

and that the amendment may be effective March 26, 1979.

THE RULE

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 322, *Automatic Market Entry Procedures*, as follows:

Section 322.5 is amended to read:

§ 322.5 Board action.

(a) After receiving an application for an AME certificate, the Board will either issue the certificate applied for, or make a negative determination as specified in section 401(d)(7) of the Act. Except as set forth in paragraph (b) of this section, Board action will be taken not later than 60 days after the date of filing of a waiver under section 322.4 or, if no waiver is filed, the end of the round in which the application is filed.

(b) If, in a proceeding on an AME application, a fundamental and difficult question of first impression is raised about the need for an emergency modification of the AME program (section 401(d)(7)(D) of the Act) and the Board does not have enough information to resolve responsibly the question within the time set forth in paragraph (a) of this section, the Board will instead announce that it is briefly postponing final action on the application. In such a case, the requirement of section 401(d)(7)(A) of the Act that the Board act on the application within 60 days is suspended, and the Board will act on the application as soon as possible, expediting and giving high priority to any proceedings that are necessary in order to resolve the question.

(Sections 204 and 401 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743 and 754, 92 Stat. 1713; 49 U.S.C. 1324 and 1371.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-9641 Filed 3-29-79; 8:45 am]

[6450-01-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION

SUBCHAPTER A—GENERAL RULES

[Docket No. RM79-32; Order No. 24]

PART 1—RULES OF PRACTICE AND PROCEDURE

Procedures for Adjustments of Rules and Orders Issued by the Federal Energy Regulatory Commission Under the NGPA

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to provide, on an interim basis, procedures whereby any person may seek an adjustment from the Commission rules and orders, having the effect of rules, which are issued under the Natural Gas Policy Act of 1978. This section also makes certain existing Commission procedures applicable to review of adjustment decisions. Adjustment relief may be granted in the form of an exception, exemption, modification or rescission to a rule or order upon a showing by applicant that relief is necessary to prevent special hardship, inequity or unfair distribution of burdens.

EFFECTIVE DATE: March 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Mary Jane Reynolds (Office of General Counsel), Energy Regulatory Commission, 825 N. Capitol St. NE., Room 8000, Washington, D.C. 20426, (202) 275-4283.

In the matter of procedures for adjustments of rules and orders issued by the Federal Energy Regulatory Commission under the NGPA. Interim regulation issued March 22, 1979.

BACKGROUND

The Natural Gas Policy Act (NGPA) mandates a new legislative framework for many facets of the natural gas industry. The law affects sales, transmission and distribution of natural gas. A primary effect of the new statute is to replace case-by-case adjudication of these various aspects of the Natural Gas Act with general rules applicable to the entire industry. Section 502(c) requires the Federal Energy Regulatory Commission (Commission) to provide procedures for obtaining adjustments to these rules and orders implementing the NGPA. Section 502(c) requires the Commission to adopt procedural rules under which any person may seek an "adjustment"—exception, exemption, modification or rescission*—of rules and orders, which have

*Section 502(c) also requires procedures for seeking interpretations of Commission rules and orders.

the applicability and effect of rules, and which are issued under the NGPA. Adjustments are to be granted to prevent special hardship, inequity or unfair distribution of burdens. Section 502(c) also requires procedures whereby any person aggrieved or adversely affected by the denial of a request for adjustment may seek the Commission review. The rules promulgated must establish procedures which include "an opportunity for oral presentation of data, views, and arguments."

It is difficult for the Commission to predict, at this time, the number of adjustments which may be requested. It is equally difficult to determine, in the absence of any experience under this new statute, the scope and nature of the effect that an adjustment may have. The proposed regulation establishes an abbreviated "paper pleading" procedure by which the problems can be presented to and resolved by the Commission Staff. Staff will have authority to deny requests for adjustment. However, where Staff proposes to grant relief, in whole or in part, the Commission will have 30 days from the date of the Staff determination to set the matter for Commission review.

The interim regulation promulgated herein provides for administrative review of all initial adjustment decisions. The Commission is required by section 502(c) to review denials of adjustment requests and is exercising its discretionary authority to review grants of adjustment. Section 502(c) clearly requires the Commission to establish procedures for review of denials of requests for adjustments. "If any person is aggrieved or adversely affected by the denial of a request for adjustment under the preceding sentence, such person may request review of such denial. . . ." We note that our regulations implementing our authority under section 504(b) of the Department of Energy Organization Act, 42 U.S.C. 7194(b) (DOE Act), which contains similar review language to that used here, provide for the Commission to review only denials by the Secretary of Energy (Secretary) of adjustment requests. The Commission's jurisdiction to review adjustments under section 504(b) of the DOE Act concerns specific appellate review of decisions of another agency. The Commission has no statutory authority to expand its review jurisdiction under the DOE Act to include decisions by the Secretary which grant adjustments.

However, the Commission's authority under the NGPA is broader. Section 502(c) gives the Commission original jurisdiction to grant adjustments from its own rules and orders under the NGPA. This necessarily includes authority to provide internal procedures

SUMMARY OF THE REGULATION

for the effective exercise of this jurisdiction. Specifically, section 501(a) of the NGPA authorizes the Commission to prescribe rules "... as it may find necessary or appropriate to carry out its functions under [the NGPA]." Therefore, unlike its authority under the DOE Act, the Commission's authority under the NGPA extends to review of both grants and denials of adjustments.

