Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Baker City, OR

Baker City Municipal Airport, OR
(lat. 44°50′17″ N, long. 117°48′35″ W)
Baker City VOR/DME
(lat. 44°50′26″ N, long. 117°48′28″ W)

That airspace extending upward from 1,200 feet above the surface within 7 miles northeast and 5.3 miles southwest of the Baker City VOR/DME 138° and 317° radials extending from 12.2 miles southeast to 14 miles northwest of the VOR/DME, and within 8.7 miles west and 4.3 miles east of the Baker City VOR/DME 345° radial extending from the VOR/DME to the south edge of V–298, and that airspace east of Baker City VOR/DME bounded on the north by the south edge of V–121, on the southeast by the northwest edge of V–269, and on the southwest by the northeast edge of V–4–444; excluding the Boise, ID, Enroute Domestic Airspace Area.

* * * * *

Issued in Seattle, Washington, on May 3, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–12638 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rules Governing Misconduct by Attorneys or Party Representatives Before the Agency

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Labor Relations Board (NLRB) is proposing to revise its rules governing misconduct by attorneys and party representatives before the Agency. The proposed changes consolidate the current misconduct rules applicable to unfair labor practice and representation proceedings into a single rule, clarify and revise the current rules to cover such misconduct at any and all stages of any Agency proceeding, whether or not it occurs during a hearing, and set forth the procedures for processing allegations of misconduct. In addition, the proposed changes revise Section 102.21 of the Board's rules governing the filing of answers to unfair labor practice complaints to make that section's disciplinary provisions applicable to non-attorney party representatives as well as attorneys.

DATES: All comments must be received on or before June 19, 1996.

ADDRESSES: All written comments should be sent to Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202) 273–1940. The comments should be filed in eight copies, double spaced, on 8½ by 11 inch paper and shall be printed or otherwise legibly duplicated.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: The NLRB's rules governing misconduct by attorneys and party representatives before the Agency are currently set forth in two separate sections of the Board's rules and regulations: Section 102.44 (unfair labor practice proceedings) and 102.66(d) (representation proceedings). These sections, which are virtually identical, currently provide that misconduct at a hearing shall be grounds for summary exclusion from the hearing, and that ''such misconduct of an aggravated character'' may also be grounds for suspension or disbarment by the Board from further practice before it after due notice and hearing.

Applying these rules, the Board in several cases has suspended or disbarred attorneys or non-attorney party representatives from further practice before the Agency for engaging in misconduct during the course of unfair labor practice or representation hearings. See, e.g., *Joel Kieler*, 316 NLRB 763 (1995); *Sargent Karch*, 314 NLRB 482 (1994); *In re An Attorney*, 307 NLRB 913 (1992); *Kings Harbor Health Care*, 239 NLRB 679 (1978); *Roy T. Rhodes*, 152 NLRB 912 (1965); *Herbert J. Nichol*, 111 NLRB 447 (1955); and *Robert S. Cahoon*, 106 NLRB 831 (1953).

As currently written, however, the Board's rules have several deficiencies. First, they do not specifically cover misconduct that does not occur during the course of a hearing. As a result, the Board has been unable to take effective and appropriate disciplinary action against attorneys or party representatives who are alleged to have engaged in misconduct in the pre-hearing, investigative and/or compliance stages of its proceedings. Thus, for example, the Board recently held that it was without authority under its current rules to institute disciplinary proceedings against an attorney who allegedly suborned perjury during the pre-complaint investigation of an unfair labor practice charge. See *H.P. Townsend Mfg. Co.*, 317 NLRB 1169 (1995). The Board in that case instead transferred the record to the State Bar Association with a request that it investigate whether disciplinary action was warranted.

