

(b) The Chairman may order a termination of the test period, if he determines, in his sole and absolute discretion, that applicant tribe or person, the manufacturer or developer of the game or the licensed gaming operation has not complied with the terms and conditions of the testing period or if he determines that the game is not Class II.

§ 504.11 What is required of a tribe or person who merely seeks a modification of a game which is already the subject of a classification decision?

A tribe or person shall submit a request for a classification decision on the game which is subject to the modifications by providing a detailed description of the modification and how the modification affects the game. A person shall also submit a letter, signed by an authorized tribal official, indicating that the tribe sponsors the person's application for a modification.

§ 504.12 Must a tribe or person seek a classification decision on a game which it alleges is a game of skill?

A tribe or person shall follow the same process for receiving a classification decision as is used for other games in this part.

§ 504.13 Is there an opportunity for public comment on a request for a gaming classification before a decision is made by the Chairman?

The Commission will include on its Internet site and its telephonic fax-on-demand documents a listing of games for which it is considering a classification. Games will appear on this listing for thirty (30) days whenever practicable. Any individual may request a description of a particular game from the Commission during this period and offer written comment which will then be considered by the Chairman before a classification decision is reached on that particular game.

§ 504.14 How does a tribe or person appeal a classification decision with which it does not agree?

(a) Within 30 days of service of a classification decision, a tribe or person sponsored by a tribe may appeal a classification decision under this part by filing:

- (1) A notice of appeal with the Commission; and
- (2) A statement and any supporting materials specifying why the appellant believes the classification decision to be erroneous.

(b) Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(c) Within 60 days of receipt of the appeal when practicable, the Commission shall review the file used to make the initial classification decision and any material submitted in the appeal and issue a decision.

§ 504.15 Will the tribe or person have an opportunity to demonstrate its game to the Commission?

In addition to any demonstration requested during the initial classification decision process, the Commission may request a demonstration of the game during its review of the record on appeal.

[FR Doc. 99-29103 Filed 11-9-99; 8:45 am]

BILLING CODE 7565-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-106527-98]

RIN 1545-AW22

Capital Gains, Partnership, Subchapter S and Trust Provisions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 1(h) relating to sales or exchanges of interests in partnerships, S corporations, and trusts.

DATES: The public hearing originally scheduled for Thursday, November 18, 1999, at 1 p.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, August 9, 1999, (64 FR 43117), announced that a public hearing was scheduled for Thursday, November 18, 1999, at 1 p.m., in room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1(h) of the Internal Revenue Code. The public comment period for these proposed regulations expires on Monday, November 8, 1999. The outlines of topics to be addressed at the hearing

were due on Thursday, October 28, 1999.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, November 2, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Thursday, November 18, 1999, is cancelled.

Cynthia Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99-29360 Filed 11-9-99; 8:45 am]

BILLING CODE 4830-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Mine Safety and Health Review Commission proposes to amend its procedural rules by adding a new rule setting forth settlement procedures which are intended to facilitate and promote the pre-hearing settlement of contested cases that come before the Commission. The new procedures would be instituted as a pilot program for a two-year trial period.

DATES: Comments must be received by December 10, 1999.

ADDRESSES: All comments concerning these proposed rules should be addressed to Norman M. Gleichman, General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006. For the convenience of persons who will be reviewing the comments, it is requested that commenters provide an original and three copies of their comments.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, 202-653-5610 (202-653-2673 for TDD relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's Procedural Rules, 29 CFR Part 2700, are currently silent regarding procedures to be utilized by administrative law judges ("ALJs") to facilitate the settlement of contested cases. The procedures used in a given case to foster pre-hearing settlement of

disputes have been determined informally by the individual ALJ assigned to the case. Notwithstanding the use of informal settlement techniques, some cases continue to the hearing stage even though settlement may be achievable.

The proposed rule is intended to provide a structured and formal system which will enhance the possibility of settlement by having the parties meet and confer, at a preliminary stage in the proceedings, with a judge who has full authority both to guide and assist the parties to a complete or partial resolution of the case and to assure the parties the confidentiality which is a necessary component of any successful settlement procedure. The Commission anticipates that providing the parties with this alternative method of resolving their disputes will reduce the number of cases that go to hearing. In conjunction with the adoption of this rule, the Commission intends to give ALJs specialized training in dispute resolution techniques.

