(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on March 17, 1971.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[FR Doc.71-4077 Filed 3-24-71;8:49 am]

[Airspace Docket No. 71-SO-37]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Revocation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to revoke the Washington, N.C., transition area.

The Washington transition area described in § 71.181 (36 F.R. 2140) was designated to provide controlled airspace protection for IFR operations at Warren Field. The prescribed special instrument approach procedure to this airport, utilizing WITN Commercial Broadcast Station, was canceled March 9, 1971. It is necessary to revoke this transition area as IFR operations are no longer authorized. Since this amendment lessens the burden on the public, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.181 (36 F.R. 2140), the Washington, N.C., transition area is revoked.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on March 17, 1971.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[FR Doc.71-4078 Filed 3-24-71;8:49 am]

[Airspace Docket No. 71-SW-11]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

The purpose of this amendment is to alter the description of the Brownsville, Tex., control zone and transition area.

The present control zone and transition area descriptions include specific reference to the Rio Grande Valley International Airport; however, the name of this airport has now been changed to Brownsville International Airport.

As this amendment imposes no additional burden on any person, notice and public procedures hereon are unnecessary and the amendment may be effective immediately.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as inafter set forth.

In § 71.171 (36 F.R. 2055) and in § 71.181 (36 F.R. 2140), the Brownsville, Tex., control zone and transition area are amended by deleting "Rio Grande Valley International Airport" and substituting "Brownsville International Airport" therefor wherever it appears.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on March 17, 1971.

R. V. REYNOLDS,
Acting Director, Southwest Region.

[FR Doc.71-4079 Filed 3-24-71;8:49 am]

[Airspace Docket No. 70-PC-5]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area; Correction

On March 2, 1971, F.R. Doc. 71-2823 (36 F.R. 3892) was published in the FEDERAL REGISTER which adopted an amendment to Part 71 of the Federal Aviation Regulations altering the Kahului, Hawaii, transition area. It has been noted that an error was made in the description of the north and northeast boundary of the transition area. Action is taken herein to correct the discrepancy.

Since this action is minor in nature and imposes no additional burden on any person, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, F.R. Doc. 71-2823 (36 F.R. 3892) is amended by deleting "V-23" and substituting "V-22" therefor. The effective date as originally published may be retained.

(Sec. 307(a), 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a), 1510; Executive Order 10854, 24 F.R. 9565, sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on March 19, 1971.

T. MCCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-4080 Filed 3-24-71;8:49 am]

[Airspace Docket No. 70-SW-52]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation and Alteration of Federal Airways and Designation and Revocation of Reporting Points; Correction

On March 2, 1971, F.R. Doc. 71-2874 was published in the FEDERAL REGISTER (36 F.R. 3892) effective April 29, 1971.

This document amended Part 71 in part by realigning VOR Federal airway No. 54. Inadvertently the segment of V-54 proposed in the notice between Scurry, Tex., and Quitman, Tex., was omitted. Accordingly, action is taken herein to correct this omission.

Since this amendment is minor in nature and no substantive change in the regulation than that proposed in the notice is effected, notice and public procedure thereon is unnecessary.

In consideration of the foregoing, effective upon publication in the FEDERAL REGISTER (3-25-71), F.R. Doc. 71-2874 is amended as hereinafter set forth.

In Item e. "Scurry, Tex.;" is deleted and "Scurry, Tex.; Quitman, Tex.;" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S. 1348(a), sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on March 19, 1971.

T. MCCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-4081 Filed 3-24-71;8:49 am]

[Airspace Docket No. 71-CE-45]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Revocation of Federal Airway Segments

The purpose of these amendments to Part 71 of the Federal Aviation Regulations is to revoke segments of VOR Federal airway Nos. 53, 128, and 144 in the vicinity of Chicago, Ill.

The segments of V-53, V-128, and V-144 between the Chicago O'Hare VORTAC and City Intersection are based on the Chicago O'Hare VORTAC 153° T (151° M) radial. This radial is unusable at all altitudes. Accordingly, action is taken herein to revoke the segments of V-53, V-128, and V-144 between the Chicago O'Hare VORTAC and City Intersection by deleting reference to the Chicago O'Hare VORTAC and adding reference to the Naperville, Ill., VOR. Aircraft may be handled by radar vectors between these two points.

Since a situation exists that requires immediate action, notice and public procedure thereon are impracticable, and good cause exists for making these amendments effective on less than 30 days notice.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective upon publication in the FEDERAL REGISTER (3-25-71), as hereinafter set forth.

Section 71.123 (36 F.R. 2010) is amended as follows:

1. In V-53 all after the phrase "INT Peotone 003°" is deleted and the phrase "and Naperville, Ill., 089° radials." is substituted therefor.

2. In V-128 all preceding the phrase "and Peotone, Ill., 003° radials;" and the phrase "From INT Naperville, Ill., 089°" is substituted therefor.

3. In V-144 all preceding the phrase "and Peotone, Ill., 003° radials;" is deleted and the phrase "From INT Naperville, Ill., 089°" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on March 19, 1971.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-4082 Filed 3-24-71;8:49 am]

[Airspace Docket No. 71-WA-5]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Revision of Citations

The purpose of these amendments to the Federal Aviation Regulations is to correct and add FEDERAL REGISTER citations.

On February 3, 1971, F.R. Doc. 71-914, comprising a compilation of Parts 71, 73, and 75 of the Federal Aviation Regulations was published as Part II of the FEDERAL REGISTER of that date. All amendments to those parts which had been published prior to January 7, 1971, were included.

Subsequent to January 7, 1971, additional amendments to Parts 71 and 75 were published which either incorrectly cited FEDERAL REGISTER volumes and page numbers or omitted them entirely. This action will correct those errors.

Since these corrections are editorial in nature and no substantive changes in the regulations are effected, notice and public procedure are unnecessary, and good cause exists for making these amendments effective on less than 30 days notice.

In consideration of the foregoing, the F.R. Docs. listed below are amended, effective upon publication in the FEDERAL REGISTER (3-25-71), as follows:

1. Change the citation "(34 F.R. 20419; 35 F.R. 2009, 4256, 5465, 6274, 7051)" to "(36 F.R. 2010)" in F.R. Docket 71-743 (36 F.R. 494).

2. Change the citation "(35 F.R. 2054)" to "(36 F.R. 2055)" in the following F.R. Docs: 71-205 (36 F.R. 215), 71-206 (36 F.R. 215), 71-207 (36 F.R. 216), and 71-(36 F.R. 215), 71-207 (36 F.R. 216), 71-286 (36 F.R. 319), and 71-287 (36 F.R. 319).

3. Change the citation "(35 F.R. 2134)" to "(36 F.R. 2140)" in the following F.R. Docs: 71-203 (36 F.R. 214), 71-204 (36 F.R. 214), 71-205 (36 F.R. 215), 71-206 (36 F.R. 215), 71-207 (36 F.R. 216), 71-286 (36 F.R. 319), and 71-287 (36 F.R. 319).

4. Change the citation "(35 F.R. 19171)" to "(35 F.R. 19171, 36 F.R. 2140)" in the penultimate paragraph of F.R. Doc. 71-630 (36 F.R. 773).

5. Change the citation "(35 F.R. 2359)" to "(36 F.R. 2371)" in F.R. Doc. 71-743 (36 F.R. 494).

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a), sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c)

Issued in Washington, D.C. on March 19, 1971.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-4083 Filed 3-24-71;8:49 am]

[Airspace Docket No. 71-EA-46]

PART 73—SPECIAL USE AIRSPACE

Revocation of Restricted Area

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to revoke Restricted Area R-2801, Bethany Beach, Del.

The Department of the Army has advised that Restricted Area R-2801 is no longer required for its designated purpose and requested that it be revoked. Accordingly, action is taken herein to revoke R-2801.

Since this amendment restores airspace to the public use and relieves a restriction, notice and public procedure thereon are unnecessary, and good cause exists for making this amendment effective on less than 30 days notice.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective upon publication in the FEDERAL REGISTER (3-25-71), as hereinafter set forth.

In § 73.28 (36 F.R. 2333) R-2801 Bethany Beach, Del., is revoked.

(Sec. 307(a), Aviation Act of 1958, 49 U.S.C. 1348(a), sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on March 19, 1971.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-4085 Filed 3-24-71;8:50 am]

[Docket No. 10940; Amdt. No. 748]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (358 F.R. 5610).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20590. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, DC 20590, or from the the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $125 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.11 is amended by establishing, revising, or canceling the following L/MF-ADF(NDB)-VOR SIAPs, effective April 22, 1971.

Wenatchee, Wash.—Pangborn Field; VOR Runway 29, Amdt. 7; Canceled.

2. Section 97.15 as amended by establishing, revising, or canceling the following VOR/DME SIAPs, effective April 22, 1971.

Palmdale, Calif.—Palmdale AF Plant No. 42 Airport; VOR/DME No. 1, Amdt. 2; Canceled.
St. Marys, Pa.—St. Marys Municipal Airport; VOR/DME Runway 27, Original; Canceled.

3. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAPs, effective April 22, 1971.

Bishop, Calif.—Bishop Airport; VOR-A, Original; Established.
Danville, Va.—Danville Municipal Airport; VOR Runway 2, Amdt. 9; Revised.
Danville, Va.—Danville Municipal Airport; VOR Runway 24, Amdt. 5; Revised.
Escanaba, Mich.—Escanaba Municipal Airport; VOR Runway 9, Amdt. 7; Revised.
Escanaba, Mich.—Escanaba Municipal Airport; VOR Runway 18, Original; Established.
Escanaba, Mich.—Escanaba Municipal Airport; VOR Runway 27, Amdt. 5; Revised.
Fort Stockton, Tex.—Pecos County Airport; VOR Runway 11R, Amdt. 4; Revised.
Fort Wayne, Ind.—Smith Field; VOR Runway 13, Amdt. 1; Revised.
Franklin, Pa.—Chess-Lamberton Airport; VOR Runway 20, Amdt. 3; Revised.
Gordonsville, Va.—Gordonsville Municipal Airport; VOR-A, Amdt. 1; Revised.
Lubbock, Tex.—Lubbock Regional Airport; VOR Runway 12, Amdt. 2; Revised.
Newburyport, Mass.—Plum Island Airport; VOR Runway 10, Amdt. 1; Revised.
Palmdale, Calif.—Palmdale Production FLT/Test INSTLN AF Plant NR 42 Airport; VOR-A, Original; Established.

Ravenna, Ohio—Portage County Airport; VOR–A, Original; Established.
Redding, Calif.—Redding Municipal Airport; VOR Runway 34, Amdt. 3; Revised.
St. Marys, Pa.—St. Marys Municipal Airport; VOR Runway 27, Original; Established.
State College, Pa.—University Park Airport; VOR–A, Amdt. 2; Revised.
Wellsville, N.Y.—Wellsville Municipal Airport; VOR–A, Original; Established.
Wenatchee, Wash.—Pangborn Field; VOR–A, Original; Established.
Wenatchee, Wash.—Pangborn Field; VOR–B, Original; Established.
Fort Stockton, Tex.—Pecos County Airport; VOR/DME–A, Amdt. 2, Revised.
Lubbock, Tex.—Lubbock Regional Airport; VOR/DME Runway 26R, Amdt. 3; Revised.
Palmdale, Calif.—Palmdale Production FLT/Test INSTLN AF Plant No. 42 Airport; VORTAC Runway 25, Original; Established.
Redding, Calif.—Redding Municipal Airport; VOR/DME Runway 34, Amdt. 1; Revised.
Willard, Ohio—Willard Airport; VOR/DME–A, Original; Established.

4. Section 97.25 is amended by establishing, revising, or canceling the following LOC–LDA SIAPs, effective April 22, 1971.

Lubbock, Tex.—Lubbock Regional Airport; LOC (BC) Runway 35L, Amdt. 6; Revised.

5. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAPs, effective April 22, 1971.

Franklin, Pa.—Chess-Lamberton Airport; NDB Runway 29, Amdt. 5; Revised.
Lubbock, Tex.—Lubbock Regional Airport; NDB Runway 17R, Amdt. 11; Revised.
Morrisville, Vt.—Morrisville-Stowe State Airport; NDB–A, Amdt. 2; Revised.
Newport, Ark.—Newport Municipal Airport; NDB Runway 35, Original; Established.
Santa Barbara, Calif.—Municipal Airport; NDB (ADF) Runway 7, Amdt. 4; Canceled.
Santa Barbara, Calif.—Santa Barbara Municipal Airport; NDB–A, Original; Established.

6. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAPs, effective April 22, 1971.

Alexandria, La.—Esler Field; ILS Runaway 26, Amdt. 1; Revised.
Lubbock, Tex.—Lubbock Regional Airport; ILS Runway 17R, Amdt. 11; Revised.
Palmdale, Calif.—Palmdale Production FLT/Test INSTLN AF Plant No. 42 Airport; ILS Runway 25, Original; Established.
Santa Barbara, Calif.—Santa Barbara Municipal Airport; ILS Runway 7, Amdt. 15, Revised.

7. Section 97.31 is amended by establishing, revising, or canceling the following Radar SIAPs, effective April 22, 1971.

Lubbock, Tex.—Lubbock Regional Airport; Radar-1, Amdt. 2; Revised.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958, 49 U.S.C. 1438, 1354, 1421, 1510; sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 522(a)(1))

Issued in Washington, D.C., on March 18, 1971.

R. S. Sliff,
Acting Director,
Flight Standards Service.

Note: Incorporation by reference provisions in §§ 97.10 and 97.20 approved by the Director of the Federal Register on May 12, 1969 (35 F.R. 5610).

[FR Doc.71-3891 Filed 3-24-71;8:45 am]

[Docket No. 10942; Amdt. No. 749]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260–3, 8260–4, or 8260–5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97–696 (358 F.R. 5610).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20590. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ–405, 800 Independence Avenue SW., Washington, DC 20590, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $125 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.25 is amended by establishing, revising, or canceling the following LOC–LDA SIAPs, effective March 19, 1971.

Baltimore, Md.—Friendship International Airport; LOC Runway 10, Original; Canceled.

2. Section 97.25 is amended by establishing, revising, or canceling the following LOC–LDA SIAPs, effective April 1, 1971.

Huntington, W. Va.—Tri-State (Walker-Long Field); LOC Runway 11, Amdt. 9; Canceled.

3. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAPs, effective April 1, 1971.

Huntington, W. Va.—Tri-State (Walker-Long Field); NDB Runway 11, Amdt. 8; Revised.

4. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAPs, effective March 19, 1971.

Baltimore, Md.—Friendship International Airport; ILS Runway 10, Original; Established.

5. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAPs, effective April 1, 1971.

Huntington, W. Va.—Tri-State (Walker-Long Field); ILS Runway 11, Original; Established.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958, 49 U.S.C. 1438, 1354, 1421, 1510; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1))

Issued in Washington, D.C., on March 18, 1971.

R. S. Sliff,
Acting Director,
Flight Standards Service.

Note: Incorporation by reference provisions in §§ 97.10 and 97.20 approved by the Director of the Federal Register on May 12, 1969 (35 F.R. 5610).

[FR Doc.71-3982 Filed 3-24-71;8:45 am]

[Docket No. 10939; Amdt. No. 171–8]

PART 171—NON-FEDERAL NAVIGATION FACILITIES

Materials Incorporated by Reference

The purpose of this amendment to Part 171 of the Federal Aviation Regulations is to establish a central repository for documents incorporated by reference in the part.

Since this amendment is procedural in nature and imposes no burden on the public, I find that public notice and procedure thereon are not necessary and that it may become effective in less than 30 days.

