

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME;

§ 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
01/03/97 ...	FL	Gainesville	Gainesville Regional	7/0043	VOR OR GPS-A, AMDT 10...
01/13/97 ...	SC	Greer	Greenville-Spartanburg	7/0261	ILS RWY 21, AMDT 2A...
01/13/97 ...	SC	Greer	Greenville-Spartanburg	7/0262	ILS RWY 3, AMDT 20A...
01/13/97 ...	SC	Greer	Greenville-Spartanburg	7/0263	NDB OR GPS RWY 3, AMDT 14...
03/05/97 ...	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	7/1190	ILS RWY 22, AMDT 4A... THIS CORRECTS TL 97-08.
03/10/97 ...	KS	Parsons	Tri-City	7/1242	NDB OR GPS RWY 35, AMDT 5... THIS CORRECTS NOTAM IN TL 97-08.
03/19/97 ...	MA	Nantucket	Nantucket Memorial	7/1465	ILS RWY 24, AMDT 15...
03/19/97 ...	MO	Mosby	Mosby/Clay County Regional	7/1463	GPS RWY 18, ORIG...
03/20/97 ...	AR	Dumas	Billy Free Muni	7/1495	VOR/DME OR GPS RWY 36, AMDT 2A...
03/20/97 ...	AR	Dumas	Billy Free Muni	7/1496	NDB RWY 36, ORIG...
03/20/97 ...	AR	McGehee	McGehee Muni	7/1494	VOR/DME OR GPS-A, AMDT 2...
03/20/97 ...	MO	Kansas City	Kansas City Downtown	7/1457	ILS RWY 19, AMDT 20B...
03/20/97 ...	NH	Lebanon	Lebanon Muni	7/1489	ILS RWY 18, AMDT 3A...
03/20/97 ...	NJ	Robbinsville	Trenton-Robbinsville	7/1501	VOR OR GPS RWY 29, AMDT 10...
03/21/97 ...	LA	Covington	Greater St. Tammany	7/1512	GPS RWY 17, ORIG...
03/21/97 ...	LA	Welsh	Welsh	7/1515	VOR/DME OR GPS RWY 6, AMDT 3...
03/25/97 ...	MA	Westfield	Barnes Muni	7/1557	NDB RWY 20, AMDT 13...
03/25/97 ...	MA	Westfield	Barnes Muni	7/1558	VOR OR GPS RWY 20, AMDT 18...
03/25/97 ...	MA	Westfield	Barnes Muni	7/1559	VOR OR TACAN OR GPS RWY 2, AMDT 2...
03/25/97 ...	MA	Westfield	Barnes Muni	7/1560	ILS RWY 20, AMDT 3...
03/27/97 ...	AL	Greensboro	Greensboro Muni	7/1643	NDB OR GPS RWY 36, ORIG...
03/27/97 ...	AR	Monticello	Monticello Muni/Ellis Field	7/1647	VOR-A, AMDT 5...
03/27/97 ...	AR	Monticello	Monticello Muni/Ellis	7/1648	GPS RWY 3 ORIG...
03/27/97 ...	KY	Campbellsville	Taylor County	7/1636	GPS RWY 5, ORIG...
03/27/97 ...	KY	Campbellsville	Taylor County	7/1638	SDF RWY 23, AMDT 2...
03/27/97 ...	KY	Campbellsville	Taylor County	7/1640	NDB OR GPS RWY 23, AMDT 3...
03/27/97 ...	KY	Campbellsville	Taylor County	7/1642	VOR/DME OR GPS-A, AMDT 5...
03/27/97 ...	OK	Clinton	Clinton-Sherman	7/1665	VOR OR GPS RWY 35L, AMDT 11...
03/27/97 ...	TX	Carthage	Panola Co-Sharpe Field	7/1672	NDB OR GPS RWY 35, AMDT 1...
03/27/97 ...	TX	Marfa	Marfa Muni	7/1655	VOR RWY 30, AMDT 4...
03/27/97 ...	TX	Marshall	Harrison County	7/1669	RNAV RWY 33, AMDT 1A...
03/27/97 ...	TX	Marshall	Harrison County	7/1670	GPS RWY 33, ORIG-A...
03/27/97 ...	TX	Marshall	Harrison County	7/1671	VOR/DME-A, AMDT 4B...
03/28/97 ...	MI	Sturgis	Kirsch Muni	7/1683	NDB RWY 18, AMDT 5...
03/28/97 ...	MI	Sturgis	Kirsch Muni	7/1684	NDB RWY 24, AMDT 10...
03/28/97 ...	MN	South St Paul	South St Paul Muni-Richard E. Fleming Field.	7/1696	NDB OR GPS-B, AMDT 3B...
03/31/97 ...	OH	Norwalk	Norwalk-Huron County	7/1729	VOR OR GPS-A, AMDT 5...
04/01/97 ...	TX	Fort Worth	Fort Worth Alliance	7/1765	GPS RWY 34R, ORIG-A...
04/01/97 ...	TX	Fort Worth	Fort Worth Alliance	7/1766	GPS RWY 16L, ORIG-A...
04/01/97 ...	TX	Fort Worth	Fort Worth Alliance	7/1768	ILS RWY 34R, AMDT 2A...

