personal appearance. The Stipulation of Dismissal of the lawsuit by the Urban Law Institute of Antioch College required that the Board make a brief written statement of the grounds for its determination to grant or deny relief. The Board is in compliance with this requirement and addresses issues raised by the applicant in the level of detail which, in the Board's opinion, they warrant.

Accordingly, the recommendations that the rule be amended as suggested in the above were not adopted.

The Department of the Air Force has determined that this rule is not a major rule because it will not have an annual effect on the economy of \$100 million or more. The Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment) certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-611, because this rule does not have a significant economic impact on small entities as defined by the Act. This rule imposes no obligatory information requirements beyond internal Air Force use.

List of Subjects in 32 CFR Part 865

Administrative practices and procedures, Military personnel, Records.

Accordingly, 32 CFR Part 865, Subpart A is revised to read as follows:

PART 865—PERSONNEL REVIEW BOARDS

Subpart A—Air Force Board for Correction of Military Records

Sec.

- 865.0 Purpose.
- 865.1 Setup of the Board.
- 865.2 Board responsibilities.
- 865.3 Application procedures.
- 865.4 Board actions.
- 865.5 Decision of the Secretary of the Air Force.
- 865.6 Reconsideration of applications.
- 865.7 Action after final decision.
- 865.8 Miscellaneous provisions.

Subpart A—Air Force Board for Correction of Military Records

Authority: 10 U.S.C. 1034, 1552.

§ 865.0 Purpose.

This subpart sets up procedures for correction of military records to remedy error or injustice. It tells how to apply for correction of military records and how the Air Force Board for Correction of Military Records (AFBCMR, or the Board) considers applications. It defines the Board's authority to act on applications. It directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by 10 U.S.C. 1034 and 1552. System of Records notice F035 SAFCB A, Military Records Processed by the Air Force Correction Board, applies.

§ 865.1 Setup of the Board.

The AFBCMR operates within the Office of the Secretary of the Air Force according to 10 U.S.C. 1552. The Board consists of civilians in the executive part of the Department of the Air Force who are appointed and serve at the pleasure of the Secretary of the Air Force. Three members constitute a quorum of the Board.

§ 865.2 Board responsibilities.

(a) *Considering applications.* The Board considers all individual applications properly brought before it. In appropriate cases, it directs correction of military records to remove an error or injustice, or recommends such correction.

(b) *Recommending action.* When an applicant alleges reprisal under the Military Whistleblowers Protection Act, 10 U.S.C. 1034, the Board may recommend to the Secretary of the Air Force that disciplinary or administrative action be taken against those responsible for the reprisal.

(c) *Deciding cases.* The Board normally decides cases on the evidence of the record. It is not an investigative body. However, the Board may, in its discretion, hold a hearing or call for additional evidence or opinions in any case.

§ 865.3 Application procedures.

(a) Who may apply:

(1) In most cases, the applicant is a member or former member of the Air Force, since the request is personal to the applicant and relates to his or her military records.

(2) An applicant with a proper interest may request correction of another person's military records when that person is incapable of acting on his or her own behalf, is missing, or is deceased. Depending on the circumstances, a child, spouse, parent or other close relative, an heir, or a legal representative (such as a guardian or executor) of the member or former

member may be able to show a proper interest. Applicants will send proof of proper interest with the application when requesting correction of another person's military records.

(b) *Getting forms.* Applicants may get a DD Form 149, "Application for Correction of Military Record Under the Provisions of Title 10, U.S.C., Section 1552," and Air Force Pamphlet 36-2607, "Applicants' Guide to the Air Force Board for Correction of Military Records (AFBCMR)," from:

(1) Any Air Force Military Personnel Flight (MPF) or publications distribution office.

(2) Most veterans' service organizations.

(3) The Air Force Review Boards Office, SAF/MIBR, 550 C Street West, Suite 40, Randolph AFB TX 78150-4742.

(4) The AFBCMR, 1535 Command Drive, EE Wing 3rd Floor, Andrews AFB MD 20331-7002.

(c) *Preparation.* Before applying, applicants should:

(1) Review Air Force Pamphlet 36-2607.