In consideration of the foregoing, § 171.71 of the Federal Aviation Regulations is amended as follows, effective April 24, 1971:

§ 171.71 Materials incorporated by reference.

Copies of standards, recommended practices and documents incorporated by reference in this part are available for the use of interested persons at any FAA Regional Office and FAA Headquarters. An historical file of these materials is maintained at Headquarters, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20590.

(Sec. 313(a), Federal Aviation Act of 1958, 49 U.S.C. 1354(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); § 1.4(b)(1) of the regulations of the Office of the Secretary of Transportation)

Issued in Washington, D.C., on March 17, 1971.

J. H. Shaffer,
Administrator.

[FR Doc.71-4084 Filed 3-24-71;8:49 am]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter X—Office of Foreign Direct Investments, Department of Commerce

FOREIGN DIRECT INVESTMENT RULES OF PRACTICE AND GENERAL PROCEDURES

On January 14, 1971, notice by the Office of Foreign Direct Investments (the Office) of proposed amendment and reissuance of the Foreign Direct Investment Rules of Practice and General Procedures (the Rules; 15 CFR, Chap. X, Parts 1020–1050) was published in the FEDERAL REGISTER (36 F.R. 547). After consideration of all relevant comment by interested persons, the Rules are hereby adopted, with the liberalizing and clarifying modifications embodied herein, pursuant to the authority of section 5, Act of October 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, January 1, 1968, 33 F.R. 47; and Department Organization Order 25–3A (formerly Department Order 184–A), January 1, 1968, 33 F.R. 54.

Effective date. The rules shall be effective as of the date of publication in the FEDERAL REGISTER and shall govern all proceedings commenced after the effective date and all pending proceedings except to the extent that the Director of the Office determines, in his discretion, that application of the amendments or any portion thereof in a pending proceeding would not be feasible or would work injustice, in which case the appropriate former rule or rules shall apply.

The text of the Foreign Direct Investment Rules of Practice and General Procedures, Parts 1020, 1025, 1030, 1035, 1040, and 1050, as amended, is set forth below.

DONALD P. KATZ,
Director, Office of Foreign Direct Investments.

MARCH 22, 1971.

PART 1020—INVESTIGATIVE PROCEDURES

AUTHORITY: The provisions of this Part 1020 issued pursuant to sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 F.R. 47; Department Organization Order 25–3A (formerly Department Order 184–A), Jan. 1, 1968, 33 F.R. 54.

§ 1020.111 Investigations.

The Office[1] may, in its discretion, initiate investigations relating to compliance by any person[2] with the Foreign Direct Investments Program (hereinafter referred to as the Program) as embodied in E.O. 11387 and Part 1000 of this chapter, any rule, regulation, or order thereunder, term or condition of any authorization or exemption issued thereunder, any decree of court relating thereto, or any other agency action thereunder.

§ 1020.112 Investigative policy.

The Office encourages voluntary cooperation with its investigations. Where the circumstances appear so to require, however, the Office may invoke compulsory process as authorized by law.

§ 1020.113 By whom conducted.

Investigations will be conducted by representatives of the Office duly designated and authorized for the purpose. Such representatives are authorized, among other things, to administer oaths and receive affirmations in any matter under investigation by the Office.

§ 1020.114 Notification of purpose.

Any person under investigation who is compelled or requested to furnish information or documentary evidence shall be advised with respect to the general purpose for which such information or evidence is sought.

§ 1020.121 Orders to furnish information.

(a) The Office may issue orders requiring any person or persons named therein:

(1) To appear before a designated representative at a designated time and place to testify, produce documentary evidence, and/or produce other information relating to any transaction involving foreign direct investment; and/or

(2) To file (whether on a continuing basis, at stated intervals, upon the occurrence of specified acts or omissions, or otherwise) reports or answers in writing to specified questions, relating to any matter that is or has been under investigation or inquiry, or is likely to lead to the production of information relating to any such matter.

(b) Any person required to submit any report, whether under this section or under § 1000.602(b) of this chapter, shall preserve, or cause to be preserved, for at least 3 years after the date of filing of such report all working papers, irrespective of by whom prepared, used in the preparation of such report; all exhibits, all schedules, and all attachments to such papers; and all books and all records related to such report or to such other papers, that were prepared in the ordinary course of business.

§ 1020.122 Authority to initiate investigations and to issue or modify agency process.

The Director of the Compliance Division is hereby delegated, without power of redelegation, the authority to initiate investigations under § 1020.111 and to issue orders under § 1020.121 and, for good cause shown, to limit, quash, modify, or withdraw such orders or to extend the time prescribed therein for compliance.

§ 1020.123 Motions relating to agency process.

Any motion to limit, quash, modify, or withdraw any order issued under § 1020.121 or to extend the time prescribed for compliance must be filed with the Office (to the attention of the person issuing said order) within seven (7) days after service of such order, or, if the return date is less than seven (7) days after service of the order, within such other time prior to the return date as may be designated in such order. Any allegation of undue burden must be accompanied by an affidavit setting forth with particularity the supporting facts.

§ 1020.124 Review; finality.

(a) Upon denial of a motion made under § 1020.123, the moving party may appeal to the decision officer pursuant to the procedure set out in § 1030.514 of this chapter. The determination of the decision officer shall constitute final agency action.

(b) The Director of the Compliance Division may extend the return date specified in an order issued pursuant to § 1020.121 by up to twenty (20) days later than the date of denial of relief under paragraph (a) of this section where:

(1) Such relief is requested by motion under § 1020.123 for the purpose of seeking judicial review of the order without first committing a willful violation thereof, and

(2) The public interest in effective enforcement and administration of the Program will not be compromised thereby.

§ 1020.131 Investigative hearings.

(a) The Office may conduct investigative hearings in the course of any investigation or inquiry relating to the administration or enforcement of the Program, as described in § 1020.111, including inquiries initiated for the purpose of determining whether to institute a proceeding under Part 1030 of this chapter.

(b) Investigative hearings shall be nonadjudicative proceedings, presided over by a representative of the Office (hereinafter referred to as the "presiding official") designated in the order issued pursuant to § 1020.121.

(c) Investigative hearings shall be stenographically recorded unless the presiding official, in his discretion upon the request of a witness, otherwise orders.

[1] As used in Parts 1020–1050 of this chapter, the "Office" means the Office of Foreign Direct Investments, U.S. Department of Commerce.

[2] As used in Parts 1020–1050 of the chapter, "person" means any individual, corporation, partnership, business venture, trust, or estate.

(d) Unless otherwise ordered by the Director of the Office, investigative hearings shall not be public.

§ 1020.132 Rights of witnesses in investigations.

Any person compelled or requested to submit information to the Office, or to testify in an investigative hearing, shall be entitled to be accompanied, represented, and advised by counsel or another person who has entered an appearance under § 1050.101 of this chapter (referred to hereafter in this section as "counsel") as follows:

(a) Counsel for a witness may advise his client, in confidence, and upon the initiative of either himself or the witness, with respect to any question asked of his client. If it appears that counsel is prompting the witness under color of this paragraph, the presiding official will so note and take appropriate action in respect thereto under paragraph (f) of this section. If, upon advice of counsel, the witness refuses to answer a question, counsel may briefly state that he has advised his client not to answer the question and the legal grounds for such refusal.

(b) Where it is claimed that the testimony or other evidence sought is outside the scope of the investigation, or that the witness is privileged to refuse to to answer a question or to produce other evidence, counsel for the witness may object and briefly and precisely state the grounds therefor.

(c) Cumulative objections are unnecessary. Repetition of the grounds for any objection will not be allowed. At the request of counsel and/or when directed by the presiding official, any objections will be treated as continuing objections and preserved throughout the further course of the hearings as to any related line of inquiry.

(d) Any motion challenging the Office's authority to conduct the investigation or the sufficiency or legality of the order to testify or produce documents or other information must have been addressed to the Office prior to the hearing (see § 1020.123). Additional copies of such motions may be filed with the presiding official as part of the record of the investigation and may be incorporated by reference into counsel's statements or objections, but no arguments in support thereof will be allowed at the hearing.

(e) After the presiding official and/or counsel for the Compliance Division have completed the examination of a witness, counsel for the witness may request the presiding official to permit the witness to clarify any of his answers in order that they may not remain equivocal or incomplete. The granting or denial of such request shall be within the sole discretion of the presiding official, and any grant may be withdrawn if counsel attempts to lead the witness or suggest answers.

(f) The presiding official shall take all necessary and appropriate actions to avoid delay, to prevent or restrain disorderly, dilatory, obstructive, or contumacious conduct and/or otherwise to regulate the course of the hearing.

§ 1020.141 Noncompliance with orders or directions.

(a) In cases of failure to comply fully with any compulsory process, including an order issued under § 1020.121, or refusal to obey a direction by a presiding official to answer a specific question, the Office may initiate or recommend appropriate action. The fact tha, an order is partially defective, or that a person may so believe, will not excuse compliance with the remainder of the order.

(b) Honest mistakes or isolated oversights, made in a good faith attempt to comply with an order of the Office or the direction of a presiding official, will normally not lead to an enforcement action.

§ 1020.151 Termination of investigations.

When the facts disclosed by an investigation indicate that further action is not necessary or warranted in the public interest, the investigative file will be closed, without prejudice to further investigation by the Office at any time if circumstances so warrant.

PART 1025—SETTLEMENT PROCEDURES

AUTHORITY: The provisions of this Part 1025 issued pursuant to Sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 F.R. 47; Department Organization Order 25–3A (formerly Department Order 184–A), Jan. 1, 1968, 33 F.R. 54.

§ 1025.111 General policy.

When the Office has reason to believe that any person subject to the jurisdiction of the Office (referred to hereinafter in this part as a "party") has violated any requirement of the Program, the Office may initiate enforcement action. Sections 5(b)(3) and 17 (as amended) of the Act of October 6, 1917 (50 U.S.C. App. 5(b)(3) 17), permit either criminal or civil sanctions, and Part 1030 of this chapter provides for formal administrative proceedings. Ordinarily, in the absence of willful violation or flagrant disregard of Program requirements, the Office will utilize one of the settlement procedures described in this part when such resolution is deemed to be in the public interest.

§ 1025.211 Informal, voluntary settlement.

(a) *Policy*. In determining whether to afford a party the opportunity for informal, voluntary settlement, the Office will consider the following:

(1) Whether the party acted in good faith;

(2) Whether the alleged noncompliance was unintentional or unforeseeable and whether the party took steps to avoid the alleged noncompliance;

(3) Whether the party cooperated with the office in ascertaining the facts and did not attempt to conceal or falsify information;

(4) The nature of the alleged noncompliance;

(5) The prior conduct of the party with respect to Program requirements; and

(6) Other relevant factors, including whether the Office believes that the party's assurances of future compliance with the Program will be adequate to ensure such compliance.

(b) *Investigation*. In addition to any investigation the Office may conduct into the substantive nature of the noncompliance, the Office may conduct an independent inquiry regarding any or all of the items enumerated in paragraph (a) of this section.

(c) *Conference policy*. It is the policy of the Office to give any party the opportunity to discuss with the staff, on an informal basis, the possible settlement of any compliance investigation involving such party. Ordinarily, any request for such discussion should be directed, in the first instance, to the staff member responsible for conducting the investigation.

(d) *Form*. (1) Disposition of a matter by an informal settlement will be in the form of an exchange of agreed-upon letters passing between the party and the Office. The letter from the Office will be signed by the Director of the Office.

(2) The letter from the party to the Office will set forth the pertinent circumstances relating to and constituting the alleged noncompliance, the steps taken to undo, correct, and prevent its recurrence and other matters agreed upon by the party and Office. The letter from the Office to the party will state the intention of the Office, based on the representations in the party's letter, to close the matter; however, the Office will expressly reserve the power to reopen the matter should the public interest so require.

§ 1025.311 Consent agreement policy and procedures.

(a) *Preliminary Notice*. If the Office, in its discretion, determines that informal, voluntary settlement is inappropriate, it will, where time, the nature of the matter involved, and the public interest permit, notify the party (i) of its intention to institute a formal proceeding against the party and (ii) that the party will be afforded an opportunity to confer with the Office staff and to submit an appropriate consent agreement proposal for consideration by the Office. Such notice may be in the form specified in § 1030.211 of this chapter or, in the discretion of the Office, in such other form sufficient to appraise the party of the nature of the alleged noncompliance. The party may appear personally or he may be represented by a person who has entered an appearance under § 1050.101 of this chapter.

(b) *Conditions*. The Office will consider each such case individually, on the basis of all relevant facts and circumstances, including any mitigating or extenuating factors. Depending upon the circumstances of the case, administrative settlement of compliance matters by a consent agreement may entail one or more of the remedies set forth in § 1030.472 of this chapter.

(c) *Form of agreement.* (1) Every consent agreement tendered by a party shall contain an appropriate form of order or judgment to be entered, an admission of all jurisdictional facts, and express waivers of further procedural steps, of any requirement of findings, and of rights to seek any form of judicial or appellate review or otherwise to challenge or contest the content, validity, or finality of the order. In addition, such proposed agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute an admission by the party that the law has been violated.

(2) The Office will determine whether the public interest would be better served by an agreement providing for an administrative consent order or a judicial consent judgment. Among the factors that the Office will ordinarily consider in making such determination are: (i) The nature and gravity of the alleged noncompliance, (ii) the prior conduct of the party with respect to Program requirements and (iii) the likelihood that subsequent enforcement proceedings against the party will be necessary.

PART 1030—PROCEDURES AND RULES OF PRACTICE FOR FORMAL ADMINISTRATIVE PROCEEDINGS

AUTHORITY: The provisions of this Part 1030 issued pursuant to sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 F.R. 47; Department Organization Order 25–3A (formerly Department Order 184–A), Jan. 1, 1968, 33 F.R. 54.

Subpart A—General Policies and Procedures; Scope of Rules

§ 1030.111 Formal administrative proceedings.

The Office may institute a formal administrative proceeding when, on the basis of facts known to the Office, there is reason to believe that any person (hereinafter referred to as "respondent") has violated any requirement of the Program. Such proceedings may include, but are not limited to, allegations that the respondent has failed to comply with or is in violation, willfully or otherwise, of any such agency action; or that the respondent has made a transaction with intent to evade any requirement of the Program. Such proceedings shall be conducted in accordance with procedures that will assure due process of law to any party who may be adversely affected because of the determination therein.

§ 1030.112 Scope of the rules in this part.

(a) The rules in this part govern procedure in formal administrative proceedings described in § 1030.111.

(b) Except as specifically provided, the rules in this part do not govern any other proceedings, such as negotiations for the entry of consent orders, investigative hearings pursuant to § 1020.131 of this chapter, applications for specific authorizations or exemptions, or promulgation of substantive rules and regulations, general bulletins, interpretative opinions, or other rule making procedures.

Subpart B—Notice; Answer; Other Pleadings

§ 1030.211 Commencement of proceedings.

A formal administrative proceeding is commenced by the issuance and service of a notice, signed by the Director of the Office, containing the following:

(a) A clear and concise statement of facts sufficient to inform the respondent with reasonable definiteness of the type of acts or practices alleged to constitute a violation;

(b) Designation of specific requirements of the Program actions alleged to have been violated;

(c) A statement that the notice has been issued upon representations of the Director of the Compliance Division as summarized in the notice, and that respondent will have the opportunity to controvert the same;

(d) The substance of §§ 1030.212 and 1030.213;

(e) Specification of the time and place for hearing, such time to be at least twenty (20) days after service of the notice unless it is found and so stated in the notice that the public interest requires a shorter period;

(f) Identification of the person who will preside over the hearing and/or prehearing matters (hereinafter referred to as the "hearing examiner") and of the representative or representatives of the Compliance Division designated to prosecute the matter;

(g) A form of order which the Office has reason to believe should issue if the facts are found to be as alleged in the notice; and

(h) Recital of the legal authority and jurisdiction for institution of the proceeding.