[FR Doc. 97-9246 Filed 4-9-97; 8:45 am]

BILLING CODE 4910-13-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1603

RIN 3046-AA45

Procedures for Previously Exempt State and Local Government Employee Complaints of Employment Discrimination Under the Government Employee Rights Act of 1991

AGENCY: Equal Employment Opportunity Commission.

ACTION: Interim rule.

SUMMARY: Title III of the Civil Rights Act of 1991, entitled the Government Employee Rights Act of 1991, extends the protections against employment discrimination based on race, color, religion, sex, national origin, age and disability to previously exempt state and local government employees. This interim rule establishes EEOC procedures for resolving employment discrimination complaints filed by those individuals.

DATES: This rule will become effective on April 10, 1997. Written comments on the interim rule must be received on or before June 9, 1997.

ADDRESSES: Comments should be submitted to the Office of the Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507. Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, N.W., Washington, D.C. between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel or Stephanie D. Garner, Senior Attorney, at (202) 663-4669 or TDD (202) 663-7026. This notice is also available in the following formats: Large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1-800-669-3362.

SUPPLEMENTARY INFORMATION: Title III of the Civil Rights Act of 1991 contains the Government Employee Rights Act of 1991. 2 U.S.C. 1201 *et seq.* Section 321 of the Government Employee Rights Act of 1991 (the Act) provides new equal employment opportunity protections for previously exempt state and local government employees. The Act designates the Equal Employment Opportunity Commission as the enforcement agency for previously exempt state and local government employees covered by section 321. 2 U.S.C. 1220.

Section 321 of the Act provides for an administrative enforcement mechanism that is different from EEOC's normal charge resolution procedures contained in 29 C.F.R. Part 1601. Under section 321, a covered individual who believes he or she was discriminated against has 180 days to file a complaint. Thereafter, the Act provides that the matter be processed in accordance with the formal adjudication principles and procedures set forth in sections 554 through 557 of the Administrative Procedure Act, 5 U.S.C. 554-557. Section 321 provides for judicial review of a Commission final order under chapter 158 of title 28 of the United States Code.

This interim rule sets out the Commission's procedures for handling complaints brought by individuals covered by section 321 of the Act. The filing procedures for complaints follow established Commission procedures for charges published at 29 CFR Part 1601. Previously exempt state and local government employees may file a complaint with the Commission at its offices in Washington, D.C. or any of its field offices. The Commission will review each complaint for jurisdiction

under section 321 and dismiss those complaints that fail to state a claim. EEOC may refer a complaint from a previously exempt state or local government employee to a neutral mediator or to any other alternative dispute resolution process. EEOC may investigate a 321 complaint using a variety of fact-finding methods. In an investigation, EEOC can issue subpoenas for the production of evidence or witnesses. EEOC's existing subpoena procedures, found at 29 CFR 1601.16, will apply to subpoenas issued under this part. The investigative procedures of this rule are modeled after those in Part 1601 of this Chapter. It is the Commission's intention to apply these procedures consistently with its application of the Part 1601 procedures.

If the complaint is not dismissed or resolved during mediation or investigation, the Commission will send the complaint to an administrative law judge for formal adjudication in accordance with the Administrative Procedure Act. Discovery under this part will be conducted in accordance with the Federal Rules of Civil Procedure and the administrative law judge will accept evidence in accordance with the Federal Rules of Evidence, except that the rules on hearsay will not be strictly applied. The administrative law judge will issue a decision within 270 days after referral of a complaint for hearing.

