

income from widgets sold in foreign countries is \$12. A uses the 50/50 method to divide its gross income between production activity and sales activity.

(i) A determines its production gross income from sources without the United States by multiplying one-half of A's \$12 of gross income from sales of widgets in foreign countries, or \$6, by a fraction, the numerator of which is all relevant foreign production assets, or \$25, and the denominator of which is all relevant production assets, or \$75 (\$25 foreign assets + (\$200 U.S. assets  $\times$  \$25 gross receipts from export sales/\$100 gross receipts from all sales)). Therefore, A's gross production income from sources without the United States is \$2 ( $\$6 \times (\$25/\$75)$ ).

*Example 2. Location of intangible property.* Assume the same facts as *Example 1*, except that A employs a patented process that applies only to the initial production of widgets. In computing the formula used to determine the source of income from production activity, A's patent, if it has an average adjusted basis, would be located in the United States.

(2) *Income attributable to sales activity.* The source of the taxpayer's income that is attributable to sales activity will be determined under the provisions of § 1.861-7(c).

(d) *Determination of source of taxable income.* Once the source of gross income has been determined under paragraph (c) of this section, the taxpayer must properly allocate and apportion separately under §§ 1.861-8 through 1.861-14T the amounts of its expenses, losses, and other deductions to its respective amounts of gross income from Section 863 Sales determined separately under each method described in paragraph (b) of this section. In addition, if the taxpayer deducts expenses for research and development under section 174 that may be attributed to its Section 863 Sales under § 1.861-8(e)(3), the taxpayer must separately allocate or apportion expenses, losses, and other deductions to its respective amounts of gross income from each relevant product category that the taxpayer uses in applying the rules of § 1.861-8(e)(3)(i)(A). In the case of gross income from Section 863 Sales determined under the IFP method or the books and records method, the rules of §§ 1.861-8 through 1.861-14T must apply to properly allocate or apportion amounts of expenses, losses and other deductions allocated and apportioned to such gross income between gross income from sources within and without the United States. In the case of gross income from Section 863 Sales determined under the 50/50 method, the amounts of expenses, losses, and other deductions allocated and apportioned to such gross income must be apportioned between sources within and without the United States

pro rata based on the relative amounts of gross income from sources within and without the United States determined under the 50/50 method.

(e) *Election and reporting rules—(1) Elections under paragraph (b) of this section.* If a taxpayer does not elect a method specified in paragraph (b)(2) or (3) of this section, the taxpayer must apply the method specified in paragraph (b)(1) of this section. The taxpayer may elect to apply the method specified in paragraph (b)(2) of this section by using the method on a timely filed original return (including extensions). A taxpayer may elect to apply the method specified in paragraph (b)(3) of this section by using the method on a timely filed original return (including extensions), but only if the taxpayer has received permission from the District Director to apply that method. Once a method under paragraph (b) of this section has been used, that method must be used in later taxable years unless the Commissioner consents to a change. See e.g., paragraph (b)(2)(ii) *Example 2* of this section. However, if a taxpayer elects to change to or from the method specified in paragraph (b)(3) of this section, the taxpayer must obtain permission from the District Director instead of the Commissioner. Permission to change methods from one year to another year will not be withheld unless the change would result in a substantial distortion of the source of the taxpayer's income.

(2) *Disclosure on tax return.* A taxpayer who uses one of the methods described in paragraph (b) of this section must fully explain the methodology used, the circumstances justifying use of that method, the extent that sales are aggregated, and the amount of income so allocated.

(f) *Income partly from sources within a possession of the United States.* [Reserved]

(g) *Effective dates.* The rules of paragraphs (a) through (e) of this section will apply to taxable years beginning 30 days after publication of final regulations. However, taxpayers may apply these regulations for taxable years beginning after July 11, 1995, and before 30 days after publication of these regulations as final regulations. For years beginning before 30 days after the publication of these regulations as final regulations, see § 1.863-3 (as contained in 26 CFR part 1 revised as of April 1, 1995).

Par. 4. Section 1.863-4 is amended by revising the section heading and paragraph (a) to read as follows:

#### § 1.863-4 Certain transportation services.

(a) *General.* A taxpayer carrying on the business of transportation service (other than an activity giving rise to transportation income described in section 863(c) or to income subject to other specific provisions of this title) between points in the United States and points outside the United States derives income partly from sources within and partly from sources without the United States.