§ 1030.212 Answer.

(a) A respondent shall, except as provided otherwise pursuant to § 1030.211 (e), have twenty (20) days after service of such notice within which to file an answer.

(b) Each answer shall contain a specific admission, denial, or explanation of each fact alleged in the notice or, if the respondent is without knowledge thereof, a statement to that effect. Allegations of a notice not specifically answered pursuant to this paragraph shall be deemed to have been admitted.

(c) Each answer shall contain a concise statement of each defense or affirmative matter that respondent will present, including a concise statement of the facts upon which it is founded. No defense or affirmative matter of which the respondent was aware at the time of filing his answer but did not include therein may be added by way of amendment or supplemental pleading under §§ 1030.221–1030.223, unless the hearing examiner, in his discretion, is convinced that respondent's failure was justifiable and that the interests of justice require its later admission.

§ 1030.213 Default.

Failure of the respondent to file an answer within the time provided or to appear as ordered shall constitute a waiver of his right to appear and contest the allegations of the notice and shall authorize the Office, without further notice, to find the facts to be as alleged in the notice and to enter findings and an order thereon.

§ 1030.221 Amendments, by leave.

The hearing examiner may, in his discretion, in the interests of justice, to facilitate the determination of a controversy, and upon such terms as are just, allow amendments to the notice or answer at any time prior to the filing of his decision.

§ 1030.222 Amendments conforming pleadings to evidence.

When issues not raised by the notice or answer but reasonably within the scope thereof are tried by express or implied consent of the parties, they shall be treated in all respects as though they had been timely raised. Amendments necessary to make the notice or answer conform to the evidence and the raising of such issues shall be allowed at any time.

§ 1030.223 Supplemental pleadings.

The hearing examiner may, in his discretion, in the interests of justice, to facilitate the determination of a controversy, and upon such terms as are just, allow service of a supplemental notice or answer setting forth transactions, occurrences, or events which occurred or were discovered since the date of the notice or answer sought to be supplemented and which are relevant to any of the issues involved in the proceeding.

Subpart C—Prehearing Procedures; Motions; Discovery

§ 1030.311 Prehearing conferences.

(a) The hearing examiner may direct any or all parties to meet with him for a conference to consider any or all of the following:

(1) Simplification and clarification of the issues;

(2) Necessity or desirability of amendments to pleadings;

(3) Stipulations or admissions of fact and of the contents, authenticity, and admissibility of documents; and

(4) Such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of documents or other physical exhibits which will be offered in evidence in the course of the proceeding and of the names of witnesses.

(b) Prehearing conferences shall not be public unless all parties so agree.

(c) The hearing examiner, at his discretion, may direct that the prehearing conference be stenographically reported.

(d) When, as a result of a prehearing conference, it appears to the hearing examiner that the orderly, fair, and expeditious disposition of the proceeding will be aided thereby, he shall enter upon the record an order reciting any and all actions taken as a result of the conference. Insofar as such order states the issues to be resolved in the proceeding or the facts or documents which have been admitted to or stipulated by the parties, such order shall take precedence over any prior pleading or portion of the proceeding.

§ 1030.321 Motions.

(a) While a proceeding is before a hearing examiner all motions must be addressed to him. Copies of all written motions must be served upon each party.

(b) Motions should, if practicable, be in writing and shall state the particular order, ruling, or action desired and the grounds therefor. However, the hearing examiner may allow oral motions to be made before him, in appropriate cases, when each party affected or to be affected by such motion is present. Oral motions must be made upon the record.

(c) Within ten (10) days after service of any written motion, or within such longer or shorter time as may be fixed by the hearing examiner, the opposing party shall answer. Failure to answer shall constitute consent to the granting of the relief or sanction requested in the motion. The moving party will ordinarily have no right to reply.

(d) As a matter of discretion, the hearing examiner may waive the requirements of paragraphs (a) through (c) of this section as to motions for extensions of time and he may rule upon such motions ex parte.

(e) The hearing examiner shall rule, either in writing or upon the record, upon all motions presented to him. No formal opinion or findings are required on any motion.

§ 1030.326 Interlocutory appeals.

No interlocutory appeal to the decision officer (see § 1030.510) will be allowed from any decision of the hearing examiner unless the hearing examiner certifies that the ruling involves an important question of law that should be resolved at that time.

§ 1030.331 Discovery.

(a) The Federal Rules of Civil Procedure shall apply to discovery proceedings. There will be no fixed rule on priority of discovery.

(b) Discovery (including requests for admission) and compulsory process for discovery shall be available to the parties to a formal administrative proceeding under this part. Upon written motion pursuant to § 1030.321, the hearing examiner shall promptly rule upon any objection to discovery action initiated pursuant to this section. The hearing examiner shall also have the power to grant a protective order or relief to any party or third party subjected to discovery or compulsory process for discovery.

Subpart D—Hearings

§ 1030.411 Public hearings.

All hearings in formal administrative proceedings shall be public unless otherwise ordered by the hearing examiner.

§ 1030.412 Expedition of hearings.

Hearings shall proceed with all reasonable expedition, be held at one place, and continue without suspension until concluded, unless the hearing examiner specifically provides otherwise. The hearing examiner may, in the interests of justice, in order to assure full and fair presentation of the issues, and consistent with the public interest in the expeditious administration and enforcement of the Program, order brief intervals in any proceeding. In unusual and exceptional circumstances, for good cause stated on the record, he shall have the authority to order hearings at more than one place and to order brief intervals to permit discovery necessarily deferred during the prehearing procedures.

§ 1030.413 Rights of parties.

Every party shall have the right of representation by counsel, due notice, presentation of evidence, objection, cross-examination, motion argument, determination upon a record, and all other rights essential to a fair hearing.

§ 1030.414 Examination of witnesses.

An adverse party, or an officer, agent, or employee thereof, and any witness determined by the hearing examiner to be hostile, unwilling, or evasive, may be interrogated by leading questions. Any witness may be contradicted and impeached by any party, including the party calling him.

§ 1030.415 Admissibility of evidence.

Technical rules of evidence shall not apply in proceedings under this part. Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of admissible documents shall be segregated and excluded so far as practicable.

§ 1030.416 Objections.

Objections to evidence shall be timely and shall briefly state the grounds relied upon but the transcript shall not include argument or debate thereon except as ordered by the hearing examiner. The hearing examiner shall, when requested by a party, rule upon the record on any properly presented objection, or specifically defer such ruling. Any objection not ruled upon shall be deemed overruled. The substance of any overruled objection shall be deemed preserved without formal exception.

§ 1030.417 Burden of proof.

Counsel representing the Compliance Division shall have the burden of persuasion and the burden of going forward with evidence to show, prima facie, that respondent failed to comply with a requirement of the Program, but the proponent of any proposition shall be required to sustain the burden of persuasion and the burden of going forward with evidence with respect thereto.

§ 1030.418 Use of information obtained in investigations.

Any documents, papers, books, physical exhibits, or other materials or information obtained by the Office under any of its powers may be disclosed by counsel representing the Compliance Division when necessary in connection with formal administrative proceedings and may be offered in evidence by such counsel in any such proceeding.

§ 1030.421 Transcript.

Hearings shall be stenographically recorded and transcribed by a reporter under the supervision of the hearing examiner. The original transcript shall be a part of the record and the sole official transcript.

§ 1030.422 Record.

The record shall include the pleadings, all motions, all orders of the hearing examiner, the original transcript, all exhibits offered in evidence by any party, all proposed findings of fact, conclusions, and orders, and the recommended decision and proposed order of the hearing examiner. Except as provided under § 1030.451, the record shall be open to public inspection during business hours at the Department of Commerce, Office of Foreign Direct Investments, upon application therefor to the Clerk.

§ 1030.423 **Excluded evidence.**

When an objection to a question propounded to a witness is sustained, the examining attorney may make a specific offer on the record of what he expected to prove by the answer of the witness, or the hearing examiner may, in his discretion, hear and record the evidence in full. Rejected exhibits, adequately marked for identification, and other rejected evidence shall be retained in the record and be available for consideration by any reviewing authority.

§ 1030.431 **Hearing examiners.**

(a) Hearings and prehearing matters in formal administrative proceedings shall be presided over by a hearing examiner appointed or designated pursuant to section 3105 or section 3344 of title 5, United States Code.

(b) The hearing examiner for prehearing matters may differ from the hearing examiner presiding over the hearing. A hearing examiner who opens the hearings under a particular notice shall, in the ordinary course, be the sole hearing examiner for such hearings, but, in the event of the death, illness, or other unavailability of a hearing examiner, or other extenuating and unusual circumstances, another hearing examiner may be appointed as provided in paragraph (a) of this section.

(c) In the event of the substitution of a new hearing examiner for the one originally designated, any motion predicated upon such substitution shall be made within five (5) days following notice of such substitution.

§ 1030.433 **Powers and duties.**

Hearing examiners shall conduct fair and impartial hearings, take all necessary action to avoid delay in the disposition of proceedings, and maintain order. They shall have all powers necessary and appropriate to that end, including, but not limited to, the following:

(a) To administer oaths and receive affirmations;

(b) To issue compulsory process;

(c) To take depositions or to order depositions or other discovery procedures as provided in § 1030.331;

(d) To rule upon offers of proof and receive evidence;

(e) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(f) To hold conferences for stipulations, simplification of issues, settlement, or any other proper purpose;

(g) To consider and rule upon, as justice may require, all procedural and other motions;

(h) To make findings of fact and conclusions of law and to issue recommended decisions and proposed orders and

(i) To take any action authorized by the rules in this part or in conformance with law.

§ 1030.434 **Suspension of attorneys.**

(a) The hearing examiner shall have the authority, for good cause stated on the record, to suspend or bar from participation in a particular proceeding any attorney who shall refuse to comply with his direction, or who shall be guilty of disorderly, dilatory, obstructive, or contumacious conduct in the course of such proceeding.

(b) Any attorney so suspended or barred may appeal to the decision officer. Appeals shall be in the form of a brief, not to exceed ten (10) pages in length and shall be filed within five (5) days after notice of the hearing examiner's action. Answer thereto may be filed within five (5) days after service of the appeal brief and may not exceed ten (10) pages. The decision of the decision officer shall constitute final agency action. The appeal shall not operate to suspend the hearing unless otherwise ordered by the decision officer. In the event the hearing is not suspended, the attorney may continue to participate therein pending disposition of the appeal.

§ 1030.451 **In camera policy.**

(a) Hearing examiners shall have the authority, for good cause stated on the record, to order any documents, or oral testimony, or other matter offered in evidence, whether admitted or rejected, to be placed in camera.

(b) Except as provided in paragraph (c) of this section, matter placed in camera is kept confidential and is not part of the public record. Only the respondent, his counsel, authorized personnel of the Office and court personnel concerned with judicial review shall have access to such matter. Where it is appropriate, in order to protect a trade secret or other confidential business information, the hearing examiner may enter other orders necessary and appropriate to protect such information from misuse.

(c) The power of the hearing examiner, the Office and reviewing courts to disclose in camera matter to the extent necessary for the proper disposition of a proceeding is specifically reserved.

§ 1030.461 **Submission by the parties of proposed findings, conclusions, and order.**

(a) Within such time after the close of the reception of the evidence as the hearing examiner may fix, each party to a proceeding under this part shall file with the hearing examiner for his consideration all proposed findings of fact, conclusions of law, and forms of order, together with briefs in support thereof. Answering briefs may be filed within a reasonable time thereafter, as fixed by the hearing examiner. The hearing examiner, in his discretion, may vary the sequence of filing documents following the close of reception of evidence.

(b) Such proposed findings, conclusions, and orders and any briefs or other papers shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. "Passim" references to the record may not be used.

(c) If a party fails to file a proposed finding as to any fact involved in the proceeding, or a proposed conclusion of law as to any legal question raised by the proceeding, he shall be deemed to have waived any objections or contentions with regard to that fact or that question of law.

§ 1030.471 **Hearing examiner's findings, conclusions, recommended decision and proposed order.**

(a) Within a reasonable time after receipt of all briefs and/or other papers pursuant to § 1030.461, the hearing examiner who presided, unless he shall become unavailable to the Office, shall make findings of fact and conclusions of law and issue a recommended decision and proposed order. The findings, conclusions, recommended decision and proposed order shall be served upon the parties and shall be included in the record.

(b) The findings of fact and conclusions of law shall be numbered and shall contain appropriate references to the record.

§ 1030.472 **Form of proposed order.**

(a) If the hearing examiner determines that the respondent has not violated any requirement of the Program, he shall in his proposed order dismiss the notice.

(b) If the hearing examiner determines that the respondent has violated any requirement of the Program, he shall issue a proposed order taking into account, in fashioning said proposed order, the nature and circumstances of the violation as well as the importance of encouraging future good faith efforts to comply with the Program. Where appropriate (including, but not limited to, cases where the respondent's violation involves positive direct investment or the holding of liquid foreign balances under circumstances where such is prohibited or in excess of the amount generally and/or specifically authorized or failure to comply with conditions of specific authorizations, and/or willful failure to or delay in filing required reports) the proposed order may include in addition to any other appropriate remedies:

(1) Reduction during any year or years in the amount of positive direct investment and/or liquid foreign balances that would have been authorized to the respondent under Part 1000 of this chapter;

(2) A requirement that the respondent repatriate all or part of its share in the earnings of incorporated affiliated foreign nationals, which repatriation shall be disregarded for the purpose of measuring compliance with the provisions of Part 1000 of this chapter;

(3) A requirement that the respondent cause its affiliated foreign nationals to make transfers of capital to the respondent, which transfers shall be disregarded for the purpose of measuring compliance with the provisions of Part 1000 of this chapter;

(4) A requirement that the respondent repatriate available proceeds of long-term foreign borrowing, which proceeds may not be held thereafter in the form of foreign balances or other foreign property;

(5) A requirement that quarterly or other special reports be filed with the Office containing such information as may be appropriate.

Subpart E—Decision and Review

§ 1030.510 Decision officer: designation and disqualification.

(a) The Director of the Office shall be the decision officer unless he is unavailable by reason of disqualification or otherwise, in which case the Deputy Director of the Office shall be the decision officer.

(b) The decision officer shall withdraw from any case when he is disqualified by reason of personal relationship or interest or other just cause. If the decision officer has not withdrawn from the case and respondent believes that grounds for disqualification exist, respondent shall submit, with its first brief submitted pursuant to § 1030.511, a motion supported by an affidavit or affidavits specifying such grounds with particularity. In such case, the decision officer shall himself rule upon the motion in writing and his decision shall become part of the record of the case.

(c) If both the Director and the Deputy Director of the Office are disqualified or otherwise unavailable, the Appeals Board for the Department of Commerce shall perform the functions of the decision officer under the rules contained in this subpart, and the decision and order of the Appeals Board shall constitute the final agency action.

§ 1030.511 Objections.

(a) Any party in a proceeding under this part may file specific objections to the hearing examiner's findings of fact, conclusions of law, recommended decision and/or proposed order, provided that notice of intent to file such objections is filed with the Office within ten (10) days after service upon the parties of the hearing examiner's recommended decision and proposed order.