The Commission is exercising its authority to review grants of adjustments under the NGPA because it recognizes that the impact of adjustment relief could be very broad, in view of the complexity of the new regulatory scheme and in view of the fact that many persons not previously subject to Commission jurisdiction under the Natural Gas Act will be directly or indirectly affected by Commission action under the NGPA. At least until there is more experience with the impact of the NGPA, the Commission believes it may be beneficial to undertake the review of grants of adjustments, in spite of the administrative burden that such review will impose upon Commission resources. Accordingly, the Commission finds it necessary and appropriate to review, on an interim basis, grants of adjustments under the NGPA.

In sum, to carry out our original responsibilities under section 502(c), we are providing that initial decisions by Staff are, on application of a person aggrieved by a denial of an adjustment application, subject to review by the Commission. The Commission is exercising its discretionary authority under section 501 to permit a person aggrieved by a grant of an adjustment application to obtain Commission review of the grant. (As discussed below, persons who may seek Commission review must have participated, or have sought and been denied an opportunity to participate, in the initial proceeding.) In addition, the rule permits the Commission, in its discretion, to review a grant of an adjustment application even if it is uncontested.

Any person who participates in the review proceeding may request a hearing on review. Although the Commission has not determined that the statute grants intervenors the right to a hearing, the review procedures provide that right. The Commission believes, consistent with the previous discussion concerning review of grants of adjustments and the abbreviated nature of the paper pleading procedure for initial decisions on adjustments, that for the present time, providing intervenors with the right to request a hearing will further enhance the ability of all persons involved in the proceeding to fully develop the record for decision-making purposes.

The new procedures for adjustments under the NGPA are set forth in a new § 1.41. Paragraph (a) makes clear that the procedures apply to adjustments from rules as well as from orders having the effect of rules. The procedures do not apply to orders issued under sections 301, 302 or 303 of the NGPA and do not apply to determinations of just and reasonable rates as provided for in sections 104, 106 and 109 of the NGPA. Certain of the existing Commission procedural regulations apply to adjustment proceedings. Therefore, paragraph (a)(2)(i) provides that the existing Commission regulations concerning the form of pleadings, dates for filing, service requirements and other similar provisions apply to these adjustment regulations. Since a proceeding under the interim rule is to be conducted almost exclusively by Staff, all references to "Commission" in the existing rules made applicable to this rule under paragraph (a)(2)(i), except § 1.14, mean "Staff" for purposes of this rule.

An adjustment proceeding is, generally, exclusively a paper proceeding. Staff does not participate in the proceeding as a party. Staff's only role is that of decision maker. For purposes of the initial application for adjustment "Staff" means the Director of the Office of Pipeline and Producer Regulation (OPPR) or his designate. See paragraph (b)(7). Therefore, it is anticipated that the initial applications for adjustment will be processed and decided by OPR. However, if it is determined that an adjustment should be granted, the Commission has 30 days to initiate Commission review of Staff's order.

Paragraph (c) provides that an adjustment proceeding is commenced by filing an application for adjustment. Any person who believes he or she will experience special hardship, inequity or unfair distribution of burdens because of an NGPA rule or order issued by the Commission may file a request for adjustment.

Paragraph (d) sets forth the requirements for content and service of the initial application. The application must contain: (1) a complete statement of all relevant facts, including all documentary support pertaining to the circumstances, act or transaction that is the subject of the application; (2) a statement of the business reasons why the relief should be granted and the business consequences that will result if the relief is denied; and (3) a statement specifying how the denial of relief will cause the applicant to suffer special hardship, inequity or unfair distribution of burdens. The application must also set forth the legal basis for the relief and the precise nature of the relief sought. The applicant must

serve a copy of the application (or a copy with confidential information deleted) on each person whom the applicant can reasonably ascertain will sustain a direct and measurable economic impact if the adjustment relief is granted. The applicant must file with its application a certificate of service indicating the names and addresses of all persons served. Staff may require the applicant to make additional service. The application must also contain a short summary of the relief requested which will be published in the FEDERAL REGISTER.

Paragraph (e) establishes the rules for intervention. The mere fact that a person has been served with the application will not automatically make such person a party to the proceeding. Rather, all persons who wish to participate in the proceeding must file a petition to intervene. The standards for intervention are those set forth in § 1.8 of the Commission's Rules of Practice and Procedure.

Once Staff has granted a petition to intervene, the intervenor has 15 days to file a response to the application. The applicant is entitled to file a rebuttal within 15 days of service of the filing by the intervenor.

Generally, these filings—the initial application, the intervenor's response and the applicant's rebuttal—will comprise the record which Staff evaluates under paragraph (g) to decide a request for adjustment. Staff may obtain additional information if the applicant files amended pleadings (paragraph (f)) or if Staff requests additional information or conducts an investigation as permitted under paragraph (g)(2).