Within 30 days of issuance, any party may appeal the dismissal of a complaint, a matter certified for interlocutory review, an administrative law judge's denial of a motion for withdrawal or a decision of an administrative law judge to the Commission. After the parties have briefed the issues, the Commission will issue a final order. In the absence of a timely appeal, the final decision of the administrative law judge will become the final order of the Commission. Previously exempt state and local government employees may seek judicial review of an EEOC final order within 60 days after its issuance in the judicial circuit in which the petitioner resides, or has its principle office, or in the United States Court of Appeals for the District of Columbia Circuit.

The Commission is publishing part 1603 as an interim rule to provide for immediate processing of complaints already filed under section 321 of the Act. The Commission will consider all comments received on part 1603 and, if necessary, will publish a revised final rule.

Executive Order 12866

In promulgating the interim rule implementing section 321 of the Act, the Commission has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. In addition, it has been determined that this regulation is not a significant regulatory action within the meaning of section 3(f).

Regulatory Flexibility Act

As Chairman of the Equal Employment Opportunity Commission, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim rule will not have a significant economic impact on a substantial number of small entities because it establishes procedures for complaints of discrimination by formerly exempt state and local government employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does not apply to this interim rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 1603

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations, Investigations, State and local governments.

For the Commission.

Gilbert F. Casellas,
Chairman.

For the reasons set forth in the preamble, title 29, chapter XIV of the Code of Federal Regulations is amended by adding part 1603 to read as follows:

PART 1603—PROCEDURES FOR PREVIOUSLY EXEMPT STATE AND LOCAL GOVERNMENT EMPLOYEE COMPLAINTS OF EMPLOYMENT DISCRIMINATION UNDER SECTION 321 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

Sec.
1603.100 Purpose.

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- 1603.101 Coverage.
- 1603.102 Filing a complaint.
- 1603.103 Referral of complaints.
- 1603.104 Service of the complaint.
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- 1603.107 Dismissals of complaints.
- 1603.108 Settlement and alternative dispute resolution.
- 1603.109 Investigations.

Subpart B—Hearings

- 1603.201 Referral and scheduling for hearing.
- 1603.202 Administrative law judge.
- 1603.203 Unavailability or withdrawal of administrative law judges.
- 1603.204 Ex parte communications.
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- 1603.206 Consolidation and severance of hearings.
- 1603.207 Intervention.
- 1603.208 Motions.
- 1603.209 Filing and service.
- 1603.210 Discovery.
- 1603.211 Subpoenas.
- 1603.212 Witness fees.
- 1603.213 Interlocutory review.
- 1603.214 Evidence.
- 1603.215 Record of hearings.
- 1603.216 Summary decision.
- 1603.217 Decision of the administrative law judge.

Subpart C—Appeals

- 1603.301 Appeal to the Commission.
- 1603.302 Filing an appeal.
- 1603.303 Briefs on appeal.
- 1603.304 Commission decision.
- 1603.305 Modification or withdrawal of Commission decision.
- 1603.306 Judicial review.

Authority: 2 U.S.C. 1220.

§ 1603.100 Purpose.

This part contains the regulations of the Equal Employment Opportunity Commission (hereinafter the Commission) for processing complaints of discrimination filed under section 321 of the Government Employee Rights Act, 2 U.S.C. 1220.

Subpart A—Administrative Process**§ 1603.101 Coverage.**

Section 321 of the Government Employee Rights Act of 1991 applies to employment, which includes application for employment, of any individual chosen or appointed by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof:

- (a) To be a member of the elected official's personal staff;
- (b) To serve the elected official on the policymaking level; or
- (c) To serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

§ 1603.102 Filing a complaint.

(a) *Who may make a complaint.* Individuals referred to in § 1603.101 who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age or disability or retaliated against for opposing any practice made unlawful by federal laws protecting equal employment opportunity or for

participating in any stage of administrative or judicial proceedings under federal laws protecting equal employment opportunity may file a complaint not later than 180 days after the occurrence of the alleged discrimination.

(b) *Where to file a complaint.* A complaint may be filed in person or by mail or by facsimile machine to the offices of the Commission in Washington, D.C., or any of its field offices or with any designated agent or representative of the Commission. The addresses of the Commission's field offices appear in 29 CFR 1610.4.