(b) Objections shall be in the form of a brief, not to exceed thirty (30) pages, filed no later than thirty (30) days after service of the hearing examiner's recommended decision and proposed order. Answering briefs, not to exceed thirty (30) pages, shall be filed not later than thirty (30) days after the closing date for submission of each objections. Reply briefs, not to exceed fifteen (15) pages, shall be filed not later than seven (7) days after the closing date for submission of answering briefs. Briefs shall be printed on one side only, if typewritten, shall be double spaced.

(c) The briefs shall be made a part of the record and the entire record shall then be certified promptly to the decision officer.

(d) If no notice of intent to file objections to the hearing examiner's findings of fact, conclusions of law, recommended decision or proposed order are filed within the time provided in paragraph (a) of this section, the record shall be certified at the conclusion of such time to the decision officer who shall decide the case in the manner provided in § 1030.513 (b). The decision officer may, at his discretion, request the parties to submit briefs on any or all of the issues raised by the record.

§ 1030.513 Decision.

(a) If objections are filed pursuant to § 1030.511, unless all parties have stipulated otherwise in writing, there shall be oral argument before the decision officer at a date and time set by him in writing and served on all parties, which argument shall be reported stenographically. The original transcript shall be made a part of the record. Each party shall be limited to thirty (30) minutes for presentation of oral argument, unless the decision officer shall determine that the circumstances of the case require more lengthy presentation.

(b) The decision officer, in deciding a matter, shall not be limited to consideration of the issues raised by the parties, but may consider all issues raised by the record.

(c) Within a reasonable time after receipt and consideration of the record and oral argument, if any, the decision officer shall do one of the following:

(1) Remand the case to the hearing examiner for the reception of additional evidence;

(2) Issue an interlocutory decision, either orally or in writing, with respect to the issues of fact and questions of law involved in the proceeding. Thereafter, in his discretion, he may direct the hearing examiner to conduct a separate hearing on relief and form of order. The decision officer may permit the filing of additional briefs and may request that the prevailing party or parties propose a form of order and the other party or parties comment thereon, or that all parties present their views concurrently. Any failure to object to any part of a form of order proposed by a prevailing party will constitute a waiver of objection to it. The decision officer shall then render a decision as specified in subparagraph (3) of this paragraph;

(3) Issue findings of fact and conclusions of law and render a decision that adopts, modifies or sets aside the hearing examiner's findings, conclusions and recommended decision and states the reasons for his action, and enter an order which shall be served on each party to the proceeding.

(d) The order entered by the decision officer shall become effective ten (10) days after service thereof, unless the respondent appeals to the Appeals Board for the Department of Commerce, pursuant to the procedure set out in Part 1035 of this chapter or files a petition for reconsideration under § 1030.515.

§ 1030.514 Appeals from orders under Part 1020 of this chapter.

Any party appealing from the denial of a motion under § 1020.123 of this chapter, shall file an appeal brief, not to exceed thirty (30) pages, within seven (7) days after service of the order denying said motion. The answering brief, not to exceed thirty (30) pages, shall be filed within seven (7) days thereafter. Oral argument will not be allowed. Within a reasonable time after receipt of the briefs, the decision officer shall render an appropriate decision.

§ 1030.515 Petition for reconsideration.

Any party may petition for reconsideration of a final decision or order of the decision officer by filing a written brief with the Office stating succinctly and with particularity the grounds upon which reconsideration is being sought within five (5) days after the date of service of the decision officer's order. The decision officer shall thereafter enter as promptly as possible an order either granting or denying the petition.

PART 1035—RULES OF PRACTICE FOR APPEALS IN PROCEEDINGS ORIGINATING UNDER PART 1030

AUTHORITY: The provisions of this Part 1035 issued pursuant to sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 F.R. 47; Department Organization Order 25-3A (formerly Department Order 184-A), Jan. 1, 1968, 33 F.R. 54.

§ 1035.101 Scope of rules.

The rules of practice in this part shall govern appeals from final decisions of the decision officer in proceedings originating under Part 1030 of this chapter. Appeals in proceedings originating under Part 1000 of this chapter shall be governed by § 1000.802 of this chapter.

§ 1035.102 Board.

(a) The Appeals Board for the Department of Commerce (referred to in this part as the "Board") shall have sole and exclusive jurisdiction to hear administrative appeals from final decisions of decision officers in proceedings under Part 1030 of this chapter. The decision of the Board shall constitute final agency action.

(b) The Chairman of the Board shall designate a panel of three Board members, from time to time, to pass upon such appeals.

(c) All communications to the Board shall be addressed to: Chairman, Department of Commerce Appeals Board, Department of Commerce, Washington, D.C. 20230, and shall be in writing.

§ 1035.103 Appeals.

(a) The respondent in a proceeding under Part 1030 of this chapter may appeal to the Board from the decision and order of the decision officer, provided that notice of intent to appeal is filed with the Board within ten (10) days after service of the decision officer's decision and order or, if the respondent files a petition for reconsideration of the decision officer's order (pursuant to § 1030.515 of this chapter), notice of intent to appeal shall be filed with the Board within ten (10) days after the date of service of the decision officer's order either denying the petition for reconsideration or disposing of a petition that had been granted.

(b) The respondent, in a proceeding under Part 1030 of this chapter, may appeal on the following grounds: that prejudicial error of law was committed; that the findings were clearly erroneous or were not supported by substantial evidence; or that the provisions of the order are arbitrary, capricious or an abuse of discretion.

§ 1035.104 Certification of the record.

Promptly after the filing of notice of intent to appeal, the record including the decision and order of the decision officer, and any petition for reconsideration and order relating thereto, shall be certified to the Board.

§ 1035.105 Briefs.

(a) The appeal brief shall be served and filed no later than thirty (30) days after service of the appropriate order of the decision officer (determined pursuant to § 1035.103(a)); the answering brief shall be served and filed no later than thirty (30) days after service of the appeal brief; and the reply brief shall be served and filed no later than seven (7) days after service of the answering brief. The appeal and answering briefs shall not exceed thirty (30) pages (if typewritten, double spaced) exclusive of appendices, and the reply brief shall not exceed fifteen (15) pages.

(b) An original and five (5) copies of each brief shall be filed with the Board and three (3) copies shall be served upon each party to the proceeding, including the Office.

(c) The appeal and answering briefs shall contain in the following order:

(1) Index, table of cases, statutes, and other authorities—and page references thereto;

(2) Concise, nonargumentative statement of facts, with specific page references to the record to support each assertion;

(3) Argument, with specific page references to the record to support each assertion;

(4) Conclusion;

(5) Appendix (optional), any record material or exhibits on which the party places particular reliance.

(d) The appeal brief shall, in addition, include in the argument section a specific explanation of how the grounds for appeal fall within the standards of § 1035.103(b), and, following the conclusion, any form of order that the respondent proposes be issued in lieu of the order issued by the decision officer.

§ 1035.107 Oral argument.

The Board will ordinarily determine an appeal on the basis of the briefs. The Board will allow oral argument only in exceptional cases when it deems it necessary, upon its own motion.

§ 1035.108 Disposition of appeals by Board.

(a) The appeal shall be determined upon the basis of the record and the briefs and argument, and shall not constitute a hearing de novo. The Board shall not substitute its discretion for that of the decision officer in any matter involving expertise in interpreting, defining, administering, or effectuating the policies and purposes of the regulations or other agency actions under the Program. The Board shall not consider facts or arguments affecting the merits of the policies embodied in the regulations or other agency actions alleged to have been violated.

(b) Unless two members of the Board are of the opinion, and so advise the Chairman of the Board in writing within 20 days after the date of the filing of the appeal brief, that they desire to grant the appeal or consider further briefs or arguments, the Chairman of the Board shall, on the 20th day after the date of the filing of the appeal brief, enter an order pursuant to § 1035.109(b).

§ 1035.109 Content of orders.

(a) The grant of an appeal may be by an order remanding the matter to the decision officer, accompanied with a brief statement of reasons therefor.

(b) The denial of an appeal ordinarily will be in the form of an order signed by the Chairman of the Board, stating that the appeal was denied by the Board on a particular date, and ordinarily will not be accompanied by an explanatory statement. Such denial without an explanatory statement shall be deemed equivalent to adoption by the Board of the decision officer's decision.

(c) Where the Board grants an appeal in part and denies it in part, it ordinarily will remand the matter to the decision officer, as specified in paragraph (a) of this section. Where the Board can appropriately dispose of such a matter by entering its own order, rather than by remanding the matter, it may do so.

(d) Entry of an order by the Board shall be effective ten (10) days after service thereof.

PART 1040—COMPLIANCE PROCEDURES; REPORTS, ADVISORY OPINIONS, AND ENFORCEMENT

AUTHORITY: The provisions of this Part 1040 issued pursuant to sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 F.R. 47; Department Organization Order 25-3A (formerly Department Order 184-A), Jan. 1, 1968, 33 F.R. 54.

Subpart A—Compliance Reports

§ 1040.111 Compliance reports following Parts 1030 or 1035 orders.

(a) Whenever, in a proceeding under Parts 1030 or 1035, an order is entered requiring the respondent to refrain from or to undertake any future act or practice, the Office will further require the respondent to file a compliance report with the Office. Such requirement will be by action of the Director of the Compliance Division pursuant to § 1020.121(a)(2) of this chapter.

(b) Such report shall be in writing, signed by the respondent or an officer thereof, be made under oath or affirmation, and be filed with the Office, Attention: Director of Compliance Division.

(c) Such report shall set forth in detail the manner and form of the respondent's compliance with each of the provisions of the order.

(d) Such report shall be filed within twenty (20) days after the order becomes effective unless the Director of the Compliance Division, upon timely request, extends such time. Further and subsequent reports may also be required by the Director of the Compliance Division.

§ 1040.114 Noncompliance with reporting requirements.

In cases of failure to comply with compliance report requirements, the Office may initiate appropriate action pursuant to § 1020.141 of this chapter.

§ 1040.121 Comment on report.

The Office will review compliance reports. The Director of the Compliance Division may comment in writing to the respondent in respect to whether the actions set forth in such a report evidence compliance with the order.

Subpart B—Advisory Opinions on Compliance

§ 1040.211 Request for opinion.

Any respondent subject to an order issued under Parts 1030 or 1035 of this chapter may request advice from the Office as to whether a proposed course of action, if pursued by it, will constitute compliance with such order. The request for advice should be submitted in writing and should include full information regarding the proposed course of action.

§ 1040.212 Response by Office.

On the basis of the facts submitted as well as other information properly available to it, the Office will, where it is practicable and otherwise appropriate, by letter signed by the Director of the Compliance Division, inform the respondent whether the proposed course of action, if pursued, would constitute compliance with the order. The Office expressly reserves the power to take such other and/or additional action as the public interest may require.

§ 1040.214 Advisory opinion during compliance investigation.

Once the Office has instituted an investigation to determine whether a respondent is in violation of an outstanding order issued against it, the Office will ordinarily consider it inappropriate to give the respondent an advisory opinion on the subject. No request for an advisory opinion, in such circumstances, will ordinarily cause the Office to discontinue such investigation.

§ 1040.221 Revocation.

The Office may, at any time, reconsider any advice or comment made under § 1040.121 or § 1040.212, and rescind, alter, or revoke the same. If it does so, the Office will, whenever possible, give prompt notice to the respondent.

§ 1040.222 Reliance.

(a) When the Office believes that a respondent has violated an order issued against it under Parts 1030 or 1035 of this chapter but the respondent establishes to the Office that it acted in actual, properly warranted, and good faith reliance upon written advice to it under § 1040.121 or § 1040.212, then the Office will not proceed or recommend any proceeding against such respondent in respect to such possible violation without first giving respondent notice under § 1040.221 and an opportunity to discontinue the questioned practice or transaction and to correct the effects thereof.

(b) If the respondent effects such discontinuance and correction promptly and fully, and satisfies the Office that it is complying with the requirements of the Program in regard to the matter, then the Office will take no further action.

Subpart C—Enforcement

§ 1040.311 Enforcement.

When the Office has information indicating that a respondent has failed or is failing to comply with the provisions of an order entered against the respondent under Part 1030, the Office may institute or recommend a civil or criminal enforcement proceeding (see, e.g., 50 U.S.C. App. 5(b)(3), 17) or a further administrative proceeding under Part 1030 of this chapter.

PART 1050—MISCELLANEOUS RULES

AUTHORITY: The provisions of this Part 1050 issued pursuant to sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 F.R. 47; Department Organization Order 25-3A (formerly Department Order 184-A), Jan. 1, 1968, 33 F.R. 54.

§ 1050.101 Appearances.

(a) *Qualifications.* (1) Members of the bar of a Federal Court or of the highest court of any State or territory of the United States are eligible to practice before the Office and the Appeals Board for the Department of Commerce in any proceeding under Parts 1020–1050 of this chapter.

(2) Any individual or member of a partnership involved in any such proceeding may appear on behalf of himself or of such partnership, upon adequate identification. A corporation or association may be represented by an officer thereof.

(b) *Notice of appearance.* Any person desiring to appear before the Office on behalf of a person or party shall file a written notice of his appearance, stating the basis of his eligibility under this section. No other application shall be required for admission to practice, and no register of attorneys will be maintained.

§ 1050.102 Standards of conduct.

(a) All persons practicing before the Office shall conform to the standards of ethical conduct required of practitioners in the courts of the United States. Accountants who prepare reports or other documents for submittal to the Office shall conform to the standards of ethical conduct prescribed by the State Board of Accountancy or other licensing authority for the State in which such accountant maintains his principal place of business.

(b) If the Office has reason to believe that any person is not conforming to such standards, or that he has been otherwise guilty of conduct warranting disciplinary action, the Office may issue an order requiring such person to show cause why he should not be suspended or disbarred from practice before, or from the preparation of reports or other documents for submittal to, the Office. The alleged offender shall be granted due opportunity to be heard and may be represented by counsel. Thereafter, if warranted by the facts, the Office may issue against the person an order of reprimand, suspension, disbarment, or other appropriate sanction.

§ 1050.103 Requirements as to form and filing of documents.

(a) *Filing.* In formal administrative proceedings under Part 1030 of this chapter, except as otherwise provided, all documents submitted to the Office shall be addressed to the hearing examiner. Where practicable, such documents shall be filed with him; otherwise, they shall be filed with the Clerk (see § 1050.104). Informational applications or requests, however, may be submitted directly to the official in charge thereof or to the Director of the appropriate Division.

(b) *Title.* Documents shall clearly show the file or docket number and title of the matter in connection with which they are filed.

(c) *Copies.* Five copies of all formal documents shall be filed, unless otherwise specified. Informal applications and correspondence should be submitted in the form of an original and two copies thereof.

(d) *Form.* (1) Documents shall be printed, typewritten (double spaced) or otherwise processed in permanent form.

(2) Wherever practicable, documents shall be on paper approximately 8½ inches by 11 inches, bound or stapled on the left side.

(e) *Signature.* One copy of each document filed shall be signed by a person who has entered an appearance (or in informal matters by a person qualified to do so).

§ 1050.104 Clerk.

The Director of the Office shall designate an employee of the Office to serve as Clerk of the Office. The Clerk shall, in general, perform the functions of the Clerk of a district court, in respect to the proceedings under Part 1030 of this chapter and where otherwise appropriate. Papers may be filed with him; he shall accept and record receipt of formal papers; he shall enter the orders of hearing examiners and cause them to be served upon parties. Where it is appropriate, the Clerk shall sign documents and other papers in the name of the Office. Nothing contained in this section shall be deemed to preclude the Clerk from performing any other functions within the Office.