(2) Discuss their concerns with MPF, finance office, or other appropriate officials. Errors can often be corrected administratively without resort to the Board.

(3) Exhaust other available administrative remedies (otherwise the Board may return the request without considering it).

(d) *Submitting the application.*

Applicants should complete all applicable sections of the DD Form 149, including at least:

(1) The name under which the member served.

(2) The member's social security number or Air Force service number.

(3) The applicant's current mailing address.

(4) The specific records correction being requested.

(5) Proof of proper interest if requesting correction of another person's records.

(6) The applicant's signature.

(e) Applicants should mail the original signed DD Form 149 and any supporting documents to the Air Force address on the back of the form.

(f) *Meeting time limits.* Ordinarily, applicants must file an application within three years after the error or injustice was discovered, or, with due diligence, should have been discovered. An application filed later is untimely and may be denied by the Board on that basis.

(1) The Board may excuse untimely filing in the interest of justice.

(2) If the application is filed late, applicants should explain why it would

be in the interest of justice for the Board to waive the time limits.

(g) *Stay of other proceedings.*

Applying to the AFBCMR does not stay other proceedings.

(h) *Counsel representation.*

Applicants may be represented by counsel, at their own expense.

(1) The term "counsel" includes members in good standing of the bar of any state, accredited representatives of veterans' organizations recognized under 38 U.S.C. 3402, and other persons determined by the Executive Director of the Board to be competent to represent the interests of the applicant.

(2) See Department of Defense Directive (DoDD) 7050.6, Whistleblower Protection Act, 3 September 1992,¹ for special provisions for counsel in cases processed under 10 U.S.C. 1034.

(i) *Page limitations on briefs.* Briefs in support of applications:

(1) May not exceed twenty-five double-spaced typewritten pages.

(2) Must be typed on one side of a page only with not more than twelve characters per inch.

(3) Must be assembled in a manner that permits easy reproduction.

(j) Responses to advisory opinions must not exceed ten double-spaced typewritten pages and meet the other requirements for briefs.

(k) These limitations do not apply to supporting documentary evidence.

(l) In complex cases and upon request, the Executive Director of the Board may waive these limitations.

(m) *Withdrawing applications.*

Applicants may withdraw an application at any time before the Board's decision. Withdrawal does not stay the three-year time limit.

§ 865.4 Board actions.

(a) *Board information sources.* The applicant has the burden of providing sufficient evidence of probable material error or injustice. However, the Board:

(1) May get additional information and advisory opinions on an application from any Air Force organization or official.

(2) May require the applicant to furnish additional information necessary to decide the case.

(b) Applicants will normally be given an opportunity to review and comment on advisory opinions and additional information obtained by the Board.

(c) *Consideration by the Board.* A panel consisting of at least three board members considers each application. One panel member serves as its chair.

The panel's actions and decisions constitute the actions and decisions of the Board.

(d) The panel may decide the case in executive session or authorize a hearing. When a hearing is authorized, the procedures in paragraph (f) of this section apply.

(e) *Board deliberations.* Normally only members of the Board and Board staff will be present during deliberations. The panel chair may permit observers for training purposes or otherwise in furtherance of the functions of the Board.

(f) *Board hearings.* The Board in its sole discretion determines whether to grant a hearing. Applicants do not have a right to a hearing before the Board.

(g) The Executive Director will notify the applicant or counsel, if any, of the time and place of the hearing. Written notice will be mailed thirty days in advance of the hearing unless the notice period is waived by the applicant. The applicant will respond not later than fifteen days before the hearing date, accepting or declining the offer of a hearing and, if accepting, provide information pertaining to counsel and witnesses. The Board will decide the case in executive session if the applicant declines the hearing or fails to appear.

(h) When granted a hearing, the applicant may appear before the Board in person, represented by counsel, or in person with counsel and may present witnesses. It is the applicant's responsibility to notify witnesses, arrange for their attendance at the hearing, and pay any associated costs.

(i) The panel chair conducts the hearing, maintains order, and ensures the applicant receives a full and fair opportunity to be heard. Formal rules of evidence do not apply, but the panel observes reasonable bounds of competency, relevancy, and materiality. Witnesses other than the applicant will not be present except when testifying. Witnesses will testify under oath or affirmation. A recorder will record the proceedings verbatim. The chair will normally limit hearings to two hours but may allow more time if necessary to ensure a full and fair hearing.