Paragraph (h) codifies the statutory criteria for granting adjustment relief: special hardship, inequity and unfair distribution of burdens. The applicant has the burden of establishing the need for relief and should the applicant fail to submit sufficient evidence, Staff may dismiss the application without prejudice. If so, the applicant may refile for the same relief at a later date. However, if Staff has requested additional material information and the applicant has failed to supply the information, the application may be denied.

The provisions concerning the order deciding the initial application for adjustment are found in paragraph (i). As stated previously, Staff makes the initial decision on adjustments. It is reduced to a written order, articulating the basis for the decision and noting any dispute with the factual assertions of the applicant. If Staff fails to issue an order rendering a decision on an application for adjustment within 150 days of the filing of the application, applicant may treat the application as having been denied.

Within 30 days thereafter, it may request review by the Commission in accordance with paragraph (j)(1). An order issued by Staff which grants an adjustment is effective 30 days after it is issued unless: (1) a petition for review is filed in accordance with paragraph (j)(1); or (2) the Commission directs that the order be reviewed in accordance with paragraph (j)(2).

Any person may seek administrative review of the initial decision granting or denying a request for adjustment, if: (1) that person is aggrieved or adversely affected by that decision; and, (2) if that person participated, or sought and was denied the opportunity to participate, in the proceeding under this section. In order to seek judicial review, the administrative appeal must first be taken in accordance with paragraph (j). Under the rule adopted today, the Commission is adapting its existing rules concerning review of denials of adjustments of the Secretary, codified at 18 CFR § 1.40, to apply to requests by aggrieved parties for review of initial adjustment decisions under the NGPA. Thus, for purposes of NGPA adjustments, the provisions of 18 CFR § 1.40, as modified in paragraph (j), apply both to denials and grants of adjustment relief. Staff takes the role of the Secretary with respect to review in § 1.40. Hence, Staff will file the record for the review at the Commission level. In § 1.40, however, the Secretary is an adverse party in all proceedings reviewing denials of adjustments by the Secretary. In contradistinction, Staff has discretion to participate as an adversary in any review of a denial of an NGPA adjustment. Staff may not participate in the proceeding as an adverse party with respect to the review of a grant of adjustment. If the Commission orders the review of a Staff order granting relief under paragraph (i)(3)(iii), but no party petitions for review, the procedure will conform as far as practicable with proceedings under § 1.40. The order directing review shall further specify the manner in which the proceeding is conducted.

As a general proposition, there are no hearings and no discovery in initial adjustment proceedings held by Staff. However, Staff may direct the conference be convened in accordance with the provisions of paragraph (k). In addition, any party to any adjustment proceeding may file a motion requesting an additional procedure or procedural ruling. See paragraph (n). Staff has authority to provide additional procedures and to make rulings on requests for procedural rulings. See paragraph (o).

The Commission recognizes that certain applications for adjustment relief will contain confidential information.

The Commission regulations allow a person whose application contains confidential information to request confidential treatment of such information. The procedures for doing so are set forth in paragraph (l). Any party to the proceeding who wishes to obtain information supplied on the basis of confidentiality may make a request for such information under the Freedom of Information Act.

Paragraph (m) allows the applicant to make a request for interim relief—a stay—pending resolution of the application for adjustment on its merits. Staff may issue interim relief but the Commission may, at any time, on its own motion, revoke, modify, rescind or stay the interim order. It may take any other appropriate action concerning the order granting interim relief. Paragraph (m)(2)(D)(ii).

Paragraph (p) makes clear that all actions taken under this section concerning adjustments are made by Staff and that no appeals may be taken from Staff decisions except for review of grants and denials of adjustments in accordance with paragraph (j). However, as previously discussed, the Commission may, on its own motion, modify, revoke, rescind, stay or otherwise act upon any interim relief issued by Staff. The Commission may also, on its own motion, review any order of Staff granting adjustment relief.

Paragraph (q) is intended to assure that those members of the Staff who make the initial decision for adjustment relief and those who act as counsel or a witness to the review of an adjustment by the Commission shall not advise the Commission in the decision on review under paragraph (j).

EFFECTIVE DATE

These regulations are being issued effective immediately on an interim basis, because the Commission finds that the need to have regulations in place, implementing section 502(c) of the NGPA to apply to any requests for adjustments prior to the issuance of final rules, constitutes good cause to find prior notice and public procedure to be impracticable and to waive publication not less than 30 days prior to the effective date. The Commission requests data, views or arguments with respect to these regulations and will also hold a public hearing. After evaluating the information received, the Commission will make any appropriate revisions to these regulations.

WRITTEN COMMENT PROCEDURES

Interested persons are invited to submit written comments, data, views or arguments with respect to this proposal. An original and 14 copies should be filed with the Secretary of the Commission. All comments received prior to May 22, 1979 will be consid-

ered by the Commission prior to promulgation of final regulations. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, N.E., Washington, D.C., during regular business hours. Comments should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM79-32.

PUBLIC HEARING PROCEDURES

A public hearing concerning this proposal will be held in Washington, D.C. on May 1, 1979, beginning at 9:30 a.m. and will continue if necessary on the following day. Any person interested in this proceeding or representing a group or class of persons interested in this proceeding may make a presentation at the hearing provided a written request to participate is received by the Secretary of the Commission prior to 4:30 p.m., on April 16, 1979.