(c) *Contents of a complaint.* A complaint shall be in writing, signed and verified. In addition, each complaint should contain the following:

- (1) The full name, address and telephone number of the person making the complaint;
- (2) The full name and address of the person, governmental entity or political subdivision against whom the complaint is made (hereinafter referred to as the respondent);
- (3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices (See 29 CFR 1601.15(b)); and
- (4) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local FEP agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(d) *Amendment of a complaint.* Notwithstanding paragraph (c) of this section, a complaint is sufficient when the Commission receives from the person making the complaint a written statement sufficiently precise to identify the parties and to describe generally the alleged discriminatory action or practices. A complaint may be amended to cure technical defects or omissions, including failure to verify the complaint, or to clarify and amplify its allegations. Such amendments, and amendments alleging additional acts that constitute discriminatory employment practices related to or growing out of the subject matter of the original complaint, will relate back to the date the complaint was first received. A complaint that has been amended after it was referred shall not be again referred to the appropriate state or local fair employment practices agency.

(e) *Misfiled complaint.* A charge filed pursuant to 29 CFR part 1601 or part 1626, that is later deemed to be a matter

under this part, shall be processed as a complaint under this part and shall relate back to the date of the initial charge or complaint. A complaint filed under this part that is later deemed to be a matter under 29 CFR part 1601 or part 1626 shall be processed as a charge under the appropriate regulation and shall relate back to the date of the initial complaint.

§ 1603.103 Referral of complaints.

(a) The Commission will notify an FEP agency, as defined in 29 CFR 1601.3(a), when a complaint is filed by a state or local government employee or applicant under this part concerning an employment practice within the jurisdiction of the FEP agency. The FEP agency will be entitled to process the complaint exclusively for a period of not less than 60 days if the FEP agency makes a written request to the Commission within 10 days of receiving notice that the complaint has been filed, unless the complaint names the FEP agency as the respondent.

(b) The Commission may enter into an agreement with an FEP agency that authorizes the FEP agency to receive complaints under this part on behalf of the Commission, or waives the FEP agency's right to exclusive processing of complaints.

§ 1603.104 Service of the complaint.

Upon receipt of a complaint, the Commission shall promptly serve the respondent with a copy of the complaint.

§ 1603.105 Withdrawal of a complaint.

The complainant may withdraw a complaint at any time by so advising the Commission in writing.

§ 1603.106 Computation of time.

(a) All time periods in this part that are stated in terms of days are calendar days unless otherwise stated.

(b) A document shall be deemed timely if it is delivered by facsimile not exceeding 20 pages, in person or postmarked before the expiration of the applicable filing period, or, in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period.

(c) All time limits in this part are subject to waiver, estoppel and equitable tolling.

(d) The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included unless it falls on a Saturday, Sunday or federal holiday, in which case the period shall be extended to include the next business day.

§ 1603.107 Dismissals of complaints.

(a) Where a complaint on its face, or after further inquiry, is determined to be not timely filed or otherwise fails to state a claim under this part, the Commission shall dismiss the complaint.

(b) Where the complainant cannot be located, the Commission may dismiss the complaint provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 30 days to a notice sent by the Commission to the complainant's last known address.

(c) Where the complainant fails to provide requested information, fails or refuses to appear or to be available for interviews or conferences as necessary, or otherwise refuses to cooperate, the Commission, after providing the complainant with notice and 30 days in which to respond, may dismiss the complaint.

(d) Written notice of dismissal pursuant to paragraphs (a), (b), or (c) of this section shall be issued to the complainant and the respondent. The Commission hereby delegates authority to the Program Director, Office of Program Operations, or to his or her designees, and District Directors, or to their designees, to dismiss complaints.

(e) A complainant who is dissatisfied with a dismissal issued pursuant to paragraphs (a), (b), or (c) of this section may appeal to the Commission in accordance with the procedures in subpart C of this part.

§ 1603.108 Settlement and alternative dispute resolution.

(a) The parties are at all times free to settle all or part of a complaint on terms that are mutually agreeable. Any settlement reached shall be in writing and signed by both parties and shall identify the allegations resolved. A copy of any settlement shall be served on the Commission.

(b) With the agreement of the parties, the Commission may refer a complaint to a neutral mediator or to any other alternative dispute resolution process authorized by the Administrative Dispute Resolution Act, 5 U.S.C. 571 to 583, or other statute.