The proposed rule is consonant with the goals set by Congress in the Alternative Dispute Resolution Act of 1996, 5 U.S.C. 571 *et seq.* ("ADRA"). In the ADRA, Congress found that, while administrative proceedings were intended to provide a prompt and inexpensive means of resolving disputes, they "have become increasingly formal, costly, and lengthy, resulting in unnecessary expenditures of time and in a decreased likelihood of achieving consensual resolution of disputes." 5 U.S.C. 571 note. In response to this development, Congress directed each federal agency to "examine alternative means of resolving disputes in connection with * * * formal and informal adjudications." * * * *Id.*

The proposed settlement provision is set forth here as a new § 2700.85. The Commission intends to implement the rule for a two-year trial period. Settlement proceedings commenced pursuant to § 2700.85 shall continue to be processed in accordance with this rule even if it expires prior to the completion of such proceedings.

II. Analysis of the Regulation

In § 2700.85(a), the Commission states that its policy is to permit and encourage settlements at any stage of proceedings. Section 2700.85(b) would make the settlement procedure applicable to all proceedings except disciplinary proceedings under current § 2700.80. Definitions of the terms "Settlement Judge," "settlement proceeding" and "partial settlement" are proposed in § 2700.85(c).

Under proposed § 2700.85(d)(1), the Settlement Judge may be appointed by the Chief ALJ on his own motion or on the motion of a party. Paragraph (d)(2) specifies that the Settlement Judge cannot be the ALJ ultimately assigned to hear and decide the case.

Section 2700.85(e) establishes a 30-day time limit for settlement negotiations, with an extension not to exceed 20 days upon application to and approval by the Chief ALJ. A further extension could only be approved by the Chief ALJ in extraordinary circumstances.

The powers and duties of Settlement Judges are set forth in § 2700.85(f). Of particular note is the Settlement Judge's authority to confer separately with any party or representative. Currently, due to restrictions on *ex parte* communications contained in § 2700.82, Commission ALJs may not utilize this basic tool of mediation.

Under proposed § 2700.85(g)(1), it is presumed that settlement conferences will take place by conference telephone call. However, face-to-face conferences are also contemplated under one or more of four enumerated circumstances set forth in paragraph (g)(2). Under paragraph (g)(3), conferences involving travel by the Settlement Judge require approval by the Chief ALJ. Paragraph (g)(4) permits the Settlement Judge to recommend attendance at the settlement conference of representatives expected to try the case, parties, or other agents having full settlement authority.

In order to encourage the parties to engage in frank and meaningful settlement negotiations, the Commission proposes a broad grant of confidentiality in § 2700.85(h). Paragraph (h)(1) protects from subsequent disclosure evidence of conduct or statements and documents revealed during settlement negotiations, except with consent of the parties. Further, this paragraph prohibits the Settlement Judge from divulging statements or information presented during private discussions except with consent of the party to such discussions. The confidentiality provision also specifies that evidence of conduct or statements made in settlement negotiations, notes prepared or maintained by the Settlement Judge, and communications between the Settlement Judge and the Chief ALJ are not admissible in any subsequent hearing or other proceeding except by stipulation of the parties. In addition, paragraph (h)(1) precludes the Settlement Judge from discussing the merits of the case with someone who is not a party or representative, and from being called as a witness.

While seeking to protect the confidentiality of settlement negotiations in order to enhance their effectiveness, the Commission is also cognizant of the need to prevent parties from attempting to use the settlement procedure as a means to shield otherwise discoverable or admissible evidence. Accordingly, in paragraph (h)(2), the Commission proposes language that permits the use in litigation of documents disclosed in the settlement process so long as they are obtained through appropriate discovery or subpoena. Paragraph (h)(2) clarifies that discovery or admission of evidence is not barred solely by virtue of its presentation in the course of a settlement proceeding. This paragraph also permits disclosure of information necessary to document a full or partial settlement agreement.

Consistent with the broad confidentiality and nondisclosure provisions, § 2700.85(i) provides that no material protected from disclosure, and no material in the possession of the Settlement Judge related to the settlement proceeding, will be entered in the official case file, and that such material therefore will not be available for public inspection. The only exception to this requirement is that decisions approving full or partial settlements, notices of termination of settlement proceedings, and stipulations of law or fact resulting from settlement negotiations will be part of the official case record.

In § 2700.85(j), the Commission would require the Settlement Judge to approve or deny in writing full or partial settlements. This requirement is consistent with that applicable to ALJs under present § 2700.69.

