

Parade of Sail. This safety zone will move with the Parade of Sail as it transits the Delaware River from Anchorage 9 (Mantua Creek anchorage) to the Walt Whitman Bridge.

(2) *Parade of Sail—Second Segment:* All waters of the Delaware River, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and on the north by the Benjamin Franklin Bridge with the exception of the southern portion of Anchorage 12, defined as that portion of the anchorage south of latitude 39° 55' 41" N.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within these regulated areas unless authorized to do so by the Coast Guard Patrol Commander. Any person or vessel authorized to enter the regulated area must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Coast Guard Patrol Commander so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (215) 271-4940.

(4) The Coast Guard Patrol Commander will notify the public of changes in the status of these zones by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22 (157.1 MHz).

(d) *Effective dates:* This section is effective from 8 a.m. on June 22, 2000 through 4 p.m. on June 23, 2000.

Dated: May 12, 2000.

**Thomas E. Bernard,**

*Captain, U.S. Coast Guard, Acting  
Commander, Fifth Coast Guard District.*

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## POSTAL SERVICE

### 39 CFR Part 952

#### Rules of Practice in Proceedings Relative to False Representation and Lottery Orders

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Rules of Practice in Proceedings Relative to False Representation and Lottery Orders to establish administrative procedures for issuing subpoenas and imposing the statutorily authorized civil penalties in

proceedings conducted under 39 U.S.C. 3005(a).

**EFFECTIVE DATE:** May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:**  
Diane M. Mego, Esq., (703) 812-1905.

**SUPPLEMENTARY INFORMATION:** On March 14, 2000, the Postal Service published in the **Federal Register** a proposed rule to amend the Rules of Practice in Proceedings Relative to False Representation and Lottery Orders (65 FR 13707-13709). The proposed rule implements The Deceptive Mail Prevention and Enforcement Act, Pub. L. 106-168, 113 Stat. 1806, enacted on December 12, 1999, which grants the Judicial Officer authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Judicial Officer considers relevant or material in any statutory proceeding conducted under 39 U.S.C. 3005(a). The Act also authorizes new administrative civil penalties.

Comments on the proposed rule were due on or before April 13, 2000. Two comments were received. One commenter was concerned that the proposed time limits for requesting a subpoena do not give the subpoenaed party a reasonable opportunity to comply with a document request or to appear at the hearing. The proposed time limits are consistent with the time limits already provided in part 952 and, therefore, have not been revised in this final rule. However, the rule recognizes the possibility that further time may be needed, and the presiding officer, at his discretion, may waive the time limits in the appropriate circumstances.

The other commenter, however, believed that the language allowing the presiding officer to exercise his discretion in granting subpoenas outside the proposed time limits improperly created standardless discretion in the presiding officer that could violate the subpoenaed individual's due process rights. Contrary to the commenter's belief, the rule could never be fashioned to cover every possibility that could arise throughout a proceeding. Granting the presiding officer the right to exercise his discretion protects the parties' rights by allowing the presiding officer to conduct each proceeding fairly. Therefore, the discretion language has been adopted as proposed.

The second commenter was also concerned that the proposed rule exceeds the authority granted by the Act by allowing the presiding officer to issue the subpoena, permitting the

Judicial Officer to seek enforcement of a subpoena, and not providing sufficient oversight for the issuance of subpoenas.

Two of the comments concern the right to delegate authority. The commenter questions authorizing the presiding officer to issue subpoenas when 39 U.S.C. 3016(a)(2) gives that authority to the Judicial Officer. The commenter points out that the Act specifies that the Postmaster General may delegate the subpoena authority in investigations, but does not contain similar provisions applicable to the Judicial Officer. The language relied on by the commenter with respect to investigative subpoenas appears to be a specific limitation on the right to delegate, however, rather than a grant of authority to delegate. By limiting the authority to approve a subpoena during an investigation to only the Postmaster General, the General Counsel or Deputy General Counsel, the Act assures that the subpoena authority remains with a high-level official. Absent a specific, legislative intent to limit the Judicial Officer's ability to delegate his authority, the subpoena authority is impliedly delegable to the presiding officer, a high-level and independent official under his supervision.