(c) The Commission may use the services of the Federal Mediation and Conciliation Service, other federal agencies, appropriate professional organizations, employees of the Commission and other appropriate sources in selecting neutrals for alternative dispute resolution processes.

(d) The alternative dispute resolution process shall be strictly confidential, and no party to a complaint or neutral shall disclose any dispute resolution

communication or any information provided in confidence to the neutral except as provided in 5 U.S.C. 584.

§ 1603.109 Investigations.

(a) Before referring a complaint to an administrative law judge under section 201 of this part, the Commission may conduct investigation using an exchange of letters, interrogatories, fact-finding conferences, interviews, on-site visits or other fact-finding methods that address the matters at issue.

(b) During an investigation of a complaint under this part, the Commission shall have the authority to sign and issue a subpoena requiring the attendance and testimony of witnesses, the production of evidence and access to evidence for the purposes of examination and the right to copy. The subpoena procedures contained in 29 CFR 1601.16 shall apply to subpoenas issued pursuant to this section.

Subpart B—Hearings**§ 1603.201 Referral and scheduling for hearing.**

(a) Upon request by the complainant under paragraph (b) of this section or if the complaint is not dismissed or resolved under subpart A of this part, on behalf of the Commission, the Office of Federal Operations shall transmit the complaint file to an administrative law judge, appointed under 5 U.S.C. 3105, for a hearing.

(b) If the complaint has not been referred to an administrative law judge within 180 days after filing, the complainant may request that the complaint be immediately transmitted to an administrative law judge for a hearing.

(c) The administrative law judge shall fix the time, place, and date for the hearing with due regard for the convenience of the parties, their representatives or witnesses and shall notify the parties of the same.

§ 1603.202 Administrative law judge.

The administrative law judge shall have all the powers necessary to conduct fair, expeditious, and impartial hearings as provided in 5 U.S.C. 556(c). In addition, the administrative law judge shall have the power to:

(a) Change the time, place or date of the hearing;

(b) Enter a default decision against a party failing to appear at a hearing unless the party shows good cause by contacting the administrative law judge and presenting arguments as to why the party or the party's representative could not appear either prior to the hearing or within two days after the scheduled hearing; and

(c) Take any appropriate action authorized by the Federal Rules of Civil Procedure (28 U.S.C. appendix).

§ 1603.203 Unavailability or withdrawal of administrative law judges.

(a) In the event the administrative law judge designated to conduct the hearing becomes unavailable or withdraws from the adjudication, another administrative law judge may be designated for the purpose of further hearing or issuing a decision on the record as made, or both.

(b) The administrative law judge may withdraw from the adjudication at any time the administrative law judge deems himself or herself disqualified. Prior to issuance of the decision, any party may move that the administrative law judge withdraw on the ground of personal bias or other disqualification, by filing with the administrative law judge promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for withdrawal.

(c) The administrative law judge shall rule upon the motion for withdrawal. If the administrative law judge concludes that the motion is timely and has merit, the administrative law judge shall immediately withdraw from the adjudication. If the administrative law judge does not withdraw, the adjudication shall proceed.

§ 1603.204 Ex parte communications.

(a) Oral or written communications concerning the merits of an adjudication between the administrative law judge or decision-making personnel of the Commission and an interested party to the adjudication without providing the other party a chance to participate are prohibited from the time the matter is assigned to an administrative law judge until the Commission has rendered a final decision. Communications concerning the status of the case, the date of a hearing, the method of transmitting evidence to the Commission and other purely procedural questions are permitted.

(b) Decision-making personnel of the Commission include members of the Commission and their staffs and personnel in the Office of Federal Operations, but do not include investigators and intake staff.

(c) Any communication made in violation of this section shall be made part of the record and an opportunity for rebuttal by the other party allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

(d) Where it appears that a party has engaged in prohibited ex parte

communications, that party may be required to show cause why, in the interest of justice, his or her claim or defense should not be dismissed, denied or otherwise adversely affected.

§ 1603.205 Separation of functions.

(a) The administrative law judge may not be responsible to or subject to the supervision or direction of a Commission employee engaged in investigating complaints under this part.

(b) No Commission employee engaged in investigating complaints under this part shall participate or advise in the decision of the administrative law judge, except as a witness or counsel in the adjudication, or its appellate review.

§ 1603.206 Consolidation and severance of hearings.