Second, the Board has found that the language in the current rules, ''misconduct of an aggravated character,'' has sometimes caused confusion about what types of conduct would be subject to suspension or disbarment. See, e.g., *Sargent Karch, supra*, 314 NLRB at 486. The courts often consider both ''aggravating'' and ''mitigating'' factors in determining the appropriate sanction for attorney misconduct under the ABA Model Rules of Professional Conduct and the various state rules of professional conduct. See ABA/BNA Lawyers Manual on Professional Conduct 101:3101–3102 (1995). However, the phrase ''aggravated'' misconduct is not often used as in the Board's rules. This has raised questions about whether the Board's rules are intended to cover the same type of conduct covered by those rules.

Third, the Board's rules fail to set forth the procedures to be followed in processing allegations of misconduct. Thus, the Board's current rules fail to advise parties how or where to file allegations of misconduct or how such allegations will be processed or what their rights are.

The proposed changes are intended to address each of these problems. First, the Board is proposing to revise the rules to cover misconduct at any and all stages of any Agency proceeding, whether or not it occurs during a hearing. Unlike under the current rules, under the new rule misconduct by attorneys or party representatives will be subject to disciplinary sanction even if the misconduct occurs during the pre-hearing, investigative or compliance stage of the proceeding.[1]

Second, the Board is proposing to delete the phrase ''aggravated'' misconduct from the rules, and to substitute the phrase ''misconduct including unprofessional or improper behavior''. By substituting this language it is not the Board's intent to make any change in the kind of conduct currently covered by the Board's misconduct rules. Rather, the Board is simply attempting to make the current rule more understandable by using language that is more familiar to attorneys and party representatives who practice before the Board. The Board will

[1] Misconduct by Agency employees, at any stage of an Agency proceeding, will be dealt with under internal disciplinary procedures.

continue to consider both aggravating and mitigating factors in determining the appropriate disciplinary sanction.

Third, the Board proposes to set forth the procedures for the processing of misconduct allegations. Under the proposal, all such allegations would be investigated by the Associate General Counsel, Division of Operations-Management or his/her designee (the Investigating Officer). Following an investigation, the Investigating Officer would make a recommendation to the General Counsel, who would make the determination whether to institute disciplinary proceedings against the attorney or party representative (the respondent). The General Counsel's determination not to institute such proceedings would be final and non-reviewable. The procedures also set forth the rights of the respondent to respond and to request a hearing, and the procedures for conducting the hearing, where a hearing is found warranted. Except as otherwise provided, the procedures are similar to those applied in unfair labor practice proceedings.

The procedures also address the role of the person bringing the allegations of misconduct or petitioning for disciplinary proceedings against the respondent. The procedures provide that any such person shall be permitted to partipate in the disciplinary hearing to a limited extent by examining and cross-examining witnesses called by the General Counsel and the respondent, but shall not be a party to the proceeding or afforded the rights of a party to call witnesses or introduce evidence, to file exceptions to the administrative law judge's decision, or to appeal the Board's decision. The Board believes that this provision strikes a proper balance by providing such interested persons the opportunity to participate to some extent in the proceeding while ensuring that the responsibility for prosecuting the disciplinary complaint will at all times remain with the General Counsel and that the disciplinary proceeding will not be transformed into an adversary proceeding between the complaining person and the respondent.[2]

Finally, the Board is also proposing to revise Section 102.21 of its rules and regulations governing the filing of answers to unfair labor practice complaints. The current rule provides that the answer of a party represented by counsel shall be signed by at least one attorney of record; that the attorney's signature constitutes a certificate by the attorney that he/she has read the answer, there is good ground to support it to the best of his/her knowledge, information and belief, and it is not interposed for delay; and that the attorney may be subjected to appropriate disciplinary action for willful violations of the rule or if scandalous or indecent matter is inserted.

It is not required under the Board's rules, however, that a party representative be an attorney. Further, it is not infrequent that a party will be represented by a non-attorney and that the non-attorney party representative will sign the answer on behalf of the party. Accordingly, the Board believes that Section 102.21 should be revised to make the foregoing provisions of that section applicable to non-attorney party representatives as well as attorneys.