Requests to participate in the hearing should include a reference to Docket No. RM79-32, as well as a concise summary of the proposed oral presentation and a number where the person making the request may be reached by telephone. Prior to the hearing, each person filing a request to participate will be contacted by the presiding officer or his designee for scheduling purposes. At least five copies of the statement shall be submitted to the Secretary of the Commission prior to 4:00 p.m., on April 27, 1979. The presiding officer is authorized to limit oral presentation at the public hearing both as to length and as to substance. Persons participating in the public hearing should, if possible, bring 10 copies of their testimony to the hearing.

The hearing will not be a judicial or evidentiary-type hearing. There will be no cross-examination of persons presenting statements. However, the panel may question such persons and any interested person may submit questions to the presiding officer to be asked of persons making statements. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. If time permits, at the conclusion of the initial oral statements, persons who have made oral statements will be given the opportunity to make a rebuttal statement. Any further procedural rules will be announced by the presiding officer at the hearing. A transcript of the hearing will be made available at the Commission's Office of Public Information.

(Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350; Department of Energy

Organization Act, Pub. L. 95-91, 91 Stat. 565 et seq., E.O. 12009, 42 FR 46267; Natural Gas Act, as amended, 15 U.S.C. §§ 717 et seq.)

In consideration of the foregoing, Part I, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, is amended as set forth below, effective immediately.

By the Commission.

KENNETH F. PLUMB,
Secretary.

PART 1—RULES OF PRACTICE AND PROCEDURE

1. Part 1, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, is amended in the table of contents by adding in the appropriate numeral order a new section number and heading to read as follows:

* * * * *

§ 1.41 Requests for adjustments under the NGPA.

* * * * *

2. Part 1, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, is amended by adding a new § 1.41, to read as follows:

§ 1.41 Requests for adjustments under the NGPA.

(a) *Applicability.* (1) This section applies to proceedings of the Commission held in accordance with section 502(c) of the NGPA to provide for adjustments of Commission rules and orders issued under the NGPA having the applicability and effect of a rule as defined in 5 U.S.C. § 551(4). It does not apply to orders issued under sections 301, 302, and 303 of the NGPA.

(2)(i) Except as otherwise provided in this section, the following provisions of this part apply to proceedings under this section:

- (A) Section 1.1—The Commission;
- (B) Section 1.2—The Secretary;
- (C) Section 1.3—Notice of public session and proceedings;
- (D) Section 1.4—Appearance and practice before the Commission;
- (E) Section 1.5(b)–(c)—Applications;
- (F) Section 1.8(a)–(c) and (e)–(f)—Intervention;
- (G) Section 1.9(g)—Answers;
- (H) Section 1.11(a) and (d)—Amendments and withdrawal of pleadings;
- (I) Section 1.13—Time, extensions of time, issuance of orders;
- (J) Section 1.14(a)–(b)—Filings; docket;
- (K) Section 1.15—Formal requirements as to pleadings, documents and other papers filed in proceedings;
- (L) Section 1.16—Subscription and verification;
- (M) Section 1.17—Service; and
- (N) Section 1.36—Public information and requests.

(ii) For purposes of this section:

(A) All references in the sections referred to in paragraph (a)(2)(i) of this section to "Commission" mean "Staff" except with respect to filing requirements in § 1.14; and

(B) There are no "hearings" as that term is used in Part 1.

(b) *Definitions.* For purposes of this section:

(1) "Adjustment" means an order issued by Staff under paragraph (i) of this section granting relief from an order or rule issued by the Commission under the NGPA. Adjustments include exceptions, exemptions, modifications and rescissions of rules and order having the effect of a rule as defined in 5 U.S.C. 551(4) and issued under the NGPA. Adjustments exclude requests for just and reasonable rates under sections 104, 106 and 109 of the NGPA;

(2) "Applicant" means a person who files an application for adjustment under paragraph (c) of this section;

(3) "Application" means an application for adjustment filed under paragraph (c) of this section;

(4) "NGPA" means the Natural Gas Policy Act of 1978;

(5) "Party" means, with respect to a particular application for adjustment, the person making the application or an intervenor;

(6) "Person" means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, joint venture, corporation, and state, or any political subdivision, agency or instrumentality, or any charitable, educational or other institution, and includes any officer, director, owner or duly authorized representative thereof;

(7) "Staff" means the Director of the Office of Producer and Pipeline Regulation, or a person who is designated by the Director and who is an employee of the Commission.

(c) *Commencement of proceeding.* A person shall commence a proceeding for an adjustment by filing an application for adjustment with the Commission.

(d) *Initial application.* (1) *Content.* (i) The application shall contain: (A) A full and complete statement of all relevant facts, including all documentary support pertaining to the circumstances, act or transaction that is the subject of the application; (B) A complete statement of the business reasons why the relief should be granted and the business consequences that will result if the relief is denied; and, (C) A statement specifying how the denial of relief will cause the applicant to suffer special hardship, inequity or unfair distribution of burdens.