(j) Additional provisions apply to cases processed under 10 U.S.C. 1034. See DoDD 7050.6.²

(k) The Board will not deny or recommend denial of an application on the sole ground that the issue already has been decided by the Secretary of the Air Force or the President of the United States in another proceeding.

(l) *Board decisions.* The panel's majority vote constitutes the action of the Board. The Board's decision will be in writing and will include determinations on the following issues:

(1) Whether the provisions of the Military Whistleblowers Protection Act apply to the application. This determination is needed only when the applicant invokes the protection of the Act, or when the question of its applicability is otherwise raised by the evidence.

(2) Whether the application was timely filed and, if not, whether the applicant has demonstrated that it would be in the interest of justice to excuse the untimely filing. When the Board determines that an application is not timely, and does not excuse its untimeliness, the application will be denied on that basis.

(3) Whether the applicant has exhausted all available and effective administrative remedies. If the applicant has not, the application will be denied on that basis.

(4) Whether the applicant has demonstrated the existence of a material error or injustice that can be remedied effectively through correction of the applicant's military record and, if so, what corrections are needed to provide full and effective relief.

(5) In Military Whistleblowers Protection Act cases only, whether to recommend to the Secretary of the Air Force that disciplinary or administrative action be taken against any Air Force official whom the Board finds to have committed an act of reprisal against the applicant. Any determination on this issue will not be made a part of the Board's record of proceedings and will not be given to the applicant, but will be provided directly to the Secretary of the Air Force under separate cover (§ 865.2(b)).

(m) *Record of proceedings.* The Board staff will prepare a record of proceedings following deliberations which will include:

(1) The name and vote of each Board member.

(2) The application.

(3) Briefs and written arguments.

(4) Documentary evidence.

(5) A hearing transcript if a hearing was held.

(6) Advisory opinions and the applicant's related comments.

(7) The findings, conclusions, and recommendations of the Board.

(8) Minority reports, if any.

(9) Other information necessary to show a true and complete history of the proceedings.

(n) *Minority reports.* A dissenting panel member may prepare a minority

¹ Copies of the publication are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

² See footnote 1.

report which may address any aspect of the case.

(o) *Separate communications.* The Board may send comments or recommendations to the Secretary of the Air Force as to administrative or disciplinary action against individuals found to have committed acts of reprisal prohibited by the Military Whistleblowers Protection Act and on other matters arising from an application not directly related to the requested correction of military records. Such comments and recommendations will be separately communicated and will not be included in the record of proceedings or given to the applicant or counsel.

(p) *Final action by the Board.* The Board acts for the Secretary of the Air Force and its decision is final when it:

(1) Denies any application (except under 10 U.S.C. 1034).

(2) Grants any application in whole or part when the relief was recommended by the official preparing the advisory opinion, was unanimously agreed to by the panel, and does not involve an appointment or promotion requiring confirmation by the Senate.

(q) The Board sends the record of proceedings on all other applications to the Secretary of the Air Force or his or her designee for final decision.

§ 865.5 Decision of the Secretary of the Air Force.

(a) The Secretary may direct such action as he or she deems appropriate on each case, including returning the case to the Board for further consideration. Cases returned to the Board for further reconsideration will be accompanied by a brief statement of the reasons for such action. If the Secretary does not accept the Board's recommendation, the decision will be in writing and will include a brief statement of the grounds for denial.

(b) Decisions in cases under the Military Whistleblowers Protection Act. The Secretary will issue decisions on such cases within 180 days after receipt of the case and will, unless the full relief requested is granted, inform applicants of their right to request review of the decision by the Secretary of Defense (SecDef). Applicants will also be informed:

(1) Of the name and address of the official to whom the request for review must be submitted.

(2) That the request for review must be submitted within ninety days after receipt of the decision by the Secretary of the Air Force.

(3) That the request for review must be in writing and include the applicant's name, address, and

telephone number; a copy of the application to the AFBCMR and the final decision of the Secretary of the Air Force; and a statement of the specific reasons the applicant is not satisfied with the decision of the Secretary of the Air Force.