(a) The administrative law judge may, upon motion by a party or upon his or her own motion, after providing reasonable notice and opportunity to object to all parties affected, consolidate any or all matters at issue in two or more adjudications docketed under this part where common parties, or factual or legal questions exist; where such consolidation would expedite or simplify consideration of the issues; or where the interests of justice would be served. For purposes of this section, no distinction is made between joinder and consolidation of adjudications.

(b) The administrative law judge may, upon motion of a party or upon his or her own motion, for good cause shown, order any adjudication severed with respect to some or all parties, claims or issues.

§ 1603.207 Intervention.

(a) Any person or entity that wishes to intervene in any proceeding under this subpart shall file a motion to intervene in accordance with § 1603.208.

(b) A motion to intervene shall indicate the question of law or fact common to the movant's claim or defense and the complaint at issue and state all other facts or reasons the movant should be permitted to intervene.

(c) Any party may file a response to a motion to intervene within 15 days after the filing of the motion to intervene.

§ 1603.208 Motions.

(a) All motions shall state the specific relief requested. All motions shall be in writing, except that a motion may be made orally during a conference or during the hearing. After providing an opportunity for response, the administrative law judge may rule on an

oral motion immediately or may require that it be submitted in writing.

(b) Unless otherwise directed by the administrative law judge, any other party may file a response in support of or in opposition to any written motion within ten (10) business days after service of the motion. If no response is filed within the response period, the party failing to respond shall be deemed to have waived any objection to the granting of the motion. The moving party shall have no right to reply to a response, unless the administrative law judge, in his or her discretion, orders that a reply be filed.

(c) Except for procedural matters, the administrative law judge may not grant a written motion prior to the expiration of the time for filing responses. The administrative law judge may deny a written motion without awaiting a response. The administrative law judge may allow oral argument (including that made by telephone) on written motions. Any party adversely affected by the *ex parte* grant of a motion for a procedural order may request, within five (5) business days of service of the order, that the administrative law judge reconsider, vacate or modify the order.

(d) The administrative law judge may summarily deny dilatory, repetitive or frivolous motions. Unless otherwise ordered by the administrative law judge, the filing of a motion does not stay the proceeding.

(e) All motions and responses must comply with the filing and service requirements of § 1603.209.

§ 1603.209 Filing and service.

(a) Unless otherwise ordered by the administrative law judge, a signed original of each motion, brief or other document shall be filed with the administrative law judge, with a certificate of service indicating that a copy has been sent to all other parties, and the date and manner of service. All documents shall be on standard size (8½ × 11) paper. Each document filed shall be clear and legible.

(b) Filing and service shall be made by first class mail or other more expeditious means of delivery, including, at the discretion of the administrative law judge, by facsimile. The administrative law judge, may in his discretion, limit the number of pages that may be filed or served by facsimile. Service shall be made on a party's representative, or, if not represented, on the party.

(c) Every document shall contain a caption, the complaint number or docket number assigned to the matter, a designation of the type of filing (e.g., motion, brief, etc.), and the filing

person's signature, address, telephone number and telecopier number, if any.

§ 1603.210 Discovery.

(a) Unless otherwise ordered by the administrative law judge, discovery may begin as soon as the complaint has been transmitted to the administrative law judge pursuant to § 1603.201. Discovery shall be completed as expeditiously as possible within such time as the administrative law judge directs.

(b) Unless otherwise ordered by the administrative law judge, parties may obtain discovery by written interrogatories (not to exceed 20 interrogatories including subparts), depositions upon oral examination or written questions, requests for production of documents or things for inspection or other purposes, requests for admission or any other method found reasonable and appropriate by the administrative law judge.

(c) Except as otherwise specified, the Federal Rules of Civil Procedure shall govern discovery in proceedings under this part.

(d) Neutral mediators who have participated in the alternative dispute resolution process in accordance with § 1603.108 shall not be called as witnesses or be subject to discovery in any adjudication under this part.

§ 1603.211 Subpoenas.

(a) Upon written application of any party, the administrative law judge may on behalf of the Commission issue a subpoena requiring the attendance and testimony of witnesses and the production of any evidence, including, but not limited to, books, records, correspondence, or documents, in their possession or under their control. The subpoena shall state the name and address of the party at whose request the subpoena was issued, identify the person and evidence subpoenaed, and the date and time the subpoena is returnable.

