[Docket No. 17158; Amdt. No. 121-137]

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

Flight Time Limitations: Flag Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends the flight time limitations pertaining to pilots utilized by flag air carriers who serve with different flight crews in a calendar month. The FAA has determined that the current rule is not consistent with the rule as it existed prior to recodification. Since it was not intended that the recodification program make any substantive changes to the regulations, the current rule is being amended accordingly.

DATE: September 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Donald A. Schroeder, Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-755-8715.

SUPPLEMENTARY INFORMATION: Section 121.487 of the Federal Aviation Regulations specifies flight time limitations applicable to pilots serving with flag air carriers. The purpose of § 121.487 is to provide a method for determining which flight time limitations govern a pilot who serves with multiple flight crews during the course of a calendar month.

The current rules in § 121.487 state that the flight time limitations governing pilots who serve with multiple flight crews during the course of a calendar month are those contained in either §§ 121.481, 121.483, or 121.485. Section 121.481 specifies daily, weekly, monthly, and yearly flight time limitations; § 121.483 specifies daily, monthly, yearly, and quarterly flight time limitations; and § 121.485 provides for quarterly and yearly flight time limitations.

It has come to our attention that the wording of paragraphs (b)-(e) of § 121.487 imposes all of the flight time limitations of either §§ 121.481, 121.483 or 121.485 on pilots who serve with multiple flight crews during the course of a calendar month. The FAA has determined, however, that it was intended that paragraphs (b)-(e) of § 121.487 should only apply the monthly and quarterly flight time limitations contained in §§ 121.481, 121.483, and 121.485, and should not apply the daily, weekly and yearly flight time limitations of those sections.

Special Civil Air Regulation No. 386F, adopted February 26, 1963, was the predecessor to current § 121.487 (b)-(e). This special regulation contained provisions which governed pilots serving with multiple flight crews during the course of a calendar month, and it applied only the monthly and quarterly flight time limitations.

When the FAA proposed to recodify Parts 40, 41, and 42 of the Civil Air Regulations (including all special regulations associated with those parts) into what is now Part 121 of the Federal Aviation Regulations (29 FR 12182, August 26, 1964), the agency stated that changes in substance were not within the scope of the recodification program. In addition, the revision note contained in § 121.487 of the FAA's notice of proposed rulemaking relating to the recodification indicated that S.R. 386F and § 41.323 were combined to create § 121.487 (29 FR 12214).

Since S.R. 386F applied only the monthly and quarterly flight time limitations to pilots serving with multiple flight crews, if § 121.487 (b)-(e) imposed other limitations it would constitute a substantive change and would be contrary to the stated purpose of the recodification program. Accordingly, the FAA is amending paragraphs (b)-(e) of § 121.487 to make them conform to the meaning of S.R. 386F and to the agency's intent in adopting Part 121 as part of the recodification program.

This clarifying amendment removes an unintended restriction and is necessary to be consistent with the stated policy of the FAA governing its regulatory recodification program. Accordingly, I find that notice and public procedure hereon are unnecessary and that good cause exists for making this amendment effective on less than 30 days notice.

Drafting Information

The principal authors of this document are Charles H. Huettner, Flight Standards Service, and Marshall S. Filler, Office of the Chief Counsel.

The Amendments

In consideration of the foregoing, Part 121 of the Federal Aviation Regulations is amended, effective September 1, 1977, by revising paragraphs (b)-(e) of § 121.487 to read as follows:

§ 121.487 Flight time limitations: Pilots not regularly assigned.

* * * * *

(b) The monthly flight time limitations for a pilot who is scheduled for duty aloft for more than 20 hours in two-pilot crews in any calendar month, or whose assignment in such a crew is interrupted more than once in that calendar month by assignment to a crew consisting of two or more pilots and an additional flight crewmember, are those set forth in § 121.481.

(c) Except for a pilot covered by paragraph (b) of this section, the monthly and quarterly flight time limitations for a pilot who is scheduled for duty aloft for more than 20 hours in two-pilot and additional flight crewmember crews in any calendar month, or whose assignment in such a crew is interrupted more than once in that calendar month by assignment to a crew consisting of three pilots and additional flight crewmember, are those set forth in § 121.483.