The commenter also questions the authority of the Judicial Officer to seek enforcement of a subpoena when 39 U.S.C. 3016(c)(1) gives that authority to the Postmaster General. However, the ability of the Postmaster General to delegate this enforcement authority is not limited by the statute. Further, the Postmaster General would be considered one of the parties to any proceeding conducted under part 952. Therefore, it makes sense that the authority to seek enforcement of a subpoena should be delegated to the Judicial Officer absent a specific limitation on that authority by Congress.

The final comment concerns the form and issuance of the subpoena. The commenter was concerned that the proposed language did not offer sufficient oversight of the subpoena process by allowing the presiding officer to enter the name of the witness and sign the subpoena, but otherwise allow the requesting party to complete the subpoena before service. The proposed rules provide sufficient oversight by requiring the requesting party to "state the reasonable scope and general relevance to the case of the testimony and any records sought," which provides initial review by the presiding officer, and by allowing a motion to quash, which gives the presiding officer a further review if necessary. Furthermore, issuing subpoenas signed but otherwise in blank is a standard

practice (cf. Fed. R. Civ. P. 45(a)(3)). After careful review, the Judicial Officer determined that the proposed language does not require revision.

With regard to the effective date, the Postal Service has determined that there is good cause to make the new regulations effective upon publication. The public interest in the enforcement of consumer protection laws would not be served by delaying the application of subpoena requirements to persons who are subject to false representation or lottery proceedings under 39 U.S.C. 3005(a).

The Postal Service hereby adopts the following amendments to 39 CFR part 952.

#### List of Subjects in 39 CFR Part 952

Administrative practice and procedure, False representations, Fraud, Lotteries, Penalties, Postal Service.

#### PART 952—[AMENDED]

1. The authority citation for part 952 is revised to read as follows:

**Authority:** 39 U.S.C. 204, 401, 3005, 3012, 3016.

##### § 952.5 [Amended]

2. Section 952.5 is amended by adding “and/or the assessment of civil penalties” to the end of the first sentence.

##### § 952.7 [Amended]

3. Section 952.7(b) is amended by:

A. Adding “and/or the assessment of civil penalties authorized by 39 U.S.C. 3012” to the end of the first sentence; and

B. Adding “tentatively assess such civil penalties as he considers appropriate under applicable law;” after the phrase “release of mail unrelated to the matter complained of;” in the third sentence.

##### § 952.11 [Amended]

4. Section 952.11 is amended by:

A. Adding “and/or assess civil penalties” after “orders” in the second sentence of paragraph (a); and

B. Adding “and/or assess civil penalties” after “orders” in paragraph (b).

##### § 952.17 [Amended]

5. Section 952.17(b)(10) is amended by adding “§ 952.19 and” before “§ 952.21”.

6. Section 952.19 is revised to read as follows:

##### § 952.19 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or

on his own initiative, the presiding officer may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the presiding officer;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of records.* In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of records designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected:

(1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and

(2) To secure voluntary production of desired third-party records whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall to the extent practical be filed:

(i) At the same time a request for deposition is filed; or

(ii) 15 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any records sought.

(3) The presiding officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the presiding officer may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or

(2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed records. Where circumstances require, the presiding officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 39 U.S.C. 3016(a)(2) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified records at a time

and place therein specified. In issuing a subpoena to a requesting party, the presiding officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the presiding officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(f) *Service.* (1) *In general.* The party requesting issuance of a subpoena shall arrange for service.

(2) *Service within the United States.* A subpoena issued under this section may be served by a person designated under 18 U.S.C. 3061 or by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age at any place within the territorial jurisdiction of any court of the United States.

(3) *Foreign Service.* Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(4) *Service on Business Persons.* Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by:

(i) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(ii) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(iii) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership,

corporation, association, or entity at its principal office or place of business.