(b) Any person served with a subpoena who intends not to comply shall, within 5 days after service of the subpoena, petition the administrative law judge in writing to revoke or modify the subpoena. All petitions to revoke or modify shall be served upon the party at whose request the subpoena was issued. The requestor may file with the administrative law judge a response to the petition to revoke or modify within 5 days after service of the petition.

(c) Upon the failure of any person to comply with a subpoena issued under this section, the administrative law judge may refer the matter to the Commission for enforcement in accordance with 29 CFR 1601.16(c).

§ 1603.212 Witness fees.

Witnesses summoned under this part shall receive the same fees and mileage as witnesses in the courts of the United States. Those fees must be paid or offered to the witness by the party requesting the subpoena at the time the subpoena is served, or, if the witness appears voluntarily, at the time of appearance. A federal agency or corporation is not required to pay or offer witness fees and mileage allowances in advance.

§ 1603.213 Interlocutory review.

(a) Interlocutory review may not be sought except when the administrative law judge determines upon motion of a party or upon his or her own motion that:

(1) The ruling involves a controlling question of law or policy about which there is substantial ground for difference of opinion;

(2) An immediate ruling will materially advance the completion of the proceeding; or

(3) The denial of an immediate ruling will cause irreparable harm to the party or the public.

(b) Application for interlocutory review shall be filed within ten (10) days after notice of the administrative law judge's ruling. Any application for review shall:

(1) Designate the ruling or part thereof from which appeal is being taken; and

(2) Contain arguments or evidence that tend to establish one or more of the grounds for interlocutory review contained in paragraph (a) of this section.

(c) Any party opposing the application for interlocutory review shall file a response to the application within 10 days after service of the application. The applicant shall have no right to reply to a response unless the administrative law judge, within his or her discretion, orders that a reply be filed.

(d) The administrative law judge shall promptly certify in writing any ruling that qualifies for interlocutory review under paragraph (a) of this section.

(e) The filing of an application for interlocutory review and the grant of an application shall not stay proceedings before the administrative law judge unless the administrative law judge or the Commission so orders. The Commission shall not consider a motion for a stay unless the motion was first made to the administrative law judge.

§ 1603.214 Evidence.

The administrative law judge shall accept relevant non-privileged evidence in accordance with the Federal Rules of

Evidence (28 U.S.C. appendix), except the rules on hearsay will not be strictly applied.

§ 1603.215 Record of hearings.

(a) All hearings shall be mechanically or stenographically reported. All evidence relied upon by the administrative law judge for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence shall be marked for identification, with a copy provided for all parties, if not previously provided, and incorporated into the record. Transcripts may be obtained by the parties and the public from the official reporter at rates fixed by the contract with the reporter.

(b) Corrections to the official transcript will be permitted upon motion, only when errors of substance are involved and upon approval of the administrative law judge. Motions for correction must be submitted within ten (10) days of the receipt of the transcript unless additional time is permitted by the administrative law judge.

§ 1603.216 Summary decision.

Upon motion of a party or after notice to the parties, the administrative law judge may issue a summary decision without a hearing if the administrative law judge finds that there is no genuine issue of material fact or that the complaint may be dismissed pursuant to § 1603.107 or any other grounds authorized by this part. A summary decision shall otherwise conform to the requirements of § 1603.217.

§ 1603.217 Decision of the administrative law judge.

(a) The administrative law judge shall issue a decision on the merits of the complaint within 270 days after referral of a complaint for hearing, unless the administrative law judge makes a written determination that good cause exists for extending the time for issuing a decision. The decision shall contain findings of fact and conclusions of law, shall order appropriate relief where discrimination is found, and shall provide notice of appeal rights consistent with subpart C of this part.

(b) The administrative law judge shall serve the decision promptly on all parties to the proceeding and their counsel. Thereafter, the administrative law judge shall transmit the case file to the Office of Federal Operations including the decision and the record. The record shall include the complaint; the investigative file, if any; referral notice; motions; briefs; rulings; orders; official transcript of the hearing; all

discovery and any other documents submitted by the parties.

Subpart C—Appeals**§ 1603.301 Appeal to the Commission.**

Any party may appeal to the Commission the dismissal of a complaint under § 1603.107, any matter certified for interlocutory review under § 1613.213, or the administrative law judge's decision under § 1603.216 or § 1603.217.

§ 1603.302 Filing an appeal.

(a) An appeal shall be filed within 30 days after the date of the appealable decision or certification for interlocutory review, unless the Commission, upon a showing of good cause, extends the time for filing an appeal for a period not to exceed an additional 30 days.