§ 1050.105 Time computation.

Computation of any period of time prescribed or allowed under Parts 1020-1040 of this chapter shall begin with the first business day following that on which the act, event, or development initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national holiday, or other day on which the Office is closed, the period shall run until the end of the next following business day. When such period of time, with the intervening Saturdays, Sundays, and national holidays counted, is 5 days or less, each Saturday, Sunday, and any such holiday shall be excluded from the computation. When such period of time, with the intervening Saturdays, Sundays, and national holidays counted, exceeds 5 days, each of the Saturdays, Sundays, and such holidays shall be included in the computation.

§ 1050.106 Service.

(a) *By the Office.* (1) Service of notices, orders, and other processes of the Office or a hearing examiner may be effected as follows:

(i) *By registered or certified mail.* A copy of the document shall be addressed to the person to be served, at its residence, office, or place of business, and sent thereto by registered or certified mail; or

(ii) *By delivery to an individual.* A copy thereof may be delivered to the natural person to be served, or to a member of the partnership to be served, or to any officer or director of the corporation or unincorporated association to be served; or

(iii) *By delivery to an address.* A copy thereof may be left at the office or place of business of the person, or it may be left at the residence of the person or of a member of the partnership or of an officer or director of the corporation or unincorporated association to be served.

(2) All other documents may be similarly served, or they may be served by ordinary first-class mail.

(b) *By other parties.* Service of documents by parties other than the Office shall be by delivering copies thereof as follows: Upon the Office, by personal delivery or delivery by first-class mail to the Clerk; upon any other party, by delivery to the party, as specified in paragraph (a) of this section.

(c) *Service on attorney of party.* When a party is represented by a person qualified pursuant to § 1050.101(a), and such representative has filed a notice of appearance as required by § 1050.101(b), or has filed any pleading or other document on behalf of the party, any notice, order, or other process or communication required or permitted to be served upon a person or party may be served upon such representative in lieu of any other service.

(d) *Proof of service.* (1) When service is by registered, certified, or ordinary first class, it is complete upon delivery of the document by the post office to the person served.

(2) The return post office receipt for a document registered or certified and mailed, or the verified return or certificate by the person serving the document by personal delivery, shall be proof of the service of the document. All documents served by ordinary mail shall have appended thereto a certificate of service, setting forth the manner of said service, including the address of any person so served.

§ 1050.107 **Fees.**

(a) *Witnesses.* Any person compelled to appear in person in response to compulsory process shall, upon his application therefor, be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) *Responsibility.* The fees and mileage referred to in this section shall be paid by the party at whose instance the witness appears.

§ 1050.108 **Ex parte communications.**

(a) In a formal administrative proceeding, no person not employed by the Office and no employee or agent of the Office who performs any investigative or prosecuting function in connection with the proceeding, shall communicate ex parte, directly or indirectly, with any person involved in the decisional process in such proceeding, with respect to the merits of that or a factually related proceeding.

(b) In a formal administrative proceeding, no person involved in the decisional process of such proceeding shall communicate ex parte, directly or indirectly, with any person not employed by the Office, or with any employee or agent of the Office who performs any investigative or prosecuting function in connection with the proceedings, with respect to the merits of that or a factually related proceeding.

(c) In a formal administrative proceeding, if an ex parte communication is made to or by any employee involved in the decisional process, in violation of paragraph (a) or (b) of this section, such employee shall promptly inform the Office of the substance of such communication and the circumstances thereof. The Office will take such action thereon as it may consider appropriate.

§ 1050.111 **Freedom of information.**

(a) All documents (including transcripts) filed in formal administrative proceedings conducted under Part 1030 of this chapter (except those documents placed in camera pursuant to § 1030.451 (b) of this chapter), and such other documents as the Office may from time to time designate, shall be made part of the public records of the Office. Copies thereof are maintained for public inspection and copying in the office of the Clerk (see § 1050.104).

(b) For good cause shown and upon application by any party submitting a document that is to be placed on the public record, pursuant to paragraph (a) of this section, the Office may excise trade secrets and customarily privileged commercial or financial information obtained from any person. Requests for such excision may be made by timely submittal to the Office of a written request specifying with particularity each item sought to be excised and setting forth in each instance a full statement of the party's business reasons for requesting excision. Mere conclusory allegations and requests that an entire document be omitted from the public record will not be deemed to satisfy the requirements of this paragraph.

(c) All documents of any description received by the Office from any person in connection with an investigation of possible noncompliance with the Program, and not described in paragraph (a) of this section, are considered part of the investigatory files of the Office, compiled for law enforcement purposes, and will not be disclosed to any person except pursuant to law.

(d) Terms used in this section shall have the meanings ascribed thereto in 5 U.S.C. §§ 551-553.

Effective date. The amendments to Parts 1020-1050 shall be effective as of the date of publication in final form in the FEDERAL REGISTER, and shall govern all proceedings commenced after the effective date and all pending proceedings except to the extent that the Director of the Office determines, in his discretion, that application of the amendments or any portion thereof in a pending proceeding would not be feasible or would work injustice, in which case the appropriate former rule or rules shall apply.

[FR Doc.71-4091 Filed 3-24-71;8:50 am]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R-408; Order No. 427]

SCHEDULES OF FEES FOR PUBLIC UTILITIES AND NATURAL GAS COMPANIES

MARCH 18, 1971.

On November 25, 1970, the Commission issued a notice of proposed rulemaking in this proceeding (35 F.R. 18324, Dec. 2, 1970) proposing to amend its general rules and regulations under the Federal Power Act and the Natural Gas Act to revise the schedules of fees at present imposed in connection with the filing of certain applications by natural gas companies and to establish new schedules of fees and annual charges to be applicable to electric utility companies and natural gas companies.

Responses were received (exclusive of requests for additional time within which to submit comments [1]) on behalf of 62 [2] companies and two industry associations raising questions as to the meaning of certain provisions, suggesting modifications for clarification or on the merits, objecting to the amounts proposed for certain of the services in the noticed schedules of fees and generally questioning the propriety of imposing annual assessments for services rendered in the administration of both Acts or the basis upon which they would be computed. A number of these comments have provided the basis for clarifying this rulemaking and others which have been called to our attention have resulted in revisions incorporating recommendations that will avoid inequities that might otherwise have occurred. The remaining comments and recommendations were considered and those which have been found lacking in merit or not necessary are not discussed in the order herein adopted.

Section 36.1 as proposed clearly stated the Commission's aim that annual assessments covering the balance of the expenses incurred in the administration in

---

[1] The notice invited the submission of data, views, comments, and suggestions in writing by no later than Dec. 18, 1970; however, by notices issued Dec. 16, 1970 (35 F.R. 19641, Dec. 25, 1970) and Jan. 22, 1971 (36 F.R. 1487, Jan. 30, 1971), the time to do so was extended ultimately to Feb. 5, 1971.

[2] Those responding to the invitation for comments are listed in an appendix which is filed as part of the original document.

each fiscal year of Parts II and III of the Federal Power Act above those recovered by the proposed fees for specified filings be based on gross electric revenues. We proposed that the allocations be based on gross rather than jurisdictional (electric) revenues because of the benefits deriving from our services (both regulatory and involving reliability) since both have direct and substantial impact on the stability and operations of public utilities regardless of the amount of their revenues derived from jurisdictional sales. However, we recognize the jurisdictional sales for resale of many public utilities are relatively small compared to their total revenues and that inequities would result if assessments covering all programs under Parts II and III of the Federal Power Act were based entirely on gross revenues. Accordingly, we have revised this section to provide that the residual costs of administration of our regulatory programs should be allocated on the basis of jurisdictional business but that the costs relating to our coordination and reliability programs which have impact on the total business of the utilities, whether or not jurisdictional, should be allocated on the basis of gross revenues. For the reason above stated, similar revision has been made in section 159.2a regarding the allocation of assessments among natural gas companies. As revised, such companies will be required to pay annual charges covering the residual costs of those programs on the basis of their jurisdictional business whether stemming from sales for resale, transportation of natural gas for others, or both. Other changes in §§ 36.1 and 158.2a have been made for purposes of clarification based on the numerous comments we have received.

We have adopted suggestions that the fees prescribed in connection with the merger or consolidation of facilities be based on a sliding scale instead of a fixed fee. Our design of the fee schedule contemplated a charge of $10,000 for mergers of Class A, Class B utilities, or both Class A and B utilities; the mere acquisition of facilities not constituting a merger or consolidation of such utilities, such as the acquisition of a transmission line having a value in excess of $50,000, would have been covered under § 36.2(c), as proposed, involving a fee of $500. But this amount would have been payable not only by the applicant disposing of the property but also by the one acquiring it. Instead, we are removing possible ambiguity and providing a more equitable schedule by requiring payment of a fee, not to exceed $10,000, based on the value of property transferred, as has been proposed. We are also adopting the suggestion that the requisite fee payable upon the filing of applications for the acquisition and disposition of facilities which involve several jurisdictional utilities should be split among them on the theory both the acquiring and disposing utility derive benefit from the transaction. In order to avoid any imposition of charges upon nonjurisdictional companies, however, the charges applicable to jurisdictional companies shall be at the rate of one-half percent of the value of facilities acquired and disposed of but not exceeding $5,000 as to each. A nonjurisdictional company acquiring facilities from or disposing of assets to a jurisdictional company will neither be charged nor the costs of such services be borne by the utilities subject to our jurisdiction.

Some filings for rate increases are very small. In such cases a fee of $500 would be inequitable. However, administrative analysis is required regardless of the amount of the increase and it is conceded that a reasonable fee should be imposed for these services. We have accordingly revised proposed § 36.2(g) to provide for payment of a flat fee of $100 for increases of less than $5,000, if in sum they constitute no more than one percent of the total charges then in effect with respect to the purchasers affected by such filing. The second requirement is based on our experience that a rate increase though small will necessitate a more thorough evaluation if it constitutes more than a very minor part of the total charges to the customers involved. Where both requirements for the minimum fee are not met, the filing fee will remain at $500 which will also apply to increases from $5,000 to $50,000. Objections to a scaled fee for increases of $50,000 or more are not well taken, since generally our input of services varies directly with the amount of the increases we are required to review. These changes have been made in § 36.2 (g).

The suggestion that filings for rate increases made under multiparty agreements involving several utilities should be exempt from fee requirements is without merit. The Commission's staff is obligated to evaluate such agreements where filing is required and if they involve rate increases Commission services should not be rendered without charge.

Several responding parties suggested the incorporation of provisions for refunds of various dimensions. The underlying purpose in adopting these fee schedules is to provide for the recoupment to the Treasury for the value of services rendered. Applications which may ultimately be denied in whole or in part after staff review and analysis involve the services of the Commission which should be subject to fee charges within the intent of our underlying authority. There is no valid basis for refund in those circumstances. Similarly, the payment of a fee based upon a filing of a rate increase which is ultimately found or conceded to be excessive should not justify a partial refund.

We adopt the suggestion that if an application or filing is withdrawn or rejected as insufficient or for some other reason not involving the input of substantial staff services, the fee should be refunded. If rejection occurs after considerable expenditure of staff time, there is no justification for refund. Accordingly, we have provided for refund in those cases if the filing has been withdrawn or found deficient and rejected. Under our procedures rejection must occur within 30 or 60 days depending on the type of filing; in that time staff effort will not have been cumulatively large. We have also clarified the status of amended filings in regard to fee requirements and filings for which more than one fee might be payable under these regulations. See section 36.3.

Two recurrent objections to the proposed regulations require comment. The first, that the Commission does not have authority to charge fees except for and to the extent of the actual cost of specific services rendered has already been considered and was covered by our discussion in the notice of rulemaking issued in this docket. Congress has by statute vested authority in all agencies of the Federal Government to prescribe fees or charges for services conferring benefits on persons subject to their jurisdiction so as to render such agencies as fully self-sustaining as possible. The pertinent provision which is included in title V of the Independent Offices Appropriations Act for the year ending June 30, 1952 (65 Stat. 290, 31 U.S.C. 483a), reads as follows:

It is the sense of the Congress that any work, service publication, report document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency (including wholly owned Government corporations as defined in the Government Corporation Control Act of 1945) to or for any person (including groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of any existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts: *Provided*, That nothing contained in this section shall repeal or modify existing statutes prohibiting the collecting, fixing the amount, or directing the disposition of any fee, charge, or price: *Provided further*, That nothing contained in this section shall repeal or modify existing statutes prescribing bases for calculation of any fee, charge, or price, but this proviso shall not restrict the redetermination or recalculation in accordance with the prescribed bases of the amount of any such fee, charge, or price.

Pursuant to such statute and to recommendations made at hearings before congressional appropriation committees, we established by order our first schedule of fees (apart from those under part I of the Federal Power Act) which were payable in connection with applications filed by natural gas pipeline companies for certificates of public convenience and necessity and for other authorizations as especially beneficial to the recipients of the services rendered in their processing. Order 317, 31 F.R. 430, January 13, 1966, as amended by FPC Order 317–A, 31 F.R. 4890, March 24, 1966, Part 159 of the Commission's regulations under the Natural Gas Act, 18 CFR Part 159.

Congressional appropriation committees have since requested further review of our fee schedules with a view to making increases or adjustments to offset in part the increasing needs for direct appropriations for agency operating expenses. S. Rept. No. 1375, 90th Cong., second session; H. Rept. No. 1348, 90th Cong., second session. More recently, the Chairman of the Subcommittee on Independent Offices and Department of Housing and Urban Development of the Committee on Appropriations of the House of Representatives requested us to review our rate and fee structures with a view to charging gas and utility companies enough to sustain our administrative operations. Hearings, Independent Offices and Department of Housing and Urban Development Appropriations for 1971, 91st Cong., second session, part 2, p. 951.

Moreover, we noted that in developing these schedules we have endeavored to adhere to the guidelines contained in Budget Circular No. A–25 by the imposition of charges "to each identifiable recipient for a measurable unit or amount of Government service * * * from which he derives a special benefit." These services include agency action which "provides special benefits * * * above and beyond those which accrue to the public at large * * *" or provides "more immediate or substantial gains or values * * * than those which accrue to the general public * * *" or provides "business stability or assures public confidence in the business activity of the beneficiary * * *" or is "performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public * * *".

Costs directly allocable to a specific type of service rendered to specifically identifiable persons would be effected by charges directly related to that specific service. In determining the amount thereof we are not required to keep cost records on a case-by-case basis but are authorized to average the costs involved in a particular service. Aeronautical Radio, Inc. v. United States, 335 F. 2d 304 (CA7, 1964), certiorari denied, 379 U.S. 966 (1965). Our remaining proposed charges being of benefit overall to the members of both industries would be assessed on a measure of size against those within the ambit of our jurisdictional activities. We deem the allocation formulas we adopt herein to be both reasonable and a practical alternative to the development of a complex, extensive and costly accounting system whereby actual costs involved in each matter would be charged to the parties involved. Even such a system for basing charges would not in all circumstances be equitable since policies developed in prolonged proceedings involving one utility often become applicable to others at a minimum of additional administrative costs. We do not, after considering the content of the responses in this respect, find the comments sufficiently persuasive to require a change in the schedules for annual fees proposed and adopted herein.