(ii) The application shall contain a complete statement of the legal basis of the relief requested including cita-

tions to authorities relied upon to support the application.

(iii) The application shall specify the exact nature of the relief sought.

(iv) The certificate of service required under § 1.7 shall indicate the names and addresses of all persons served.

(v) The application shall include a proposed notice of the adjustment proceeding which shall state the applicant's name, the rule or order under the NGPA of which an adjustment is sought, the date of the application, and a brief summary of the relief requested. The proposed notice shall be in the following form:

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

(Name of Applicant) _____
Docket No. _____

NOTICE OF APPLICATION FOR ADJUSTMENT

On (date application was filed), (name of applicant) filed with the Federal Energy Regulatory Commission an application for an adjustment under (the rule or order under the NGPA of which an adjustment is sought), wherein (name of applicant) sought (relief requested).

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24 issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed within 15 days after publication of this notice in the FEDERAL REGISTER.

(2) *Service.* (i) The applicant shall serve a copy of the application, or a copy from which confidential information has been deleted in accordance with paragraph (1) of this section, on each person who is reasonably ascertainable by the applicant as a person who may suffer direct and measurable economic impact if the relief is granted.

(ii) Notwithstanding the provisions of paragraph (d)(2)(i) of this section, if an applicant determines that compliance with paragraph (d)(2)(i) of this section would be impracticable, the applicant shall:

(A) Comply with the requirements of paragraph (d)(2)(i) of this section with regard to those persons whom it is reasonable and practicable to serve; and

(B) Include with the application a description of the persons or class or classes of persons to whom notice was not sent.

(iii) Staff may require the applicant to provide alternate or additional service and shall cause notice of the application to be published in the FEDERAL REGISTER.

(e) *Intervention.* A petition to intervene under § 1.8 must be filed within 15 days after service of the applica-

tion. If a person is not served with the application, a petition to intervene under § 1.8 must be filed within 15 days after publication in the FEDERAL REGISTER of notice of the application.

(f) *Other filings.* (1) *Intervenors.* Responses to the application may be filed within 15 days after the date the petition to intervene has been granted.

(2) *Applicant.* The applicant may respond to filings of another party within 15 days after service of such filings. Amended pleadings may be filed under § 1.11 if the applicant discovers facts unavailable at the time the initial application was filed, or, if such pleadings are requested or permitted by Staff under paragraph (g) of this section.

(g) *Evaluation.* (1) Staff shall consider all filings made in connection with the application for adjustment. Staff may also consider information received under paragraph (g)(2) of this section. If Staff obtains information under paragraph (g)(2)(i) or (iii) of this section and relies upon such information, the applicant shall be advised of such information and shall be given 15 days to respond to such information.

(2) (i) Staff may initiate an investigation of any statement in an application and use in its evaluation any relevant fact obtained in such an investigation.

(ii) Staff may request additional information from the applicant.

(iii) Staff may solicit and accept submissions from intervenors or third persons relevant to the application.

(iv) Staff may consider information obtained in informal conferences held under paragraph (k) of this section.

(h) *Criteria.* (1) Staff shall grant an application where there are sufficient facts to make a determination on the merits and where Staff determines that an adjustment is necessary to prevent or alleviate:

- (i) Special hardship;
- (ii) Inequity; or
- (iii) An unfair distribution of burdens.

(2) Where there are not sufficient facts to make a determination on the merits, the Staff may dismiss the application without prejudice; except, that where Staff has requested additional material information under paragraph (g) of this section and the applicant has failed to provide the requested information, Staff may deny the application.

(i) *Orders.* (1) Staff shall issue a decision and an order granting or denying the application in whole or in part. The order shall articulate the basis for the decision, noting any dispute with the factual assertions of the applicant.

(2) In addition to service otherwise required under this section, Staff shall serve the decision and order on all per-

sons who sought and were denied an opportunity to participate in the proceeding under this section.

(3) If Staff fails to issue an order granting or denying the application for adjustment within the determination period the applicant may treat the application as having been denied and may, within 30 days after the close of the determination period, request review thereof as prescribed in paragraph (j)(1) of this section. For purposes of this clause, "determination period" means the 150 days commencing with the filing of the application, unless Staff for good cause extends such period.

(4) An order of Staff issued under paragraph (i)(1)(i) granting an adjustment, in whole or in part, is final 30 days after it is issued, unless, during such 30-day period, either:

(i) A petition for review is filed under § 1.40 in accordance with paragraph (j)(1) of this section, in which case the order is final when the review process under § 1.40 has been completed; or

(ii) The Commission directs that the order be reviewed under § 1.40 in accordance with paragraph (j)(2) of this section, in which case the order is final when the review process under § 1.40 has been completed unless the Commission expressly states that the order shall be effective pending review proceeding.

(j) *Review of initial decision and order for adjustment.*

(1) *General rule.* (i) Within 30 days after the issuance by Staff of an order granting or denying, in whole or in part, an application for adjustment relief under this section, any person may file a petition for Commission review of that order in accordance with § 1.40, if the person: (A) is aggrieved or adversely affected by that order; and, (B) participated, or sought and was denied an opportunity to participate, in the proceeding under this section.