(5) *Service on Natural Persons.*

Service of any subpoena may be made upon any natural person by:

(i) delivering a duly executed copy to the person to be served; or

(ii) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(6) *Verified Return.* A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(g) *Contumacy or refusal to obey a subpoena.* In the case of contumacy or refusal to obey a subpoena, the Judicial Officer may request the Attorney General to petition the district court for any district in which the person receiving the subpoena resides, is found, or conducts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of Columbia) to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00-12784 Filed 5-19-00; 8:45 am]

BILLING CODE 7710-12-U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MN60-01-7285a; FRL-6604-5]

### Approval and Promulgation of Implementation Plans; Minnesota

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

**ACTION:** Direct final rule.

**SUMMARY:** We are approving a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for LTV Steel Mining Company (LTV), formerly known as Erie Mining Company, located in St. Louis County, Minnesota. The Minnesota Pollution Control Agency (MPCA) submitted this SIP revision on September 29, 1998 in response to a request from LTV that EPA remove the Stipulation Agreement for Erie Mining Company from the State SIP. The

rationale for the approval and other information are provided in this notice.

**DATES:** This action is effective on July 21, 2000 without further notice, unless EPA receives relevant adverse comments by June 21, 2000. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353-8328, before visiting the Region 5 office.)

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Regulation Development Section, Air Programs Branch (AR-18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

- A. What Action Is EPA Taking Today?
- B. Why Was This SIP Revision Submitted?
- C. Why Can We Approve This Request?
- D. What Is the Background for This Rulemaking?

#### A. What Action Is EPA Taking Today?

We are approving MPCA's September 29, 1998 request for a site-specific revision to the Minnesota PM SIP. Specifically, we are approving the removal of the Stipulation Agreement for LTV Steel Mining Company, formerly known as Erie Mining Company, from the State PM SIP.

#### B. Why Was This SIP Revision Submitted?

The State requested that EPA remove the Stipulation Agreement from the SIP because the Agreement was initially submitted as a SIP to: (a) Provide a variance from state SIP rules for three years; and (b) provide a mechanism to make the 90 percent control efficiency federally enforceable. In its submittal, MPCA concludes that the Stipulation Agreement was satisfied on LTV's part because the source modified their air pollution control equipment to achieve 90 percent control efficiency, tested the furnaces, and submitted opacity data to support a higher opacity limit during

the specified time frame. Further, MPCA did not act on the adjusted opacity limit provided for in the Stipulation Agreement by not issuing a facility permit which would have finalized a revised opacity limitation.

#### C. Why Can We Approve This Request?

At the time of the approval of the Stipulation Agreement, the National Ambient Air Quality Standards (NAAQS) for particulate matter were based on the total suspended particulates (TSP) indicator. On July 1, 1987 EPA replaced TSP as the indicator for the PM ambient standard with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

We are approving the current SIP submittal as a Direct Final **Federal Register** notice because removing the Stipulation Agreement from the SIP would pose no threat to continued maintenance of the PM NAAQS in the area. The state rules for particulate and opacity standards, which would become applicable to LTV, are contained in the federally approved PM SIP for Minnesota and are therefore federally enforceable.

Further, although section 193 of the Clean Air Act Amendments of 1990 (November 15, 1990) requires equivalent or greater emission reductions for modifications to control requirements in effect before the date of enactment of the 1990 Amendments, this requirement does not apply in this case because the area is designated attainment for PM and the Stipulation Agreement was not required for a nonattainment area plan. Additional information is available in our November 30, 1999 Technical Support Document (TSD).

#### D. What Is the Background for This Rulemaking?

On February 20, 1981 the State submitted to EPA a Stipulation Agreement for LTV as a revision to Minnesota's total suspended particulates (TSP) SIP. Emissions from 27 furnaces at LTV, located in St. Louis County, Minnesota, (designated a TSP attainment area), exceeded the State's opacity and particulate matter limitations. Therefore, MPCA and LTV entered into a Stipulation Agreement which would allow LTV to exceed the requirements of the State rules until December 31, 1983.

The Stipulation Agreement required LTV to implement a control strategy which would provide for 90 percent control, 5 percent more than required by the State rules, by December 31, 1983. An opacity limit was also to be