We reject the contention that the proposed fees would constitute an illegal imposition of a tax inasmuch as we hold that the proposed charges constitute fees rather than taxes. The distinction between a tax and a fee has been clearly defined by the courts. The cases hold that:

A tax is an enforced contribution exacted pursuant to legislative authority for the purpose of raising revenue to be used for public or governmental purposes, and not as payment for a special privilege or a service rendered. United States v. Butler, 297 U.S. 1, 61 (1936); Gumby v. Yates, 214 Ga. 17, 102 S.E. 2d 548, 550–551 (1958). A fee is a charge fixed by law for services of public officers or for use of a privilege under control of the Government. Fort Smith Gas Co. v. Wiseman, 189 Ark. 675, 74 S.W. 2d 789, 790 (1934). A tax is imposed upon the party paying it by mandate of the public authorities, without his being consulted in regard to its necessity, or having any option as to its payment. The amount is not determined by any reference to the service which he receives from the Government, but by his ability to pay, based on property or income. On the other hand, a fee is always voluntary, in the sense that the party who pays it originally has, of his own volition, asked a public officer to perform certain services for him, which presumably bestow upon him a benefit not shared by other members of society. Stewart v. Verde River Irrigation & Power Dist. 49 Ariz. 531, 68 P. 2d 329, 334, 335.

While it may possibly be argued that the provision of title V calling for the payment of the amounts collected in fees into the Treasury as miscellaneous receipts is descriptive of a tax, we believe that an overall reading of title V firmly supports the contention that the fees are not intended for the support of the Government as a whole, but rather as a means of sustaining to the fullest extent feasible those agencies of the Government which bestow special privileges and services upon certain individuals who may apply for those privileges and services.

The question whether the proposed schedules constitute a tax is not affected by the method used in their assessment, i.e., whether in fixed amounts or varying in accordance with specified formulae. The proposed charges were not authorized to impose exactions in the support of government in the general understanding of the term "tax", United States v. Butler, 297 U.S. 1, 61; New Jersey Bell Telephone Co. v. State Board of Taxes, 280 U.S. 338, 347, but would be in the nature of impositions "levied to reimburse the State or a subdivision thereof for services rendered rather than to provide public revenue * * *" 51 Am. Jur., Taxation section 20.[3]

The second objection made by a number of the responding parties is to the amounts projected to be recovered under the proposed fee schedules. In essence, those who have raised this contention state that the benefits of regulation should be borne in part by those who also benefit from the services rendered by the administration of both Acts who are not subject to regulation. These comments have merit. While we do not exercise jurisdiction over REA or municipally operated utilities, they do derive benefits from the services we provide under parts II and III of the Federal Power Act. In this light it would be inequitable to have the privately owned utilities bear the cost of such services and we have accordingly revised § 36.1 to reflect this change. (We had already excluded from our formula the costs associated with services rendered to other (including Federal) agencies since we have not incorporated in the costs to be assessed our expenses incurred in programs directed to servicing other agencies and the public.)

However, we do not agree that recoupment of part of the costs of all other services rendered to jurisdictional companies should be absorbed by the taxpayers generally since they primarily benefit the public utilities. The extension of the Commission's jurisdiction in 1935 to public utilities was prompted in substantial part by the deplorable practices of management which resulted in the collapse of the financial structures upon which the electric utility industry had been erected. The creation of regulatory agencies at the Federal[4] level and the exercise of the powers delegated by the Congress to them have provided the foundation for the sound financial condition which public utilities and natural

[3] State statutes designed to recover in part the costs of administration of their public service commissions either on a fixed-fee basis for specific services or as a percentage of some measure of size or value are not infrequent. See compilation in Committee Print prepared by the Subcommittee on Intergovernmental Relations of the Senate Committee on Operations, dated Sept. 11, 1967, entitled, State Utility Commissions, 90th Cong., first session, p. 22.

[4] Investigation of both the electric and gas industries by the Federal Trade Commission resulted in the grant of regulatory powers over public utilities. See title II of the Public Utility Holding Company Act of 1935, 49 Stat. 838. Regulation of natural gas companies, though considered at the time that Act was adopted, was not authorized until 1938. 52 Stat. 821.

gas companies have achieved.[5] We recog-

"A great measure of the improvement in the financial position of the electric utilities has been due to the strengthening of regulatory controls by the Federal Power Commission, and particularly to the enforcement of the new uniform system of accounts."

A trade publication editorialized that

"At no time in the past twenty years has the electric utility industry of this country been in as sound a position financially as it is today."

Report on the Reclassification and Original Cost of Electric Plant of Public Utilities and Licensees, Federal Power Commission, 1950, pp. 19–20.

nize that the exercise of our responsibilities in preventing the imposition of rates and charges which are unjust and unreasonable or preferential and prejudicial has provided continuing benefit to consumers, but our actions in this respect have redounded to the benefit of both industries by creating the economic climate for greater usage of the services of the regulated companies which in turn have further strengthened their financial stability and their ability to sell debt and equity securities required for capital additions to meet ever-increasing demands. In these circumstances we believe that our proposal which would make our operations as self sustaining as reasonably possible is consistent with statutory directives and is equitable, particularly since the charges involved can ultimately be passed on by these companies to their customers as expenses properly includable among items upon which their respective costs of service are based.

The view that the imposition of fees destroys the budgetary restrictions imposed upon agencies like the Federal Power Commission is misplaced since all receipts are payable into the U.S. Treasury and not available for our use. The Commission's spending power, whether or not such charges are imposed, is predicated on appropriations authorized by the Congress and is dependent solely on the determination of that body as to the funds needed for administration of the power delegated to us.

These regulations will become effective July 1, 1971. The filing fees will become payable on all applicable filings made after that date and assessments for the costs of administration of the Commission's programs will be made as soon after the close of its fiscal year ending June 30, 1971, as is practicable, except that annual charges relating to the Commission's public utility and natural gas pipeline regulatory programs will be computed and assessed for the first time for the Commission's fiscal year ending June 30, 1972.

[5] A report issued by the Commission in 1950 discussed industrywide recognition of the benefits accruing from only one facet of the Commission's activities—the adoption of a uniform accounting system. Typical of the comments made was the following in a publication issued by a prominent member of the New York Stock Exchange:

The Commission finds:

(1) That the notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently before this Commission through the submission, in writing, of data, views, comments, and suggestions in the manner as described above, are consistent and in accordance with all procedural requirements therefor as prescribed in section 553 of title 5 of the United States Code.

(2) That the revisions herein made to the amendments proposed in the notice of rulemaking do not impose a further burden on persons subject to these regulations, do not constitute a substantial departure from the original proposal, and are consistent with the prime purpose of this rulemaking; therefore further notice and opportunity for comment is unnecessary.

(3) Upon consideration of all relevant matters presented, including the arguments, contentions, suggestions and other views expressed in the comments received and having determined that a conference to discuss the proposed amendments was not required, we further find that the amendments to the Commission's regulations adopted herein are necessary and appropriate for carrying out the provisions of the Federal Power Act, the Natural Gas Act, and the Independent Offices Appropriations Act for the year ending June 30, 1952.

The Commission, acting pursuant to the provisions of the Federal Power Act, particularly section 309 (49 Stat. 858, 16 U.S.C. 825h), the Natural Gas Act, particularly section 16 (52 Stat. 830, 15 U.S.C. 717o), and the Independent Offices Appropriations Act for the Year Ending June 30, 1952 (65 Stat. 290, 31 U.S.C. 483a), orders:

SUBCHAPTER A—GENERAL RULES

PART 3—ORGANIZATION: OPERATION: INFORMATION AND REQUESTS; MISCELLANEOUS CHARGES; ETHICAL STANDARDS

(A) Part 3, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

1. The title of Part 3 is amended by inserting the words "Miscellaneous Charges," immediately preceding the words "Ethical Standards". As so amended the title of Part 3 reads as set forth above.

2. Section 3.102, *Public information, requests, and assistance,* is amended by revising the section title and by revising paragraph (b) to read as follows:

§ 3.102 Public information requests, and assistance; miscellaneous charges.

* * * * *

(b) During the Commission's regular business hours, the public may examine in the Office of Public Information in Washington, D.C., copies of public information filed with the Commission. Photo copies of public material may be obtained through the public reference room. Fees charged for such copies are established by an annual contract between the Commission and a private company which does the work. Current schedules of fees for copying work are available from the Office of Public Information. Except for requests made by Government agencies certification of copies of any official Commission record shall be accompanied by a fee of $2. Inquiries and orders may be made to that office personally, by telephone, or by mail.

SUBCHAPTER B—REGULATIONS UNDER THE FEDERAL POWER ACT

(B) Subchapter B—Regulations under the Federal Power Act, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

1. The title of "Part 11—Annual Charges" is revised to read as set forth above.

PART 32—INTERCONNECTION OF FACILITIES; EMERGENCIES; TRANSMISSION TO FOREIGN COUNTRY

2. In "Part 32—Interconnection of Facilities; Emergencies; Transmission to Foreign Country.", the section titles and introductory clauses of §§ 32.1 and 32.51 and § 32.22 are revised to read as follows:

§ 32.1 Contents of application; filing fee.

Every application under section 202(b) of the Act shall be accompanied by the fee prescribed in Part 36 of this subchapter and shall set forth the following information:

* * * * *

§ 32.22 Application for permanent connection for emergency use; contents; form and style; filing fee; number of copies.

Application for Commission approval of a permanent connection for emergency use only shall be acocmpanied by the fee prescribed in Part 36 of this subchapter and shall conform with the requirements of §§ 32.1 to 32.4, inclusive, and, in addition, shall state in full the reasons why such permanent connection for emergency use is necessary in the public interest.

§ 32.51 Contents of application; filing fee.

Every application shall be accompanied by the fee prescribed in Part 36 of this subchapter and shall set forth in the order indicated, the following:

* * * * *

PART 33—APPLICATION FOR SALE, LEASE, OR OTHER DISPOSITION, MERGER OR CONSOLIDATION OF FACILITIES, OR FOR PURCHASE OR ACQUISITION OF SECURITIES OF A PUBLIC UTILITY

3. In "Part 33—Application for Sale, Lease, or Other Disposition, Merger or

Consolidation of Facilities, or for Purchase or Acquisition of Securities of a Public Utility", the title and introductory clause of § 33.2 are revised to read as follows:

§ 33.2 Contents of application; filing fee.

Each such applicant shall set forth in its application to the Commission, which shall be accompanied by the fee prescribed in Part 36 of this subchapter, in the manner and form and in the order indicated, the following information which should insofar as possible, be furnished as to said applicant and each company whose facilities or securities are involved:

* * * * *

PART 34—APPLICATION FOR AUTHORIZATION OF THE ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

4. In "Part 34—Application for Authorization of the Issuance of Securities or the Assumption of Liabilities", the title and introductory clause of § 34.2 are revised to read as follows:

§ 34.2 Contents of application; filing fee.

Every such applicant shall set forth in its application to the Commission, which shall be accompanied by the fee prescribed in Part 36 of this subchapter, in the manner and form and in the order indicated, the following information which, in the case of the assumption of a liability, shall be furnished as to both the issuer and the person assuming liability:

* * * * *

PART 35—FILING OF RATE SCHEDULES

5. In "Part 35—Filing of Rate Schedules", between the heading "Application" and the section title "§ 35.1 Application; obligation to file rate schedules", a new "§ 35.0 Filing fees", is added which reads as follows:

§ 35.0 Filing fees.

Every filing made under this part shall be accompanied by the fee described in Part 36 of this Subchapter.

PART 36—ANNUAL CHARGES AND FEES UNDER PARTS II AND III OF THE FEDERAL POWER ACT

6. Immediately following Part 35, a new "Part 36—Annual Charges and Fees" is added which reads as follows:

AUTHORITY: The provisions of this Part 36 issued under sec. 309, Federal Power Act, 49 Stat. 858, 16 U.S.C. 825h; sec. 16, Natural Gas Act, 52 Stat. 830, 15 U.S.C. 717o; Independent Offices Appropriations Act for year ending June 30, 1952, 65 Stat. 290, 31 U.S.C. 483a.

§ 36.1 Annual charges.

Reasonable annual charges shall be assessed by the Commission against each public utility to reimburse the United States for such costs of administration of parts II and III of the Federal Power Act as hereinafter provided:

(a) A determination shall be made for each fiscal year of the costs of administration of the Commission's public utility regulatory programs (other than those associated with coordination and reliability) from which shall be deducted the allocable costs associated with services primarily rendered to or for the benefit of electric systems which are not public utilities as defined in the Federal Power Act and the amounts received during the same period pursuant to the provisions of § 36.2. The difference shall constitute the adjusted costs of administration of such programs for such period.

(1) The adjusted costs of administration determined under this paragraph (a) shall be assessed against each public utility in the proportion that the gross jurisdictional kilowatt hours sold and kilowatt hours delivered under interchange power agreements by such public utility in the calendar year terminating in such fiscal period bear to the sum of the gross jurisdictional kilowatt hours sold and kilowatt hours delivered under interchange power agreements by all public utilities for the like period.

(b) A determination shall be made for each fiscal year of the costs of administration of the Commission's coordination and reliability programs from which shall be deducted the allocable costs associated with services primarily rendered to or for the benefit of electric systems which are not public utilities as defined in the Federal Power Act. The difference shall constitute the adjusted costs of administration of such programs for such period.

(1) The adjusted costs of administration determined under paragraph (b) of this section shall be assessed against each public utility in the proportion that the gross electric revenues of such public utility in the calendar year terminating in such fiscal period bear to the sum of the gross electric revenues of all public utilities for the like period.

(c) Annual charges assessed under this section shall be paid within 60 days of the rendition of a bill therefor by the Commission.

§ 36.2 Filing fees.

A filing fee in the amounts set forth below shall accompany each of the following:

(a) Applications for physical connections $150

(b) Applications for the construction of border facilities $150

(c) Other corporate applications authorized by these regulations under the Federal Power Act $500

The provisions of this paragraph shall not apply to:

(1) Applications under part I of the Federal Power Act which are subject to the fees prescribed in part 11 of these regulations,

(2) applications for the acquisition by merger or consolidation or the disposition by sale, lease, or otherwise of electric facilities which are subject to the fees prescribed in paragraph (d) of this section, and

(3) applications for authority to hold interlocking positions which are subject to the fees prescribed in paragraph (h) of this section.

(d) Applications by a public utility for the acquisition by merger or consolidation, directly or indirectly, of electric facilities of another person or for disposition by sale, lease or otherwise of electric facilities to another person. .... ½ percent of the value of such facilities, but not exceeding $5,000.

(1) The fee prescribed by this paragraph (d) shall be shared by the public utilities acquiring and disposing of such facilities proportionately to the value of such facilities acquired or disposed of; the entire fee shall be paid by a public utility acquiring or disposing of such facilities from or to a person not a public utility.

(e) Nominal rate schedule filings voluntarily filed other than those involving rate increases $100

(1) Examples of such filings include schedule changes having minimal impact on the operations of a public utility such as those providing service to an additional delivery point, changes in maximum obligation to serve, changes in minimum billing demand not affecting billings, changes in service rules or regulations not affecting billings, extensions of terms of contracts or continuation of service, cancellation of rate schedules where service is no longer needed, changes in delivery voltages or metering voltages, changes in contract provisions not affecting service, rates or billings, and adoption of initial rate schedules containing rates identical to rates applicable to the same customer class previously accepted for filing.

(f) Moderately complex rate schedule filings voluntarily filed $500

(1) Examples of such filings include schedule changes presenting more complex administrative problems such as those involving interconnection agreements, pooling agreements and additional large-scale sales.