(4) That the request must be based on the Board record; requests for review based on factual allegations or evidence not previously presented to the Board will not be considered under this section but may be the basis for reconsideration by the Board under § 865.6.

(c) Decisions in cases filed under Section 507, Public Law 103-160. The Secretary will issue a decision within 60 days of receipt of the case of an officer who:

(1) Was offered the opportunity to be discharged or separated from active duty under the Voluntary Separation Incentive (VSI) or Special Separation Benefit (SSB) programs,

(2) Elected not to accept such discharge or separation,

(3) Was thereafter discharged or separated from active duty, after September 30, 1990, as a result of selection by a board convened to select officers for early separation (a "RIF board"),

(4) Files an application with the Board within two years of the date of separation or discharge, or one year after March 1, 1996, whichever is later, alleging that the officer was not effectively counseled, before electing not to accept discharge or separation under the VSI/SSB programs, concerning the officer's vulnerability to selection for involuntary discharge or separation ("RIF"), and

(5) Requests expedited consideration under this section.

(d) Upon finding of ineffective counseling, the Secretary will provide the officer with an opportunity to participate, at the officer's option, in the VSI or SSB programs or, if eligible, in an early retirement program.

(e) In cases under §§ 865.5(b) and 865.5(c) which involve additional issues not cognizable under those sections, the additional issues may be considered separately by the Board under §§ 865.3 and 865.4. The special time limits in §§ 865.5(b) and 865.5(c) do not apply to the decision concerning these additional issues.

§ 865.6 Reconsideration of applications.

The Board may reconsider an application if the applicant submits newly discovered relevant evidence that was not available when the application was previously considered. The Executive Director will screen each

request for reconsideration to determine whether it contains new evidence.

(a) If the request contains new evidence, the Executive Director will refer it to a panel of the Board for a decision. The Board will decide the relevance and weight of any new evidence, whether it was reasonably available to the applicant when the application was previously considered, and whether it was submitted in a timely manner. The Board may deny reconsideration if the request does not meet the criteria for reconsideration. Otherwise the Board will reconsider the application and decide the case either on timeliness or merit as appropriate.

(b) If the request does not contain new evidence, the Executive Director will return it to the applicant without referral to the Board.

§ 865.7 Action after final decision.

(a) *Action by the Executive Director.* The Executive Director will inform the applicant or counsel, if any, of the final decision on the application. If any requested relief was denied, the Executive Director will advise the applicant of reconsideration procedures and, for cases processed under the Military Whistleblowers Protection Act, review by the SecDef. The Executive Director will send decisions requiring corrective action to the Chief of Staff, U.S. Air Force, for necessary action.

(b) *Settlement of claims.* The Air Force is authorized, under 10 U.S.C. 1552, to pay claims for amounts due to applicants as a result of correction of military records.

(c) The Executive Director will furnish the Defense Finance and Accounting Service (DFAS) with AFBCMR decisions potentially affecting monetary entitlement or benefits. DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(d) DFAS settles claims on the basis of the corrected military record. Computation of the amount due, if any, is a function of DFAS. Applicants may be required to furnish additional information to DFAS to establish their status as proper parties to the claim and to aid in deciding amounts due.

(e) *Public access to decisions.* After deletion of personal information, AFBCMR decisions will be made available for review and copying at a public reading room in the Washington, D.C. metropolitan area.

§ 865.8 Miscellaneous provisions.

(a) At the request of the Board, all Air Force activities and officials will furnish the Board with:

(1) All available military records pertinent to an application.

(2) An advisory opinion concerning an application. The advisory opinion will include an analysis of the facts of the case and of the applicant's contentions, a statement of whether or not the requested relief can be done administratively, and a recommendation on the timeliness and merit of the request. Regardless of the recommendation, the advisory opinion will include instructions on specific corrective action to be taken if the Board grants the application.

(b) *Access to records.* Applicants will have access to all records considered by the Board, except those classified or privileged. To the extent practicable, applicants will be provided unclassified or nonprivileged summaries or extracts of such records considered by the Board.