(b) An appeal shall be filed with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036, by mail or personal delivery or facsimile.

§ 1603.303 Briefs on appeal.

(a) The appellant shall file a brief or other written statement within 30 days after the appeal is filed, unless the Commission otherwise directs.

(b) All other parties may file briefs or other written statements within 30 days of service of the appellant's brief or statement.

(c) Every brief or statement shall contain a statement of facts and a section setting forth the party's legal arguments. Any brief or statement in support of the appeal shall contain arguments or evidence that tend to establish that the dismissal, order or decision:

(1) Is not supported by substantial evidence;

(2) Contains an erroneous interpretation of law, regulation or material fact, or misapplication of established policy;

(3) Contains a prejudicial error of procedure; or

(4) Involves a substantial question of law or policy.

(d) Appellate briefs shall not exceed 50 pages in length.

(e) Filing and service of the appeal and appellate briefs shall be made in accordance with § 1603.209.

§ 1603.304 Commission decision.

(a) On behalf of the Commission, the Office of Federal Operations shall review the record and the appellate briefs submitted by all the parties. The Office of Federal Operations shall

prepare a recommended decision for consideration by the Commission.

(b) When an administrative law judge certifies a matter for interlocutory review under § 1603.213, the Commission may, in its discretion, issue a decision on the matter or send the matter back to the administrative law judge without decision.

(c) The Commission will not accept or consider new evidence on appeal unless the Commission, in its discretion, reopens the record on appeal.

(d) The decision of the Commission on appeal shall be its final order and shall be served on all parties.

(e) In the absence of a timely appeal under § 1603.302, the decision of the administrative law judge under § 1603.217 or a dismissal under § 1603.107 shall become the final order of the Commission. A final order under this paragraph shall not have precedential significance.

§ 1603.305 Modification or withdrawal of Commission decision.

At any time, the Commission may modify or withdraw a decision for any reason provided that no petition for review in a United States Court of Appeals has been filed.

§ 1603.306 Judicial review.

Any party to a complaint who is aggrieved by a final decision under § 1603.304 may obtain a review of such final decision under chapter 158 of title 28 of the United States Code by filing a petition for review with a United States Court of Appeals within 60 days after issuance of the final decision. Such petition for review should be filed in the judicial circuit in which the petitioner resides, or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

[FR Doc. 97-9162 Filed 4-9-97; 8:45 am]

BILLING CODE 6570-06-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations: Overflight Payments to North Korea

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: This rule amends the Foreign Assets Control Regulations to authorize by general license payments with respect to the provision of services by North Korea in connection with the overflight of North Korea or emergency

landings in North Korea by aircraft owned or controlled by a person subject to the jurisdiction of the United States or registered in the United States.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT:

Steven I. Pinter, Chief of Licensing, tel.: 202/622-2480, or William B. Hoffman, Chief Counsel, tel.: 202/622-2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

As part of the October 21, 1994 United States-Democratic People's Republic of Korea Agreed Framework, the United States undertook to ease economic sanctions against North Korea. As a measure consistent with this foreign policy, the Treasury Department is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), by adding § 500.585 to authorize, by general license, the payment of fees with respect to the provision of services by North Korea in connection with the overflight of North

Korea or emergency landings in North Korea by aircraft owned or controlled by a person subject to the jurisdiction of the United States or registered in the United States.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601-612, does not apply.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, banking, Blocking of assets, Cambodia, Exports, Finance, Foreign claims, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, International organizations, North Korea, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Terrorism, Travel restrictions, Trusts and estates, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as set forth below:

1. The authority citation for part 500 is revised to read as follows:

Authority: 50 U.S.C. App. 1-44; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104-132, 110 Stat. 1214, 1254 (18 U.S.C. 2332d); E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 500.585 is added to read as follows:

§ 500.585 Payments for services rendered by North Korea to United States aircraft authorized.

Payments to North Korea of charges for services rendered by the Government of North Korea in connection with the overflight of North Korea or emergency landing in North Korea by aircraft owned or controlled by a person subject to the jurisdiction of the United States or registered in the United States are authorized.

Dated: March 24, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 31, 1997.

James E. Johnson,

Assistant Secretary (Enforcement).

[FR Doc. 97-9206 Filed 4-7-97; 12:05 pm]

BILLING CODE 4810-25-F