\* \* \* \* \*

#### § 1.863-5 [Removed]

Par. 6. Section 1.863-5 is removed.  
Margaret Milner Richardson,  
Commissioner of Internal Revenue.  
[FR Doc. 95-30087 Filed 12-7-95; 2:00 pm]  
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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 33 CFR Part 52

[OST Docket No. OST-95-878; Notice 95-14]

RIN 2105-AC31

#### Coast Guard Board for Correction of Military Records; Procedural Regulation

**AGENCY:** Office of the Secretary, DOT.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department proposes to amend its regulations with respect to reconsideration of final decisions of the Board for Correction of Military Records of the Coast Guard (Board). This action is taken on the Department's initiative in order to streamline processing of these cases and to clarify the circumstances under which final decisions can be reconsidered. The proposed amendment will make it possible for the Board to expedite reconsideration and will increase the resources available to meet the requirement that all cases be decided within 10 months of the receipt of a completed application.

**DATES:** Comments must be submitted on or before February 9, 1996. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Comments should be mailed, preferably in duplicate, to Docket No. OST-95-878, Documentary Services Division, C-55, PL-401, U.S. Department of Transportation; 400 Seventh Street SW, Washington, D.C. 20590. Comments will be available for review by the public at this address from 9 a.m. through 5 p.m., Monday

through Friday. Persons wishing acknowledgment of their comments' receipt should include a stamped, self-addressed postcard. The Documentary Services Division will time and date-stamp the card and return it to the commenter.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Joost, Chairman, Board for Correction of Military Records of the Coast Guard, C-60, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street SW, Washington, D.C. 20590-0001. Telephone: (202) 366-9335.

**SUPPLEMENTARY INFORMATION:**

**The Board Process With Respect to Reconsideration**

The Secretary of Transportation, acting through the Department of Transportation Board for Correction of Military Records of the Coast Guard, is authorized by section 1552 of title 10, United States Code, to correct the military records of serving, separated and retired Coast Guard military personnel when there is an error or injustice in a military record.

After a final decision has been reached on an application for correction, the decision can be appealed by the applicant in an appropriate Federal court. There is no right, under 10 U.S.C. 1552, to administrative reconsideration of a final decision, but applicants have always been allowed to request such reconsideration by regulation.

Under the present DOT BCMR regulation with respect to reconsideration (33 CFR 52.67(b)), the only basis for reconsideration is the presentation of "newly discovered evidence or information, not previously considered by the Board \* \* \* [which] would, if true, result in a determination other than that originally made."

The present regulation does not explicitly authorize reconsideration if the applicant offers evidence showing that material legal or factual error was made by the Board in its original decision. Also, it does not provide a means for expeditious handling of requests for reconsideration that do not meet the threshold requirements for review. Because of the current statutory direction that Board decisions be issued within 10 months of receiving a complete application, and the resulting pressure on Board resources, the Board must find ways to increase its efficiency of operation. An expedited process for handling facially defective reconsideration requests is proposed as an appropriate step in that direction. In addition, the present rule does not

require that a request for reconsideration be made within a certain time period.

**The Proposal**

The proposed rule would explicitly authorize the Board to consider applications for reconsideration upon a showing that the Board committed legal or factual error in the original determination that could have resulted in a determination other than that made.

The proposed rule would authorize the Chairman not to docket applications for reconsideration that do not meet the threshold requirements for reconsideration, i.e. applications that only (1) present evidence or information previously considered by the Board, (2) present new evidence or information that is clearly not material to the result in the case, (3) present new evidence or information that could have been submitted earlier with the exercise of reasonable diligence, or (4) make arguments as to legal or factual error that are clearly not material to the result. The phrase "otherwise comes to the attention of the Board" has been deleted, however, as unnecessary.

The proposed rule would provide that no Board member who considered an applicant's original application for correction would participate in the consideration of that person's application for reconsideration. There will, to the extent practicable, be a related prohibition on the staff member; the person who drafted the original decision would not draft the reconsideration decision. In light of these safeguards, it would not be necessary for the Secretary's designate to approve each denial of a reconsideration request, thus expediting the review process.

**Section-by-Section Analysis**

Section 52.67, Reconsideration, is rewritten to add the new requirements outlined above, and to simplify the procedure on reconsideration.

Paragraph (a) provides that reconsideration of an application may occur if the applicant meets at least one of two sets of criteria. The first of these, paragraph (a)(1), directs reconsideration if an applicant presents evidence or information that was not previously considered by the Board if that evidence or information could result in a different determination and if it "could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence." The second of these, paragraph (a)(2), directs reconsideration if an applicant presents evidence or information that the Board committed legal or factual

error in the original determination that could have resulted in a different result.

Paragraph (b) directs the Chairman to docket a reconsideration request if it meets the requirements of paragraph (a)(1) or (a)(2). If neither of these requirements is met, the Chairman shall not docket the request, and shall return the application to the applicant with a statement that no action is being taken due to a failure to meet the threshold requirements for docketing.