(ii) Except as otherwise provided in this paragraph (j)(1), of this section, the provisions of § 1.40 shall apply to Commission review of both grants and denials of adjustment applications under this section.

(A) "Contested order" in § 1.40 means the order issued by Staff granting or denying, in whole or in part, an application for adjustment under this section.

(B) "Staff" is substituted for "Secretary" in § 1.40. With respect to review of an order denying an application for adjustment under this section, Staff may in its discretion, participate in the proceeding in the same manner prescribed for the Secretary in § 1.40(e). With respect to review of an order granting an application for adjustment under this section, Staff may not

participate in the proceeding except to the extent necessary to file the record as prescribed in § 1.40(e)(i). With respect to review of an order granting in part and denying in part an application for adjustment under this section, Staff may participate as prescribed in § 1.40(e)(ii), only if a petition for review has been filed which specifically seeks review of the portion of the order denying the application for adjustment.

(iii) A petition to intervene under § 1.40(e)(2) may be filed only by a person who participated, or who sought and was denied an opportunity to participate, in the proceeding under this section.

(iv) There has not been an exhaustion of administrative remedies until a request for review has been filed under § 1.40 in accordance with this paragraph and the review process under § 1.40 has been completed by the issuance of an order granting or denying, in whole or in part, the relief requested.

(2) *Review initiated by the Commission.* (i) Within 30 days after the issuance by Staff of an order granting, in whole or in part, an application for adjustment relief under this section, the Commission may direct that the order be reviewed in a proceeding which, insofar as practicable, shall conform to proceedings under § 1.40. The order directing such review shall specify the manner in which such proceedings shall be conducted and the extent to which § 1.40 shall apply.

(k) *Conferences.* Staff may direct that a conference be convened. The conference will be conducted by Staff in accordance with procedures Staff determines will most expeditiously further the purpose of the conference. A conference will be convened only after actual notice of the time, place and nature of the conference is provided to the parties. All parties may attend the conference. However, if a party wishes to present confidential information at the conference, Staff may exclude all other parties from that part of the conference when the confidential information is presented.

(l) *Requests for confidential treatment.* (1) If any person filing a document under this section claims that some or all of the information contained in a document is exempt from the mandatory disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, that person may request confidential treatment of such information. At the time request is made for confidential treatment, the person shall submit a copy of the document which contains the confidential information and two copies of the document which

exclude the information for which confidential treatment is requested. The request for confidential treatment shall describe the information deleted and specify the grounds for the claim of confidential treatment. The service requirements of § 1.17 will be deemed satisfied if a copy of the document with the confidential information deleted is served.

(2) If a determination to disclose the information is made under § 1.36, the person who has requested confidential treatment shall be given notice thereof and shall be afforded no less than 10 days to respond to such determination before the information is disclosed.

(m) *Interim relief.* (1) The applicant may at any time file a request for interim relief in a proceeding under this section, setting forth the legal and factual basis for the request.

(2) The grounds for granting interim relief are:

(i)(A) A showing that irreparable injury will result in the event the interim relief is denied; and

(B) A showing that denial of the interim relief requested will result in a more immediate special hardship or inequity to the person requesting the interim relief than the consequences that would result to other persons if the interim relief were granted; or

(ii) A showing that it would be in the public interest to grant the interim relief.

(3) Any party may within ten days after the filing of the request for interim relief file a reply to the request for interim relief.

(4) Staff may request a written statement of the views of any party regarding whether the interim relief should be granted and may convene an expedited conference on the request for interim relief.

(5) If Staff has not granted the request for interim relief within 30 days after it is filed, the petition shall be deemed denied.

(6)(i) Subject to paragraph (m)(6)(ii) of this section, Staff shall issue an order granting or denying the request for interim relief and shall notify all parties. Any grant of interim relief is subject to further modification in the order issued under paragraph (i).

(ii) The Commission may, on its own motion, at any time revoke, modify, rescind, stay or take any other appropriate action concerning the order granting interim relief.

(n) *Motions.* Any party may file a motion for any procedural ruling or relief desired. Motions shall set forth the ruling or relief requested and shall state the grounds therefor and the statutory or other authority relied upon. Staff shall rule on all motions.

(o) *Procedural rulings.* Staff, in its discretion, may make any procedural rule or provide any procedural relief.

(p) *Appeals.* All actions under this section are made by Staff, except with respect to requests for public information under § 1.36. Except as provided in paragraph (j) of this section, there are no appeals to the Commission from Staff action taken under this section.

(q) *Separation of functions.* Any member of the Staff who made the decision to grant or deny an adjustment or who participated in the proceeding to review the grant or denial of that adjustment under paragraph (j) of this section, as a witness or counsel may not advise the Commission concerning the review of the grant or denial of that adjustment.

[FR Doc. 79-9838 Filed 3-29-79; 8:45 am]

[6450-01-M]

SUBCHAPTER H—REGULATIONS OF NATURAL GAS SALES UNDER THE NATURAL GAS POLICY ACT OF 1978

[Docket No. RM79-26]

PART 270—RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

Interpretive Rule; Commission Interpretation of Section 314 of the NGPA

AGENCY: Federal Energy Regulatory Commission.