(c) *Payment of expenses.* The Air Force has no authority to pay expenses of any kind incurred by or on behalf of an applicant in connection with a correction of military records under 10 U.S.C. 1034 or 1552.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96-8697 Filed 4-10-96; 8:45 am]

BILLING CODE 3910-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL-5450-9]

Control of Air Pollution; Removal and Modification of Obsolete, Superfluous or Burdensome Rules

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining, through "direct final" procedure, that certain rules in the Code of Federal Regulations (CFR), 40 CFR Parts 51 and 52 should be deleted or modified. Deleting or modifying these rules will clarify their legal status and remove unnecessary, obsolete or burdensome regulations.

In the proposed rules section of this Federal Register, EPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on the direct final rule, EPA will withdraw the portions of the final rule that triggered the comments. EPA will address those comments in a final rule on the related proposed rule, which is being published

in the proposed rules section of this Federal Register. See, for example, EPA's partial withdrawal of a direct final rule in 60 FR 6030 (Feb. 1, 1995). Any portions of the final rule for which no adverse or critical comment is received will become final after the designated period.

DATES: This action will be effective June 10, 1996 unless notice is received by May 13, 1996 that any person wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Maureen Delaney, Office of Air and Radiation, Office of Policy Analysis and Review, (202) 260-7431.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995, the President directed all Federal Agencies and departments to conduct a comprehensive review of the regulations they administer, to identify those rules that are obsolete or unduly burdensome. EPA conducted such a review, including rules issued under the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*) On June 29, 1995, EPA published a notice deleting more than 200 Clean Air Act rules that were no longer legally in effect. 60 FR 33915 (June 29, 1995).

In this document, EPA tackles the next phase of its revision effort, deleting or modifying: additional regulations that are legally obsolete in whole or in part; regulations which duplicate the statute or guidance; and regulations that do not add significantly to statutory provisions, are unduly restrictive or inhibitive of Agency flexibility, or otherwise are overly burdensome.

EPA's philosophy in this rulemaking is to delete those regulations which there is no compelling reason to retain, even though no clear harm results from retention. For example, some regulations are being deleted because the same substantive provisions exist in the form of policy guidance. In the case of these regulations, EPA has concluded that the policy guidance is sufficient to inform the public of EPA's regulatory interpretations, while allowing the Agency to be more quickly responsive to unforeseen circumstances that may call for increased flexibility in EPA's positions. Where EPA has determined that a regulation does not add substantial value to what is already contained in the law, or where there are alternative means to accomplish the regulatory end without restricting EPA's ability to respond to factual peculiarities

in a timely and appropriate way, EPA has determined that the regulation should be deleted.

EPA has included in this phase of its regulatory streamlining effort those regulations which can readily be deleted or modified without a major or complicated regulatory overhaul, and which do not raise issues on which EPA anticipates adverse comment. These are therefore appropriate for direct final rulemaking. In the next phase of its rulemaking effort, EPA anticipates addressing the modifications and deletions that require a comprehensive approach to more complex or potentially controversial revisions.

The removal of these rules from the CFR is not intended to affect the status of any civil or criminal actions that were initiated prior to the publication of this rule, or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect. Removal of provisions on the ground that they reiterate or are redundant of statutory provisions does not affect any obligation or requirement to comply with such statutory provision.

Finally, this rule deletes several state-specific regulations that no longer have any use or legal effect. For example, the rule deletes several federal implementation plan provisions that were promulgated in the 1970's for states that subsequently achieved approval of corrective state plans. Those approvals removed EPA's authority to retain the federal provisions, and therefore the federal provisions should have been deleted at that time. This rule accomplishes those and other similar deletions.

II. Deletion and Modification of Unnecessary or Burdensome Rules

The following deletions/modifications have been divided into two basic types of regulations found in 40 CFR Parts 51 and 52: (1) rules applicable on a national basis; (2) rules applicable to a specific state. This notice looks in turn at each of the categories, setting forth the reasons that EPA seeks today to remove them from the CFR.

Any deletion of provisions that state implementation plans ("SIPs") currently reference is not intended to disturb those references, and EPA interprets those references to be to the version that was in the CFR when the state adopted the reference, unless the state subsequently provides otherwise and EPA approves such subsequently adopted provision as a SIP revision.