(g) Rate schedule filings involving rate increases (computed on an annual basis) in excess of charges for the 12-month period preceding the proposed effective date thereof, as follows:

(1) Nominal rate increases:

(i) Schedule changes involving increases in rates totaling less than $5,000 and 1 percent of the total charges to the persons to be affected thereby $100

(ii) Schedule changes involving increases in rates totaling less than $5,000 but not subject to the filing fee provided in subdivision (i) of this subparagraph and those involving increases in rates of $5,000 or more but not less than $50,000 .... $500

(2) Rate increases other than those covered under subparagraph (1) of this paragraph:

(i) One percent of the amount of such increases up to but not exceeding $1 million;

(ii) $10,000 plus one-half percent of the amount of such increases in excess of $1 million and not exceeding $10 million;

(iii) $55,000 plus one quarter percent of the amount of such increases in excess of $10 million.

(h) Applications to hold interlocking positions $100

§ 36.3 Miscellaneous.

(a) Annual assessments and fee payments shall be made by check or money order to the Treasurer of the United States. No fees will be refunded unless within 60 days of the filing of an application or rate schedule filing in connection with which such fees have been paid such application or rate schedule filing has been voluntarily withdrawn by the applicant or rejected by the Commission as incomplete or for some other reason.

(b) An application or rate schedule filing submitted for the sole purpose of amending a pending application or rate schedule filing need not be accompanied by a fee in addition to that which accompanied the original submission, provided that if the later application or rate schedule filing would have upon initial filing required payment of a larger fee, such refiling shall be accompanied by an amount equal to the difference between both fees.

(c) Where an application or filing seeks Commission authorization in the alternative or would otherwise be subject to the payment of more than one filing fee, only the highest fee shall be required.

§ 36.4 Accounting for fees paid pursuant to this part.

A public utility subject to the provisions of this Part shall account for the assessments and fees paid by charging the amounts thereof to Account 928, Regulatory commission expenses.

PART 45—APPLICATION FOR AUTHORITY TO HOLD INTERLOCKING POSITIONS

7. In "Part 45—Application for Authority to Hold Interlocking Positions", the title and introductory clause of § 45.8 are revised to read as follows:

§ 45.8 Contents of application; filing fee.

Each application shall be accompanied by the fee prescribed in Part 36 of this subchapter and shall state the following:

* * * * *

SUBCHAPTER E—REGULATIONS UNDER THE NATURAL GAS ACT

PART 159—FEES AND ANNUAL CHARGES UNDER THE NATURAL GAS ACT

(C) Part 159, Subchapter E—Regulations under the Natural Gas Act, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

1. The title of "Part 159—Fees for Certain Applications Filed Pursuant to the Natural Gas Act" is revised to read as set forth above.

2. In § 159.2 Applications involving construction or acquisition of facilities, paragraphs (a), (b), and (d) are revised to read as follows:

§ 159.2 Applications involving construction or acquisition of facilities.

* * * * *

(a) Within 30 days following issuance of notice of application, an amount equal to sixty-five one-thousandths of 1 percent (0.0065) of the estimated cost of construction of new facilities or of facilities to be acquired;

(b) Within 30 days following grant of the certificate, an amount equal to one hundred and thirty one-thousandths of 1 percent (0.00130) of the estimated cost of construction of new facilities or of facilities to be acquired, unless applicant does not accept the certificate.

* * * * *

(d) If the actual cost of construction of new facilities or of facilities to be acquired exceeds the estimated cost thereof, the statement of actual cost, required to be submitted by § 157.20 (c)(4) and (d)(3) of this chapter, shall be accompanied by an amount equal to one-hundred and ninety-five one-thousandths of 1 percent (0.00195) of the excess of actual cost (plus estimated cost of facilities for which actual cost is not then recorded on the books of applicant) above estimated cost.

* * * * *

3. Immediately following § 159.2, a new "§ 159.2a "Annual charges" is inserted which reads as follows:

§ 159.2a Annual charges.

Reasonable annual charges will be assessed by the Commission against natural gas companies to reimburse the United States for costs of administration of the Natural Gas Act, as hereinafter provided:

(a) A determination shall be made for each fiscal year of the costs of administration of the Commission's natural gas pipeline programs from which shall be deducted the amounts received during the same period pursuant to the provisions of §§ 159.1 and 159.2. The difference shall constitute the adjusted costs of administration of such programs for such period.

(1) The adjusted costs of administration determined under this paragraph (a) shall be assessed against each Class A and Class B natural gas company in the proportion that the total jurisdictional gas deliveries of such natural gas company in the calendar year terminating in such fiscal period bear to the sum of the jurisdictional gas deliveries of all Class A and Class B natural gas companies for the like period.

(b) In addition to the annual charges prescribed in paragraph (a) of this section, each natural gas company required to file an Annual Report—Total Gas Supply on FPC Form No. 15 shall be assessed one-tenth ($\frac{1}{10}$) of a mill for each Mcf of new reserves certificated during the year covered by said report as shown for item 14 of such form.

(c) Annual charges assessed under this section shall be paid within 60 days of the rendition of a bill therefor by the Commission.

4. In "§ 159.3 Miscellaneous", paragraph (a) is revised to read as follows:

§ 159.3 Miscellaneous.

(a) *Method of payment.* Annual assessments and fee payments shall be made by check or money order payable to the Treasurer of the United States. No fees will be refunded.

* * * * *

(D) The amendments herein adopted shall become effective July 1, 1971, except that annual assessments required to be paid under §§ 36.1(a) and 159.2a(a) of these regulations shall first be assessed for the calendar year terminating in the fiscal year of the Commission ending June 30, 1972.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.[6]

[SEAL] KENNETH F. PLUMB, *Acting Secretary.*

[FR Doc.71-4045 Filed 3-24-71;8:46 am]

[Docket No. R-393; Order 428]

BLANKET CERTIFICATE PROCEDURE FOR SMALL PRODUCER SALES AND RELIEF FROM DETAILED FILING REQUIREMENTS

MARCH 18, 1971.

The Commission on July 23, 1970 issued a notice of proposed rulemaking in this proceeding (35 F.R. 12220, July 30, 1970) proposing prospectively to exempt from regulation under the Natural Gas Act all existing and all future jurisdictional sales made by small producers as defined therein. The proposal did not cover either percentage sales made by small producers pursuant to percentage sales contracts or sales to interstate pipeline companies by their affiliates.

In response to the notice comments were filed by 73 parties, including producers, pipeline and distribution companies, associations representing producer and distributor interests, and the California and New York State Commissions. A conference was also held in this case on December 8, 1970. The small producers support the exemption as originally proposed, while the large producers either oppose such exemption or question its advisability. Pipeline and distribution companies are divided on the issue, wth one expressing outright opposition and some of the others suggesting extensive modifications. The American Public Gas Association and the California and New York State Commissions also oppose the proposal.

The small producers argue that traditionally they have been very aggressive in searching for new gas reserves but that such activity has been greatly curtailed in recent years, largely because of restrictive regulation. They further state that their drilling efforts often prove or disprove the presence of gas bearing

[6] Commissioner Carver concurring in part and dissenting in part filed a separate statement which is filed as part of the original document.

structures, and that the information gained is useful to all producers, large and small, in their search for new gas supplies. Because of uncertainties in regulated prices, they claim that discontinuation of regulation, rather than higher ceiling prices alone, is necessary to provide the incentive required to encourage a substantial increase in exploratory drilling.

Opponents of the proposed exemption, on the other hand, contend that the proposal will lead to higher natural gas prices for small producer sales resulting ultimately in higher consumer rates. They also disagree with the view that the impact on the consumer will be minimal. In addition, they question the Commission's authority to exempt small producers.

We disagree with the argument that the provisions of sections 4, 5, and 7 of the Act, which speak in terms of all sales in interstate commerce for resale by any natural gas company, are mandatory and leave no room for administrative judgment and discretion. Mr. Justice Clark, speaking for the Court in F.P.C. v. Hunt, 376 U.S. 515 (1964) recommended that the Commission consider procedures for the exemption of small producers. And, in Permian Basin Area Rate Cases, 390 U.S. 747 (1968), the Court, while recognizing that the language of sections 5 and 7 is without exception or qualification, noted the power of the Commission under section 16, for purposes of its rules and regulations, to "classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters."

One of the important Commission responsibilities under the Natural Gas Act is to assure maintenance of an adequate gas supply for the interstate market. By our action herein, we are taking an important step forward to meet this responsibility. Upon review of the contentions made by the various parties, we have decided that both existing and future sales of small producers shall be regulated in the manner hereinafter provided.

Such action should encourage small producers to increase their exploratory efforts which are so important to the discovery of new sources of gas. Our purpose in taking action here is not to increase contract prices, but to facilitate the entry of the small producer into the interstate market and to stimulate competition among producers to sell gas in interstate commerce. We seek to assure the small producer that when he enters into a new contract for the interstate sale of gas, the provisions of his contract will not be subject to change. We also want to relieve the small producer of the expenses and burdens relating to regulatory matters. Our action should also ease the administrative burdens connected with processing small producer filings.

We have reviewed the impact of our action on 96 pipelines that purchase gas, based on 1969 statistics in Forms 2 and 2–A. This shows, for example, that Kansas-Nebraska's purchases from small producers amount to 21.63 percent of its total gas supply including purchases from all producers, pipelines and its own production. Comparable percentages for many of the small gather-type pipelines were quite high. However, many of the major pipelines show less than 10 percent. Others show no purchases at all from small producers. The overall weighted average for the 96 companies was 7.54 percent (or 10.52 percent after eliminating all pipeline to pipeline sales).[1]

The action taken here in our view does not constitute deregulation of sales by small producers. We will continue to regulate such sales but will do so at the pipeline level by reviewing the purchased gas costs of each pipeline with respect to small producer sales. We shall also provide certain other safeguards against unreasonably high small producer prices, as hereinafter discussed, to assure adequate protection for the consumer.

We are concerned that favored nation, price redetermination and spiral escalation provisions in small producer contracts may have an adverse impact on consumers. The filing of contracts containing such clauses executed on or after April 2, 1962, has previously been proscribed by the Commission as contrary to the public interest.[2] There is, of course, no objection to the use of these provisions to the extent the resulting rate does not exceed the applicable area just and reasonable rate ceiling, as provided in our Permian opinion, 34 FPC 159, 236, or, where none is available, the applicable area guideline initial rate ceiling. But these provisions should not be permitted to increase the contract price above such level. To do otherwise would clearly be contrary to the public interest. Consequently, this order will limit the use of these indefinite price escalation provisions by small producers.

The New York Commission contends that the proposed exemption may open the way for large producers to sell their gas in interstate commerce free from Commission regulation by selling their reserves in place to small producers, who would in turn resell the reserves under a conventional (exempt) sales contract to an interstate pipeline. To forestall this possibility, we shall provide that the exemption authorized here for small producers shall not apply to jurisdictional sales made by them where the gas reserves relating thereto were acquired by the purchase of developed reserves in place from a large producer. In such circumstances the small producer will be required to obtain separate certificate authorization.

Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Tennessee), in its comments inquired as to whether a pipeline will be assured of recouping its cost of purchased gas if it pays the "going" field price to a small producer. Any question as to the propriety of the price paid by a pipeline to a small producer will be subject to review in certificate and rate cases involving that pipeline to make sure it is justified. The Commission has ample authority to inquire in these cases into the reasonableness of all items of operating expense, including the cost of purchased gas, and to disallow items of cost which are imprudent. We shall also require pipeline purchasers to file, within 60 days of the execution thereof, every new contract or contract amendment for the purchase of natural gas from a small producer whose sale is regulated by the terms of this order.

The exemption proposed in the July 23 notice was applicable, inter alia, to sales made by a small producer to a large producer, but not to the resale of such gas by the large producer. A number of large producers argue that if sales by small producers to them are regulated by this order, there is no justification for not also applying consistent treatment to the resale of such gas. They warn that if large producers in these circumstances are not exempt they will be forced to sell gas purchased from small producers under new contracts intrastate commerce in the future or to forego such small producers' supplies, thus limiting the usefulness of their existing gathered and plant facilities. They also point out that if these small producer sales are made directly to an interstate pipeline purchaser under new contracts, it will be necessary for the purchaser to construct new facilities to take such gas which would duplicate existing facilities of large producers. With regard to existing sales, they claim that it would be discriminatory to prevent large producers from increasing their resale rates to account for higher rates paid to small producers.

We think it important to encourage large producers to continue to utilize their existing facilities for the resale in interstate commerce of gas purchased from small producers. For this reason we shall permit large producers with respect to the resale of gas sold to them by small producers pursuant to the subject exemption to file rate increases authorized by contract, thus permitting them to maintain the contract price differential between their purchase and resale prices. These filings shall be accepted, without refund obligation, as long as the price differential is consistent with prevailing price differentials in the area and as long as the small producer prices for new gas are not unreasonably high, considering appropriate comparisons with highest contract prices for by large producers or the prevailing market price for intrastate sales in the same producing area. We shall require large producer purchasers, like pipeline purchasers, to file any new contracts or contract amendments with small producers.

Some of the large producers contend that royalty interests should be excluded specifically from any exemption granted

[1] These statistics do not include resales to pipelines by large producers of gas purchased from small producers.

[2] Order No. 242, 27 FPC 339; F.P.C. v Texaco Inc., 377 U.S. 33.

to small producers.[3] We disagree. The royalty interests stand in the same shoes as the working interest owners. Consequently, if a royalty interest relates to a small producer sale, such interest shall be exempt, but if it applies to any other sale it will not be exempt.

Consolidated Gas Supply Corp. (Consolidated) urges that small producers be exempt from compliance with section 7(b) with respect to the abandonment of their small producer sales only when they have obtained the written consent of the pipeline purchaser to such abandonment. Consolidated points out that the vast majority of these are routine matters occurring either because of depletion of production or because continuance of the sale is uneconomic, and in these situations the purchaser routinely consents to the abandonment. But, Consolidated claims that in the rare situation where there is a dispute as to whether a small producer sale should be discontinued there should be some Commission procedure available for the resolution of such dispute.

We think it important to retain control over all abandonments of jurisdictional sales. For this reason, small producers shall be required to comply with section 7(b) of the Act with respect to every small producer sale exempted herein.[4] We shall also require purchasers to notify us of the cessation of deliveries by a small producer regulated by the terms of this order within 60 days of such cessation.

Austral Oil Co., Inc. (Austral), suggests that the definition of "affiliated producers" be clarified to make it clear that such term does not include small producers who have participated in joint ventures, nominee agreements and similar contractual arrangements in order to spread the risk of exploration and development and for operating convenience, unless such agreements otherwise establish the power to direct or cause the direction of the management policy of a person. The suggestion is a good one and we shall adopt it.

Tennessee has raised a question as to the applicability of the small producer exemption to a sale by a nonsignatory small producer under a large producer's rate schedule. The exemption is applicable to such sale by a small producer.

The Commission proposed in the July 23 notice to waive the provisions of § 154.63 of the Commission's regulations to permit the tracking by pipeline purchasers of rate increases resulting from the exemption of small producers in those situations where a purchaser did not otherwise have the right to make a tracking filing. Consolidated claims that the collection of a tracking increase by a pipeline should not be subject to reduction and refund, as provided in the July 23 notice, inasmuch as the small producers will have no potential refund obligation with respect to their increased rates.