ACTION: Interpretive Rule, amending existing rules.

SUMMARY: The Federal Energy Regulatory Commission interprets the definition of "natural gas covered by this Act" in Section 314(b) of the Natural Gas Policy Act of 1978 (NGPA), Pub. L. 95-621, to include any natural gas which falls within one or more of the categories listed in the definition. The rule clarifies the status of commingling or related contract clauses in the context of sales or assignments by intrastate pipelines or declared natural gas supply emergencies.

EFFECTIVE DATE: March 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert C. Platt, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 275-0161.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

One of the primary purposes of the Natural Gas Policy Act of 1978, Pub.

L. 95-621 (NGPA) was to eliminate the distinction between the regulatory consequences of making sales in the interstate and the intrastate natural gas markets. Section 314 of the NGPA is an important part of the statutory scheme to remove these distinctions. Section 314(a) declares as unenforceable certain sales contract provisions which: (a) Prohibit the commingling of the natural gas sold under the contract with natural gas subject to the Commission's Natural Gas Act (NGA) jurisdiction; (b) prohibit later sales in the interstate market of the natural gas sold under the contract; (c) prohibit transportation of the natural gas sold under the contract by a natural-gas company; or, (d) terminate or grant the option to terminate the contract upon such commingling, sale or transportation.

The provisions of section 314 apply only to "natural gas covered by this Act." Section 314(b) defines this term:

[The term "natural gas covered by this Act" means—

(1) natural gas which is not committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act;

(2) natural gas, the sale in interstate commerce of which—

(A) is authorized under section 302(a) or 311(b); or

(B) is pursuant to an assignment under section 312(a); and

(3) natural gas, the transportation in interstate commerce of which is—

(A) pursuant to any order under section 302(c) or section 303(b), (c), (d) or (h); or

(B) authorized by the Commission under section 311(a).

A question of statutory construction arises as to the application of section 314. The question raised is whether the provisions of section 314(a) making commingling clauses unenforceable, apply only to natural gas which is described in all three clauses in section 314(b) or whether the section 314(a) prohibitions apply to natural gas which falls within any one of the section 314(b) clauses.

Because both interpretations have been ascribed to section 314(b), the Commission believes an interpretive rule will remove uncertainty surrounding the meaning of the section. The proposed interpretation would clarify the definition by stating that the definition should be read disjunctively. This reading would make section 314 applicable to natural gas which is in one or more of the three categories listed in section 314(b) rather than limiting its applicability to natural gas which meets all three tests.

LEGAL ANALYSIS

A disjunctive reading of the section 314(b) definition is supported by both a textual analysis and the legislative

history.¹ Four arguments support a disjunctive reading of the definition.

First, the draftsmen of the NGPA adopted a disjunctive usage in many of the NGPA definitions. Under this usage, definitional lists which are immediately preceded by the word "means" and joined by the word "and" are to be read disjunctively. For example, the section 2(18) definition of "committed or dedicated to interstate commerce" includes two categories of natural gas.² As in section 314(b), the NGPA draftsmen deliberately started each category by repeating "natural gas". Although the two categories are joined by the word "and", a disjunctive reading is surely intended in this instance. One category describes OCS gas and the other describes a jurisdictional test. A conjunctive reading would limit the definition to OCS gas which also meets the jurisdictional test. However, other provisions of the NGPA contemplate onshore "committed or dedicated" gas as well as "committed or dedicated" OCS gas. Similarly, the definition of "production day" in section 108 uses the word "and" to join "any day during which natural gas is produced" with "any day during which natural gas is not produced. . . ." In like manner, this same disjunctive usage is in the section 314(b) definitions.

Second, a conjunctive reading would be implausibly narrow. For example, if the section 314(b)(1), (b)(2)(A) and (b)(3)(B) tests must all be met in order to be included within the definition of "natural gas covered by this Act", then the Section 314(a) limitations would apply to natural gas which is not committed or dedicated to interstate commerce and sold by an intrastate pipeline under section 311(b) only if it happened to be subsequently transported under section 311(a). Congress did not intend this result. Sections 311 and 312 represent a statutory mandate to create an integrated na-

tionwide system for the sale and transportation of natural gas. This broad mandate was not intended to be confined to the transportation of gas which happens to have been sold under section 311(b). Since the statutory authority for each of these transactions contained in the NGPA is designed to address discrete issues which have arisen under NGA regulation, Congress could not have intended a conjunctive reading of section 314.

Similarly, the legislative intent would not permit private contractual prohibitions to frustrate the emergency powers accorded to the President during a declared natural gas supply emergency. Yet, a conjunctive reading of section 314(b)(3)(A) with sections 314(b)(1) and (2) would allow commonplace commingling clauses to immunize natural gas from the President's emergency powers to redirect the gas into the interstate market. The President's emergency powers were not so circumscribed under the Emergency Natural Gas Act of 1977, Pub. L. 95-2 (ENGA), section 9(b), and the legislative history of the NGPA fails to support such a substantial change from its predecessor statute, the ENGA.