(d) The quarterly flight time limitations for a pilot to whom paragraphs (b) and (c) of this section do not apply and who is scheduled for duty aloft for a total of not more than 20 hours within any calendar month in two-pilot crews (with or without additional flight crewmembers) are those set forth in § 121.485.

(e) The monthly and quarterly flight time limitations for a pilot assigned to each of two-pilot, two-pilot and additional flight crewmember, and three-pilot and additional flight crewmember crews in a given calendar month, and who is not subject to paragraph (b), (c), or (d), of this section, are those set forth in § 121.483.

(Secs. 313(a), 601, 604, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1424), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on August 29, 1977.

LANGHORNE BOND,
Administrator.

[FR Doc.77-25614 Filed 8-31-77;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

PART 1—GENERAL PROCEDURES

Subpart B—Rules and Rulemaking Under Sec. 18(a)(1)(B) of the FTC Act As Amended by Public Law 93-637

Trade Regulation Rulemaking Procedures

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This document establishes procedures for handling communications with respect to trade regulation rulemaking proceedings to Commissioners or members of Commissioners' personal staff by persons not employed by the Commission. It further clarifies that the entire rulemaking record is publicly available. These amendments are made in light of recent court decisions and are procedural in nature.

DATES: Effective date: September 1, 1977. Comments by: October 3, 1977.

FOR FURTHER INFORMATION CONTACT:

Thomas A. Sheehan, Attorney, Office of General Counsel, Federal Trade Commission, 6th St. and Pennsylvania Ave., NW., Washington, D.C. 20580, (202-523-3990).

ADDRESSES: Send comments to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Ave., NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Having examined its rulemaking procedures in light of the recent decisions by the Court of Appeals for the District of Columbia in *Home Box Office, Inc.* v. *FCC*, D.C. Cir. No. 75-1280 (March 25,

1977; special concurring opinion by MacKinnon, J., May 20, 1977) and *Action for Children's Television* v. *FCC*, No. 74-2006 (D.C. Cir. July 1, 1977), the Commission has determined, as an exercise of discretion, to add a new section, § 1.18 (c), to its Rules of Practice. This new section will require that communications relating to a rulemaking proceeding be made only during the regular course of the proceeding, thus ensuring that they become part of the rulemaking record and providing an opportunity for comment on such communications. Section 1.18(c) provides that, after a rulemaking proceeding has commenced, all communications concerning the merits of that proceeding from persons not employed by the Commission to Commissioners, or members of their personal staffs, are prohibited. If a prohibited communication does occur it will be placed on the Commission's public record but will not be considered by the Commission when it reviews the record of the proceeding. Requests for information as to the status of a rulemaking proceeding are not subject to these restrictions. Section 1.18 (b) is amended to reflect the Commission's current practice of making the entire rulemaking record publicly available. The titles to § 1.18 and § 1.18(a) are also being amended.

While this rule is effective September 1, 1977, the Commission invites comments on it on or before October 3, 1977. Comments should be addressed to the Office of the Secretary. The Commission will review all comments received and take whatever action, if any, it deems appropriate.

In consideration of the foregoing, 16 CFR Chapter 1 is amended as follows:

By amending § 1.18(b) and adding § 1.18(c) to read as follows:

§ 1.18 Rulemaking Record.

(a) *Definition.*

* * * * *

(b) *Public availability.* The rulemaking record shall be publicly available except when the presiding officer, for good cause shown, determines that it is in the public interest to allow any submission to be received in camera subject to the provisions of § 4.11 of this chapter.

(c) *Communications to Commissioners and their attorney advisors.* Except as provided by the Commission, pursuant to § 1.14(a) of the Rules of Practice, after commencement of a trade regulation rule proceeding, no person not employed by the Commission shall communicate, orally or in writing, with any Commissioner or any member of a Commissioner's personal staff, with respect to the merits of that proceeding. If a prohibited communication does occur, the communication will be placed on the public record on receipt. In the case of an oral communication, the Commissioner or staff member shall place on the public record a memorandum setting forth the contents of such communication and the circumstances thereof. Such communications or memoranda will not be part of the rulemaking record.

By direction of the Commission, Commissioners Collier and Dole dissenting.

JAMES A. TOBIN,
Acting Secretary.