Under proposed § 2700.85(k), settlement proceedings terminate upon the Settlement Judge's issuance of a decision approving a full settlement, or by written notification to the Chief ALJ that no full settlement was reached. Paragraph (k)(2) provides that the Chief ALJ, upon notification that a full settlement was not obtained, must promptly assign the case to an administrative law judge other than the Settlement Judge for further proceedings.

Decisions concerning submission of a case to settlement procedures, assignment of a Settlement Judge, requests for enlargement of time for negotiations, and termination of settlement proceedings are not subject to rehearing or appellate review under proposed § 2700.85(l).

Consistent with the Commission's desire to enable Settlement Judges to employ the traditional techniques of

mediation, and with proposed §§ 2700.49(f)(4) and (f)(5), the Commission proposes in § 2700.85(m) to exclude settlement procedures under the proposed rule from application of current § 2700.82, governing *ex parte* communications, to permit Settlement Judges to privately confer with a party or its representative during settlement proceedings.

III. Matters of Regulatory Procedure

The Commission has determined that these rules are not subject to Office of Management and Budget review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–612) that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, *Ex parte* communications, Hearing and appeal procedures, Lawyers.

For the reasons set out in the preamble, it is proposed to amend 29 CFR part 2700 as follows:

PART 2700—PROCEDURAL RULES

1. The authority citation for part 2700 is revised to read as follows:

Authority: 5 U.S.C. 571 note, 572 and 574; 30 U.S.C. 815, 820 and 823.

2. Part 2700 is amended by adding a new § 2700.85, to read as follows:

§ 2700.85 Settlement procedures.

(a) *Policy.* The Commission permits and encourages settlements of disputes at any stage of proceedings.

(b) *Applicability.* This section applies to any proceeding under these rules except disciplinary proceedings under § 2700.80.

(c) *Definitions.* For purposes of this section:

(1) *Settlement Judge* means the Judge (including, where applicable, the Chief Administrative Law Judge) appointed by the Chief Judge to conduct settlement negotiations under this section.

(2) *Settlement proceeding* means any proceeding under this section.

(3) *Partial settlement* means the complete disposition of some but not all of the issues in the case.

(d) *Appointment.* (1) The Chief Judge may, on the motion of any party or on his own initiative, appoint himself or another Commission administrative law judge as Settlement Judge in any proceeding covered by this section.

(2) The Settlement Judge shall not be the Judge assigned to hear and decide the case.

(e) *Time period for negotiations.* Settlement negotiations under this section shall be for a period not to exceed 30 days. Upon request of the Settlement Judge and submission by the Settlement Judge to the Chief Judge of an oral or written status report, the Chief Judge may grant an enlargement of time of the settlement period not exceeding 20 days. The Chief Judge may grant a further enlargement of time only in extraordinary circumstances.

(f) *Powers and duties of Settlement Judges.* (1) The Settlement Judge shall confer with the parties on any subjects with a view toward full or partial settlement of the case.

(2) The Settlement Judge shall seek resolution of as many of the issues in the case as is feasible.

(3) The Settlement Judge may suspend discovery and rule on motions related to discovery during the time of assignment.

(4) The Settlement Judge may confer separately with any party or representative.

(5) The Settlement Judge may suggest privately to each party or its representative what concessions should be considered, and assess privately with each party or representative the reasonableness of the party's case or settlement position.

(g) *Settlement conference and other communication.* (1) In general it is expected that the Settlement Judge shall communicate with the parties by a conference telephone call.

(2) A personal conference with the parties may be scheduled under one or more of the following circumstances:

(i) It is possible for the Settlement Judge to schedule in one day three or more cases for conference at or near the same location;

(ii) The offices of the representatives of the parties, as well as that of the Settlement Judge, are located in the same metropolitan area;

(iii) A conference may be scheduled in a place and on a day that the Judge is scheduled to preside in other proceedings under this part;

(iv) Any other suitable circumstances in which the Settlement Judge determines that a personal meeting is

necessary for a resolution of substantial issues in a case and the holding of a conference represents the prudent use of resources.

(3) All personal conferences under § 2700.85(g)(2) that require travel by the Settlement Judge must be approved by the Chief Judge.

(4) The Settlement Judge may recommend that the representative who is expected to try the case for each party be present and, without regard to the scope of the representative's powers, may also recommend that the parties, or agents having full settlement authority, be present. The parties and their representatives are required to be completely candid with the Settlement Judge so that he may properly guide settlement discussions.