As required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the NLRB certifies that these rules will not have a significant impact on small business entities.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB proposes to amend 29 CFR Part 102 as follows:

PART 102—RULES AND REGULATIONS

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.21 is revised to read as follows:

§ 102.21 Where to file; service upon the parties; form.

An original and four copies of the answer shall be filed with the Regional Director issuing the complaint. Immediately upon the filing of his answer, respondent shall serve a copy thereof on the other parties. An answer of a party represented by counsel or non-attorney representative shall be signed by at least one such attorney or non-attorney representative of record in his/her individual name, whose address shall be stated. A party who is not represented by an attorney or non-attorney representative shall sign his/her answer and state his/her address. Except when otherwise specifically provided by rule or statute, an answer need not be verified or accompanied by affidavit. The signature of an attorney or non-attorney party representative constitutes a certificate by him/her that he/she has read the answer; that to the best of his/her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the action may proceed as though the answer had not been served. For a willful violation of this section an attorney or non-attorney party representative may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

§ 102.44 [Removed]

3. Section 102.44 is removed.

§ 102.66 [Amended]

3a. Paragraph (d) of § 102.66 is removed, and paragraphs (e), (f), and (g) are redesignated paragraphs (d), (e), and (f), respectively.

4. The following new Subpart U—Misconduct By Attorneys or Party Representatives, consisting of new § 102.156, is added to read as follows:

Subpart U—Misconduct by Attorneys or Party Representatives

§ 102.156 Exclusion from hearings; Refusal of witness to answer questions; Misconduct including unprofessional or improper behavior by attorneys and party representatives before the Agency; Procedures for processing misconduct allegations.

(a) Misconduct including unprofessional or improper behavior at any hearing before an administrative law judge, hearing officer, or the Board shall be ground for summary exclusion from the hearing.

[2] Courts have long held that attorney disciplinary proceedings are in the nature of an internal investigation concerning the protection and integrity of the adjudicatory process rather than adversarial disputes involving the conflicting rights or obligations of private parties. Accordingly, they have refused to grant party status or a right to appeal to the complaining person or individual in such proceedings, even if that person or individual was a party or party representative in the case where the alleged misconduct occurred and/or was permitted to participate in the disciplinary hearing. See *Ramos Colon* v. *U.S. Attorney for the District of Puerto Rico,* 576 F.2d 1 (1st Cir. 1978); *Application of Phillips,* 510 F.2d 126 (2d Cir. 1975); *In re Echeles,* 430 F.2d 347 (7th Cir. 1970); and *Mattice* v. *Meyer,* 353 F.2d 316 (8th Cir. 1965). See also *Matter of Doe,* 801 F. Supp. 478 (D. N.M. 1992). The Board believes that this policy is a sound one and is properly applied in Agency disciplinary proceedings as well.

(b) The refusal of a witness at any such hearing to answer any question which has been ruled to be proper shall, in the discretion of the administrative law judge or hearing officer, be ground for striking all testimony previously given by such witness on related matters.

(c) Notwithstanding any action taken under paragraph (a) of this section, misconduct including unprofessional or improper behavior by an attorney or party representative before the Agency, including but not limited to such misconduct at any hearing, shall be ground for appropriate discipline including suspension and/or disbarment from practice before the Agency and/or other sanctions.

(d) Allegations of misconduct pursuant to paragraph (c) of this section, except for those involving the conduct of Agency employees, shall be handled in accordance with the following procedures:

(1) Allegations that an attorney or party representative has engaged in misconduct may be brought to the attention of the Investigating Officer by any person. The Investigating Officer, for purposes of this paragraph, shall be the Associate General Counsel, Division of Operations-Management, or his/her designee.

(2) The Investigating Officer or his/her designee shall conduct such investigation as he/she deems appropriate. Following an investigation, the Investigating Officer shall make a recommendation to the General Counsel, who shall make the determination whether to institute disciplinary proceedings against the attorney or party representative. If the General Counsel determines not to institute disciplinary proceedings, all interested persons shall be notified of the determination, which shall be final.