Small producers will have no refund obligations with respect to increased rates, if any, collected for sales regulated hereunder to pipelines, and, as a result, pipelines will receive no refunds from small producers to flow through. However, the pipeline's rates will be subject to reduction and refund, with respect to new small producer sales, but only as to that part of the rate which is unreasonably high considering appropriate comparisons with highest contract prices for sales by large producers or the prevailing market price for intrastate sales in the same producing area. Tracking increases to the extent they reflect small producer prices for new sales above the standard set forth above may be suspended, and if so, will be collected subject to reduction and refund. The issue will be resolved either in (1) a pipeline rate case or (2) a proceeding involving only the tracking increase. Pipelines must state the grounds for claiming that the rate at which gas is purchased from a small producer is required by the present or future public convenience and necessity. The Commission shall consider all relevant factors. See Permian Basin Area Rate Cases, 390 U.S. 747 (1968); Austral Oil Co. v. F.P.C., —— F. 2d —— (Fifth Circuit 1970, slip opinion dated March 19, 1970, No. 27492, et al.) In this manner the market mechanism in the light of regulation of pipeline rates will be protective of consumer interests.

Sales from small producers to large producers will likewise carry no refund obligations. However, if the resales by large producers to pipelines reflect new small producer sales at prices in excess of the previously discussed standard, the large producers' rates will be subject to suspension and refund.

Accordingly, the provisions of § 154.63 are hereby waived to permit pipeline purchasers or pipelines purchasing from such pipeline purchasers to file rate increase applications to track small producer rate increases resulting from the exemption of small producers pursuant to the provisions of this order: *Provided*, That pipelines filing such an adjustment submit supporting schedules showing the computation and provided further that such filing may be made only if the small producer rate increases, or such increases together with other increases authorized for tracking by applicable Commission rules or orders, affect the pipelines average cost of purchased gas by 1 mill or more. The Commission reserves the right to require a pipeline to file all information required by § 154.63 if it deems such information to be necessary.

Many of the small producers urge us to relieve them of any potential refund obligations they have under increased rates collected in section 4(e) rate suspension proceedings or under initial rates collected under temporary certificates issued pursuant to section 7. These matters more properly should be disposed of in appropriate area proceedings after the refund obligations are determined.

In view of the foregoing, we shall revise § 157.40 so as to establish a blanket certificate procedure for small producers, applicable to all small producer sales made nationwide under existing and future contracts.[5] Small producers under this procedure shall be relieved of all filing requirements under the Natural Gas Act and the Commission's regulations, except for the annual statement required by § 154.104 of the regulations and except for compliance with the abandonment provisions of section 7(b) of the Act. By subsequent order we shall amend § 250.11 to provide for a revised annual statement to be filed by small producers regulated hereunder commencing in 1972.

Producers who have received small producer certificates prior to the issuance of this order, or who have applied and qualify but have not yet received such a certificate, will not be required to file new applications seeking exemption, unless otherwise directed. Commission orders relating to those small producers who have applied and qualify for a certificate will be issued without any further action on the part of the producers involved. Such certificates, regardless of the date of issuance, will be effective as of 45 days from the date of issuance of this order. Similarly, all of those small producers who file applications for a blanket certificate within 45 days from the date of issuance of this order and who are entitled to coverage thereunder will also receive certificates which will be effective as of 45 days from the date of issuance of this order, regardless of the date of issuance of such certificate. With regard to those producers who have small producer certificates, the existing certificates, without further order of the Commission, shall be deemed to cover, as of 45 days from the issuance of this order, all small producer sales of those producers which are exempt under the provisions of this order. The 45-day period will give the pipeline purchasers and their distribution customers time to track any increases resulting from this action.

We intend to review the prices established in new contracts or contract amendments relating to sales by small producers to assure the reasonableness of the rates charged by such producers pursuant to the action we are taking herein. In the event we determine that

[3] The question of this Commission's jurisdiction over royalty interests is now pending before the United State Court of Appeals for the District of Columbia in Mobil Oil Corporation, et al. v. F.P.C., Nos. 23463, et al.

[4] If a contract for an exempted sale of gas expires and is not extended or replaced by a new contract, the small producer must continue the sale of such gas unless the pipeline consents to abandonment or the producer obtains abandonment authorization. Moreover, in such circumstances the small producer is not entitled to collect any rate in excess of the highest rate permitted under the expired contract for the sale of such gas unless it files a notice of change in rate in accordance with section 4(d) of the Act.

[5] Notwithstanding the provisions of this order, a small producer may file for the minimum rate authorized by the Commission for any area.

this approach is inimical to the interests of consumers, we shall take further action to protect the consumers.

The Commission finds:

(1) The notice and opportunity to participate in this rule-making proceeding through the submission, in writing, of data, views, comments and suggestions are in accordance with all procedural requirements therefor as prescribed in section 553, title 5 of the United States Code.

(2) The action taken herein is necessary and appropriate for the administration of the Natural Gas Act.

(3) Since the modifications adopted herein to the amendments proposed in the notice of this proceeding are consistent with the prime purpose of the proposed rule-making herein, further notice thereof is unnecessary.

The Commission, acting pursuant to the provisions of the Natural Gas Act, particularly sections 4, 5, 7, and 16 thereof (52 Stat. 822, 823, 824, 825, and 830; 56 Stat. 83, 84; 61 Stat. 459; 76 Stat. 72, 15 U.S.C. 717c, 717d, 717f, and 717o, orders:

(A) Parts 154 and 157 of Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations, are amended as follows:

SUBCHAPTER E—REGULATIONS UNDER NATURAL GAS ACT

PART 154—RATE SCHEDULES AND TARIFFS

1. Part 154 is amended by revising paragraph (f) of §§ 154.91, 154.104, and 154.110 to read:

§ 154.91 Applicability.

* * * * *

(f) *Filings by certain nonsignatories*. Where the operator and the signatory coowners in a particular sale are exempt with respect to such sale pursuant to § 157.40, and where any nonsignatory coowner's interests are not covered by such exemption, such coowner may file rate schedules, rate changes, or certificate applications with respect to such interests notwithstanding the provisions of paragraph (d) of this section.

* * * * *

§ 154.104 Annual statements by small producers.

Annual statements certifying to the matters enumerated in the form set out in § 250.11 of this chapter shall be filed by all producers, either individually or by groups, who have been exempted under the provisions of § 157.40. The statements shall be submitted by April 1 of each year for the preceding calendar year.

§ 154.110 Applicability of §§ 154.92 through 154.102.

Sections 154.92 through 154.102 shall apply only to those persons specified in § 154.91 and shall not apply to small producer sales which are exempted under § 157.40 of this chapter.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

2. Part 157 is amended by revising § 157.40 to read:

§ 157.40 Exemption of small producers from certain filing requirements.

(a) *Definitions*. (1) A "Small Producer" is an independent producer of natural gas as defined in § 154.91 of this chapter, who is not affiliated with a natural gas pipeline company and whose total jurisdictional sales on a nationwide basis, together with such sales of "affiliated producers" are not in excess of 10,000,000 Mcf at 14.65 p.s.i.a. during any calendar year. As used in this section, the term "jurisdictional sales" includes volumes of gas paid for but not taken under prepayment clauses or otherwise, and volumes of gas sold under other independent producer rate schedules in the proportion that the independent producers seeking to come within this section has an interest in such sales, but does not include sales made pursuant to percentage sales contracts.

(2) "Affiliated producers" are persons who, directly or indirectly, control, or are controlled by, or are under common control with, the applicant producer. Such control exists if the producer has the power to direct or cause the direction of, or as a matter of actual practice does direct, the management and policies of another producer, whether such power is exercised alone or through one or more intermediary companies, or pursuant to an agreement, and whether such power or practice is established through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, associated companies, relationship of blood or marriage, or any other direct or indirect means. For the further purposes of this section, the term "agreement" shall not include any agreement for the operation of a natural gas producing property or a plant processing natural gas or any joint venture, partnership, nominee, or other type of agreement pertaining to the joint exploration for and development and operation of oil and gas properties, unless such agreement otherwise establishes the power of one producer to direct or cause the direction of the management and policy of another producer.

(3) "Small producer sales" are (i) sales by a small producer of his own interests under his own contracts; (ii) sales of all interests under a small producer's contract if producers not qualifying as small producers have interests which in the aggregate are no greater than 12½ percent; and (iii) sales of a small producer's interests under another producer's contract.

(b) *Procedure for securing blanket small producer certificate*. (1) Small producers may apply for a blanket certificate to cover all existing and all future jurisdictional sales that do not raise the producer's total jurisdictional sales on a nationwide basis above 10,000,000 Mcf during any calendar year. Applications by these producers shall include the following information: (i) Total jurisdictional sales on a nationwide basis for the year preceding the application; (ii) a list of outstanding certificates and rate schedules together with names and percentage of interest of other interest owners under such rate schedules; (iii) a list of outstanding rate schedules of others in which applicant owns an interest together with applicant's percentage of interest; and (iv) the names of all owners (stockholders, partners, joint venturers, etc.) of the applicant with an interest of 10 percent or more, their percentage of ownership in the applicant and in any other natural gas company, and any positions such owners may hold with another natural gas company.

(2) An applicant for a blanket certificate who has no outstanding certificate issued by, or rate schedule filed with, this Commission for the sale of natural gas shall include the following information in his application:

(i) A list of all contracts to sell natural gas in interstate commerce,

(ii) Source of production, total rate and the annual volume delivery obligations of the producer under each such contract, together with names and percentage of interest of other interest owners under each such contract, and

(iii) A list of owners of the applicant with an interest of 10 percent or more, their percentage of ownership in the applicant and in any other natural gas company and any position such owners may hold with another natural gas company.

(3) The application shall contain the information required by the form set out in § 250.10 of this chapter. A conformed copy shall be served upon each of the applicant's purchasers.

(c) *Exemption under blanket certificate*. Small producers certificated hereunder shall be authorized to make small producer sales nationwide pursuant to existing and future contracts at the price specified in each such contract. However, no small producer shall be relieved from compliance with section 7(b) of the Natural Gas Act with respect to any small producer sale exempted hereunder. The exemption authorized herein shall not apply to any jurisdictional sale made by a small producer where the gas reserves relating thereto were acquired by the purchase of developed reserves in place from a large producer.

(d) *Duration of the exemption*. The exemption authorized hereunder shall remain in effect for each small producer until the Commission on its own motion or on application terminates such certificate because the producer no longer qualifies as a small producer or fails to comply with the terms of the exemption. Upon such termination the producer will be required to file separate certificate applications and individual rate schedules for future sales but the exemption will still be effective as to those made under contracts dated prior to such termination.

(e) *Limitation on contractual provisions.* No Small Producer granted exemption under paragraph (c) of this section shall charge or collect any rate for a small producer sale of natural gas in excess of the applicable area just and reasonable base rate ceiling, or, where none is available, the applicable area guideline initial rate ceiling, where the contractual right to such rate is based upon any contractual provision which would not be permitted by paragraphs (a), (b), (b-1), and (c) of § 154.93 of this chapter. For the purposes of this limitation, it shall make no difference whether the contract was executed prior to or subsequent to April 3, 1962.

(f) *Filings by large producers with respect to related resales.* A large producer may file for the price specified in its related contract for the resale of any natural gas sold to it by a small producer pursuant to the exemption authorized hereunder. Any such rate filing shall be accepted if the price differential between the purchase and resale prices does not exceed the prevailing price differential in the area, and if the small producer prices for new gas are not unreasonably high, considering appropriate comparisons with highest contract prices for sales by large producers or the prevailing market price for intrastate sales in the same producing area.

(g) *Filing of contracts and notification of abandonment.* Pipeline purchasers and large producer purchasers shall file, within 60 days of the execution thereof, each new contract and each contract amendment dated on or after March 18, 1971, for the sale of natural gas to them by a small producer pursuant to the exemption authorized hereunder and shall notify this Commission of the cessation of deliveries made by a small producer pursuant to the exemption authorized hereunder within 60 days of such cessation.

SUBCHAPTER G—APPROVED FORMS, NATURAL GAS ACT

PART 250—FORMS

(B) Part 250 of Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations is amended by revising § 250.10 as follows:

The title of § 250.10 is revised to read:

§ 250.10 Application for small producer exemption.

* * * * *

The text of § 250.10 is revised by substituting therefor the form entitled "Application for Small Producer Exemption" as set out in Attachment A hereto.[6]

[6] Attachment A filed as part of the original document.

(C) The Secretary of the Commission shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

(D) The amendments adopted herein shall be effective 45 days from the date of issuance of this order.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Acting Secretary.*

[FR Doc.71-4044 Filed 3-24-71;8:46 am]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

Triamcinolone

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (12-392V) filed by American Cyanamid Co. proposing revised labeling regarding the use of triamcinolone injection for use in dogs and cats. The supplemental application is approved.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512 (i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135b is amended by adding the following new section:

§ 135b.29 Triamcinolone injection veterinary.

(a) *Chemical name.* 9-Flouro-11β,16α, 17,21 - tetrahydroxypregna - 1,4 - diene-3,20-dione.

(b) *Specifications.* Each cubic centimeter of triamcinolone injection veterinary contains: 2.5 milligrams of triamcinolone and 10 milligrams of procaine hydrochloride with 0.1 percent of sodium bisulfite and 84.4 percent of polyethylene glycol 400.

(c) *Sponsor.* American Cyanamid Co., Post Office Box 400, Princeton, N.J. 08540.

(d) *Conditions of use.* (1) The drug is indicated for use in dogs and cats for its anti-inflammatory activity.

(2) (i) In dogs, the drug may be given by intramuscular or subcutaneous injection at 0.625 milligram for each 10 pounds of body weight, and if only one or two injections are anticipated, the dosage may be doubled. It may also be given to dogs by intra-articular administration at from 0.625 milligram to 1.25 milligrams per dose. Repeat dosage as indicated.

(ii) In cats, the drug may be given by intramuscular or subcutaneous injection at 0.625 milligram for each 10 pounds of body weight. It may also be given by intra-articular administration at from 0.31 milligram to 0.625 milligram per dose. Repeat dosage as indicated.

(iii) Since requirements vary with the individual animal, recommended dosage is approximate and must be adjusted to the response of the individual animal. Generally, initial dosages are at a higher range. When response is satisfactory, gradually reduce dosage until a minimum dose is obtained. This is particularly important for long-term medication. If additional treatment or a long-term treatment is necessary, triamcinolone tablets may be used as a maintenance dosage.

(3) For use by or on the order of a licensed veterinarian.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: March 9, 1971.

C. D. VAN HOUWELING, *Director, Bureau of Veterinary Medicine.*

[FR Doc.71-4059 Filed 3-24-71;8:47 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Triamcinolone Acetonide Tablets

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (13-624V) filed by E. R. Squibb & Sons, Inc., proposing revised labeling regarding the oral use of triamcinolone acetonide tablets for use in dogs and cats. The supplemental application is approved.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512 (i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135c is amended by adding the following new section:

§ 135c.40 Triamcinolone acetonide tablets.

(a) *Chemical name.* 9-Flouro-11β,16α, 17,21 - tetrahydroxypregna-1,4-diene - 3, 20-dione cyclic 16,17-acetal with acetone.

(b) *Specifications.* Each tablet contains either 0.5 milligram or 1.5 milligrams of the drug.

(c) *Sponsor.* E. R. Squibb & Sons, Inc., Georges Road, New Brunswick, N.J. 08902.

(d) *Conditions of use.* (1) The drug is indicated for use in dogs and cats for its anti-inflammatory activity.

(2) An initial daily dosage of 0.05 milligram per pound of body weight is usually sufficient to control symptoms, although up to 0.1 milligram per pound of body weight may be given daily if response to the smaller dose is inadequate. As soon as feasible, and in any case within 2 weeks, dosage should be reduced gradually to maintenance levels of 0.0125 to 0.025 milligram per pound of body weight per day. Therapy should be discontinued by a gradual reduction in dosage after the condition has been controlled for several days. Therapy may be initiated with a single dose of sterile triamcinolone acetonide suspension veterinary in which case the tablet dosage