(h) *Confidentiality.* (1) All statements made, and all information presented, during the course of proceedings under this section shall be regarded as confidential and shall not be divulged outside of these proceedings except with the consent of the parties. The Settlement Judge shall not divulge any statements or information presented during private negotiations with a party or his representative except with the consent of that party. No evidence of statements or conduct in proceedings under this section relating to compromise or offers to compromise, no notes or other material prepared by or maintained by the Settlement Judge, and no communications between the Settlement Judge and the Chief Judge, including any status report of the Settlement Judge under paragraph (e) of this section, will be admissible in any subsequent hearing or other proceeding except by stipulation of the parties. The Settlement Judge shall not discuss the merits of the case with any person except a party or its representative, nor appear as a witness in any hearing of the case.

(2) Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpoena. Nothing in paragraph (h)(1) of this section prevents the discovery or admissibility of any evidence that is otherwise discoverable or admissible solely because the evidence was presented in the course of a settlement proceeding, or precludes disclosure of information necessary to document an agreement reached or order issued pursuant to a settlement proceeding.

(i) *Record of proceedings.* (1) No material of any kind required to be held confidential under paragraph (h)(1) of this section shall be part of the official case record, nor shall any such material be open to public inspection, unless the

parties otherwise stipulate and the Settlement Judge approves.

(2) The Settlement Judge shall file or cause to be filed in the official case record any decision approving full settlement of the case. Where a full settlement is not achieved, the Settlement Judge shall notify the Chief Judge in writing of the termination of proceedings under this section, have the notification filed in the official case record, and include with the notification, for filing in the official case record, any decision approving partial settlement or stipulation of law or fact resulting from settlement negotiations.

(3) With the exception of a decision approving the terms of any full or partial settlement agreed to between the parties as set forth in paragraph (j) of this section, notification of the termination of settlement proceedings, or stipulations of law or fact agreed to by the parties, the Settlement Judge shall not file or cause to be filed in the official case record any material in his possession relating to these proceedings, including but not limited to communications with the Chief Judge, unless the parties otherwise stipulate and the Settlement Judge approves.

(j) *Settlement.* Pursuant to the Mine Act, any full or partial settlement of a case that is the subject of a settlement proceeding shall be submitted to the Settlement Judge for written approval.

(k) *Termination of settlement proceeding.* (1) The settlement proceedings shall terminate upon the issuance of a decision approving a full settlement or written notification to the Chief Judge by the Settlement Judge that no full settlement has been reached.

(2) Upon notification to the Chief Judge by the Settlement Judge that negotiations have concluded without a full settlement, the Chief Judge shall promptly assign the case to a Judge other than the Settlement Judge for appropriate proceedings under the Commission's procedural rules.

(l) *Non-reviewability.* Notwithstanding the provisions of § 2700.76 governing interlocutory review, any decision concerning the submission of a case to settlement procedures, any decision concerning the assignment of a Settlement Judge or a particular Judge, any decision to request or grant an enlargement of time under paragraph (e) of this section, and any decision by the Settlement Judge to terminate proceedings under this section is not subject to review by, appeal to, or rehearing by any Judge, the Chief Judge, or the Commission.

(m) *Ex-parte communications.* The provisions of § 2700.82 shall not apply

to settlement proceedings under this section.

Dated: November 2, 1999.

Mary Lu Jordan,
Chairman.

[FR Doc. 99-29322 Filed 11-9-99; 8:45 am]

BILLING CODE 6735-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC-087-1-9939b; FRL-6463-5]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of North Carolina on July 29, 1998. These revisions clarify rules for the control of particulate emissions, change the Division's name and address, revise exclusionary levels, add requirements for expedited permit processing, make clarifications, and correct deficiencies identified by EPA. In the Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 10, 1999.

ADDRESSES: All comments should be addressed to: Gregory Crawford at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102),

U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

North Carolina Department of Environment and Natural Resources, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699.

FOR FURTHER INFORMATION CONTACT: Gregory Crawford at 404/562-9046.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: October 5, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99-27932 Filed 11-9-99; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99-2272; MM Docket No. 99-313; RM-9753]

Radio Broadcasting Services; Greenwood and Mauldin, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sutton Radiocasting Corporation proposing the reallocation of Channel 244A from Greenwood to Mauldin, South Carolina, and the modification of Station WCRS-FM's license accordingly. Channel 244A can be reallocated to Mauldin in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.7 kilometers (6.7 miles) south at petitioner's requested site. The coordinates for Channel 244A at Mauldin are 34-41-30 North Latitude and 82-17-02 West Longitude. In accordance with provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 244A at Mauldin, South Carolina.

DATES: Comments must be filed on or before December 13, 1999, reply comments on or before December 28, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the