Paragraph (c) provides that the Board shall consider each application for reconsideration that has been docketed under paragraph (b). This paragraph also provides that the final decision on reconsideration shall involve a different Board than the one that initially considered the application.

Paragraph (d) provides that the Board's final action on docketed application for reconsideration shall be the same as if they were original applications for correction.

Paragraph (e) provides that an applicant's request for reconsideration must be filed within two years after the issuance of a final decision, subject to other legal rules such as the Soldier's and Sailor's Civil Relief Act. The two-year statute of limitations parallels the time period allowed by Article 73 of the Uniform Code of Military Justice for petitioning for a new trial after the approval of a court-martial sentence on the grounds of newly discovered evidence or fraud on the court. If the Chairman docketed an applicant's request for reconsideration under paragraph (b), the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

**Regulatory Process Matters**

This NPRM does not propose a significant rule under Executive Order 12681 or the Department's Regulatory Policies and Procedures. The costs of a purely procedural change in the Board's rule would be negligible. The NPRM would not, if adopted, have a significant economic effect on a substantial number of small entities, as defined in the Regulatory Flexibility Act. There are no Federalism factors to warrant the preparation of a Federalism assessment.

**List of Subjects in 32 CFR Part 52**

Administrative practice and procedure, Archives and records, Military personnel, Military records.

Issued this 24th day of November at Washington, DC.

Mortimer L. Downey,  
Deputy Secretary of Transportation.

For the reasons set forth in the preamble, the Office of the Secretary of the U.S. Department of Transportation proposes to amend 33 CFR Part 52 as follows:

#### **PART 52—[AMENDED]**

1. The authority citation for Part 52 is revised to read as follows:

Authority: 10 U.S.C. 1552; 49 U.S.C. 108; Pub. L. 101-225, 103 Stat. 1908, 1914.

2. Section 52.67 is revised to read as follows:

##### **§ 52.67 Reconsideration.**

(a) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.

(1) An applicant presents evidence or information that was not previously considered by the Board that could result in a determination other than that originally made. Evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or

(2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

(b) The Chairman shall docket a request for reconsideration of a final decision if it meets the requirements of paragraph (a)(1) or (a)(2) of this section. If neither of these requirements is met, the Chairman shall not docket such request.

(c) The Board shall consider each application for reconsideration that has been docketed. None of the Board members who considered an applicant's original application for correction shall participate in the consideration of that applicant's application for reconsideration.

(d) Action by the Board on a docketed application for reconsideration is subject to § 52.64(b).

(e) An applicant's request for reconsideration must be filed within two years after the issuance of a final decision, except as otherwise required by law. If the Chairman docketed an applicant's request for reconsideration, the two-year requirement may be

waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

[FR Doc. 95-29345 Filed 12-8-95; 8:45 am]

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 52**

[SC-029-1-7177b; FRL-5316-6]

#### **Approval and Promulgation of Implementation Plans State of South Carolina's State Implementation Plan (SIP)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of South Carolina for the purpose of establishing a Federally enforceable state construction and operating permit (FESCOP) program. In order to extend the Federal enforceability of South Carolina's FESCOP to hazardous air pollutants (HAPs), EPA is also proposing approval of South Carolina's FESCOP regulations pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA). In the Final Rules Section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment 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 that direct final rule, no further activity is contemplated in relation to this proposed rule. 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. 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.

**DATE:** To be considered, comments must be received by January 10, 1996.

**ADDRESSES:** Written comments should be addressed to: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the material submitted by the State of South Carolina may be

examined during normal business hours at the following locations:

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 Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

#### **FOR FURTHER INFORMATION CONTACT:**

Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555 extension 4153.

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

Dated: September 20, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95-30107 Filed 12-8-95; 8:45 am]

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#### **FEDERAL COMMUNICATIONS COMMISSION**

##### **47 CFR Part 64**

[CC Docket No. 91-281; FCC 95-480]

#### **Calling Number Identification Service—Caller ID**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** On November 30, 1995, the Commission adopted a Fourth Notice of Proposed Rulemaking (Fourth NPRM) addressing numerous petitions for waiver of its Caller ID rules. The Fourth NPRM is intended to address issues associated with requiring carriers to deploy blocking capabilities. It seeks comment on whether local exchange carriers (LECs) must pass calling party number (CPN) if they use particular switches that do not have CLASS software installed.

**DATES:** Comments must be filed on or before December 27, 1995, and reply comments must be filed on or before January 10, 1996.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.