DISSENTING STATEMENT OF COMMISSIONER COLLIER TO COMMISSION DECISION TO ADOPT AMENDMENT TO § 1.18 OF THE COMMISSION'S RULES OF PRACTICE

I dissent from this modification of the Commission's rules, not because I believe that off-the-record communications with respect to the merits of rulemaking proposals should be permitted, but because the Commission has declined to provide an adequate opportunity for such communications to be made on-the-record.

In my opinion, our current rules are seriously deficient in their failure to provide for oral presentations to the Commissioners by designated representatives in rulemaking proceedings. Section 1.14 of our Rules provides: "Where it believes that it should have further information or additional views of interested persons as to the form and content of the rule, it may withhold final action pending the receipt of such additional information or views." As implemented by the Commission to date, this Rule has not provided for the regular opportunity by interested persons to make oral presentations to the full Commission.

In contrast, we provide in adjudicative proceedings that: "Oral agruments will be held in all cases on appeal to the Commission, unless the Commission otherwise orders upon its own initiative or upon request of any party made at the time of filing his brief." § 3.52(f). In practice, this Rule generally results in the Commission's granting oral argument.

The same presumption favoring oral presentations at the close of rulemaking proceedings should be created. These presentations, like post-record written comments, should be based upon information already in the record. See § 1.13(h). The opportunity should be afforded to representatives of various interests that were selected by the presiding officer. See § 1.13(d)(5)(D). See also § 1.17.

I have no quarrel with controlling communications to Commissioners during the course of rulemaking proceedings. The failure to do so can render our orderly procedures for accumulating relevant information and views a nullity if not a charade. But I object to an absolute ban on such communications (in contrast, for example, to placing them on the public record), unless and until the Commission establishes a proper forum for receipt of oral presentations.

DISSENTING STATEMENT OF COMMISSIONER DOLE

I agree that the Commission should tighten up its procedures for dealing with contacts between Commissioners and outside parties on the merits of pending rulemaking proceedings. Otherwise, the elaborate procedures established for the development and analysis in public of a rulemaking record could be compromised.

However, I disagree with the solution adopted by the majority. I believe that the purpose of this rule could have been served in a less restrictive way, modeled along the lines of the draft recommendations recently issued by the Administrative Conference of the United States, Select Committee on Ex Parte Communications. I would have preferred a rule requiring that, after commencement of a trade regulation rulemaking proceeding, all written communications from any person not employed by the Commission received by any Commissioner and addressed to the merits of the proposed rule be placed on the public record. In addition, all oral communications of substantive significance from any person not employed by the Commission addressed to the merits of the proposed rule and made privately to any Commissioner would be required to be summarized and placed on the public record. It has been my policy in the past, when meeting with any person outside the agency concerning agency business, to have an FTC staff member present, and I would have continued this policy.

The solution I would have preferred is consistent with the current emphasis on open government conducive to developing all relevant information and the accessibility of government decision-makers to any member of the public. It is also consistent with the traditionally flexible, legislative nature of informal rulemaking. At the same time, this solution would have ensured that the public and reviewing courts were provided with a record of all considerations presented to the agency.

[FR Doc.77-25666 Filed 8-31-77;8:45 am]

SUBCHAPTER A—ORGANIZATION, PROCEDURES, AND RULES OF PRACTICE

PART 4—MISCELLANEOUS RULES

Restrictions on Ex Parte Communications

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The rule amends the Commission's Rules of Practice to reflect the provisions of the Government in the Sunshine Act, and to clarify the coverage of the rule with respect to communications between Commission decisionmakers and Commission staff.

EFFECTIVE DATE: September 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Jerome A. Tintle, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580 (202-523-3487).

SUPPLEMENTARY INFORMATION: The Commission published a notice of proposed rulemaking at 42 FR 33041 (June 29, 1977) inviting comments to be filed by July 29, 1977 on a proposed amendment of § 4.7 of the Commission's Rules of Practice. The amendments reflect the provisions of section 4 of the Government in the Sunshine Act, Pub. L. 94-409. No comments were received.

Accordingly, 16 CFR 4.7 is amended to read as follows:

§ 4.7 Ex Parte Communications.

(a) *Definitions.* For purposes of this section, "ex parte communications" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding.

(b) *Prohibited ex parte communications.* While a proceeding is in adjudicative status within the Commission, except to the extent required for the disposition of *ex parte* matters as au-