(3) If the General Counsel decides to institute disciplinary proceedings against the attorney or party representative, the General Counsel or his/her designee shall serve the Respondent with a complaint which shall include: a statement of the acts which are claimed to constitute misconduct including the approximate date and place of such acts together with a statement of the discipline recommended; notification of the right to a hearing before an administrative law judge with respect to any material issues of fact or mitigation; and an explanation of the method by which a hearing may be requested. Sections 102.24 through 102.51, rules applicable to unfair labor practice proceedings, shall be applicable to the extent that they are not contrary to the provisions of this section.

(4) Within 14 days of service of the disciplinary complaint, the respondent shall respond by admitting or denying the allegations, and may request a hearing. If no response is filed or no material issue of fact or relevant to mitigation warranting a hearing is raised, the matter may be submitted directly to the Board. If no response is filed, then the allegations shall be deemed admitted.

(5) The hearing shall be conducted at a reasonable time, date, and place. In setting the hearing date, the administrative law judge shall give due regard to the respondent's need for time to prepare an adequate defense and the need of the Agency and the respondent for an expeditious resolution of the allegations.

(6) The hearing shall be public unless otherwise ordered by the Board or the administrative law judge.

(7) Any person bringing allegations of misconduct or filing a petition for disciplinary proceedings against an attorney or party representative shall be given notice of the scheduled hearing and shall be afforded the opportunity to examine or cross-examine witnesses called by the General Counsel and respondent at such hearing. Any such questioning must be limited to the issues raised in the General Counsel's complaint. Any such person shall not be a party to the disciplinary proceeding, however, and shall not be afforded the rights of a party to call witnesses and introduce evidence at the hearing, to file exceptions to the administrative law judge's decision, or to appeal the Board's decision.

(8) The respondent will, upon request, be provided with an opportunity to read the transcript or listen to a recording of the hearing.

(9) The General Counsel must establish the alleged misconduct by a preponderance of the evidence.

(10) At any stage of the proceeding prior to hearing, the respondent may submit a settlement proposal to the General Counsel, who may approve the settlement or elect to continue with the proceedings. Any formal settlement reached between the General Counsel and the respondent, providing for entry of a Board order, shall be subject to final approval by the Board. In the event any settlement, formal or informal, is reached after opening of the hearing, such settlement must be submitted to the administrative law judge for approval. In the event the administrative law judge rejects the settlement, either the General Counsel or the respondent may appeal such ruling to the Board as provided in § 102.26.

(11) If it is found that the respondent has engaged in misconduct in violation of paragraph (c) of this section, the Board may issue a final order imposing such disciplinary sanctions as it deems appropriate, including suspension and/or disbarment from practice before the Agency, and/or other sanctions.

(12) Any person found to have engaged in misconduct warranting disciplinary sanctions under this section may seek judicial review of the administrative determination.

Dated: Washington, D.C., May 14, 1996.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 96–12464 Filed 5–17–96; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Review of Existing Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Review of regulations; request for comment.

SUMMARY: MMS performs annual periodic reviews of its significant regulations and asks the public to participate in these reviews. The purpose of the reviews is to identify and eliminate regulations that are obsolete, ineffective or burdensome. In addition, the reviews are meant to identify essential regulations that should be revised because they are either unclear, inefficient or interfere with normal market conditions.

The purpose of this document is to: Provide the public an opportunity to comment on MMS regulations that should be eliminated or revised; and provide a status update of the actions MMS has taken on comments previously received from the public in response to documents published March 1, 1994 and March 28, 1995.

DATES: Written comments must be received by July 19, 1996.

ADDRESSES: Mail written comments to Department of the Interior; Minerals Management Service, Mail Stop 4013; 1849 C Street NW., Washington, DC 20240; Attention: Bettine Montgomery, MMS Regulatory Coordinator, Policy and Management Improvement.

FOR FURTHER INFORMATION CONTACT: Bettine Montgomery, Policy and