Third, the legislative history of the NGPA supports a disjunctive reading. The Statement of Managers indicates that section 314 reflects the House version of the bill (H. Report No. 95-1752, 95th Cong. 2d Sess. at 110 (1978)). Section 414(c) of the House version (H.R. 8444, passed on August 5, 1977) corresponds to NGPA Section 314. The prohibition against commingling in the House version applied to "the first sale of any natural gas to which the provisions of sections 404, 406, 407, 409, or 413(e)(4) apply." These sections roughly correspond to the three categories listed in the NGPA section 314(b), definition of "natural gas covered by this Act." Because these sections are listed disjunctively in both the text of H.R. 8444 and its corresponding committee report (H.R. Rept. No. 543, Vol. 2, 95th Cong., 1st Sess. at 405 (1977)), a disjunctive reading should be incorporated by reference into the Statement of Managers of the final version of the NGPA.

Finally, consideration of the history and purpose of commingling clauses would demonstrate that a disjunctive reading would fulfill the Congressional intent to obviate the effect of clauses entered into during the former era of NGA regulation as opposed to the present era of NGPA regulation. The Commission had found in a series of cases under the NGA that if a sale was made in interstate commerce, the production was subject to not only the pricing policies of the Commission but also the abandonment provisions of NGA section 7(b). Similarly, the Com-

mission had held that transportation of gas by interstate facilities could render the producers of such gas jurisdictional. Consequently, in order to avoid potential regulation under the NGA as a result of either sales or transportation in interstate commerce, producers began to include clauses prohibiting commingling. Since the NGPA's enactment, natural gas which was not "committed or dedicated to the interstate market" as of November 8, 1978 cannot become so "committed or dedicated" by either sales or transportation of natural gas in interstate commerce. Therefore, the need for such clauses in any contract has disappeared. The public policy goals of the NGPA do, then, require the broad reading of section 314 embodied in this interpretive rule.

For these reasons, the Commission concludes that § 314(b) must be read disjunctively, and accordingly issues an interpretive rule which embodies this conclusion.

(Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, Department of Energy Organization Act, Pub. L. 95-91, Administrative Procedure Act, 5 U.S.C. § 553, E.O. 12009, 42 FR 46267.)

This order merely clarifies NGPA section 314. Because this is an interpretive rule, the Commission finds that it may become effective immediately and that no provision to give interested persons an opportunity to participate in the rule making is necessary. 5 U.S.C. § 553.

In consideration of the foregoing, the Commission amends Part 270 of Title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

KENNETH F. PLUMB,
Secretary.

Subchapter I, Chapter I of Title 18, is amended by adding a new § 270.206 to read as follows:

§ 270.206 Applicability of section 314
"Limitation on Effectiveness of Commingling and Similar Clauses".

For the purposes of section 314(a) of the NGPA, (relating to unenforceability of commingling and similar clauses) the term "natural gas covered by this Act" means natural gas which is described in any one or more of the following paragraphs:

(a) Natural gas which is not committed or dedicated to interstate commerce as of November 8, 1978.

(b) Natural gas, the sale in interstate commerce of which (1) is authorized under NGPA section 302(a) or 311(b); or (2) is pursuant to an assignment under NGPA section 312(a).

(c) Natural gas, the transportation in interstate commerce of which is (1) pursuant to any order under NGPA

¹Even if a syntactic analysis did not support the disjunctive reading, the courts have permitted wide latitude in ascribing a disjunctive meaning to the word "and".

In the construction of statutes, it is the duty of the Court to ascertain the clear intention of the legislature. In order to do this, Courts are often compelled to construe 'or' as meaning 'and', and again 'and' as meaning 'or'.

United States v. Fisk, 3 Wall. 445, 448, 70 U.S. 445, 448 (1866), accord, *Peacock v. Lubbock Compress Co.*, 252 F.2d 892 (5 Cir. 1958), cert. denied 356 U.S. 973 (1958).

²Section 2(18)(A) states "—The term 'committed or dedicated to interstate commerce', when used with respect to natural gas, means—

(i) natural gas which is from the Outer Continental Shelf; and

(ii) natural gas which, if sold, would be required to be sold in interstate commerce (within the meaning of the Natural Gas Act) under the Natural Gas Act, or any provision of such Act."

section 302(c) or NGPA section 303(b), (c), (d), or (h); or (2) authorized by the Commission under NGPA section 311(a).

[FR Doc. 79-9783 Filed 3-29-79; 8:45 am]

[4410-09-M]

Title 21—Food and Drugs

CHAPTER II—DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

Excepted Stimulant and Depressant Drugs

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations on excepted stimulant and depressant compounds and transfers the Table of Excepted Prescription Drugs to a separate volume of Title 21. These changes are made in an effort to update the regulations and to increase the usefulness of the Table of Excepted Prescription Drugs. No changes in the criteria or method of application for excepted status are made.

DATES: This rule is effective March 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Howard McClain, Jr., Chief, Regulatory Control Division, telephone: 202-633-1366.

SUPPLEMENTARY INFORMATION: Effective November 13, 1973, the Administrator of the Drug Enforcement Administration placed the depressants, amobarbital, pentobarbital and secobarbital under Schedule II control (38 FR 31310) in § 1308.12(e) of 21 CFR, Part 1300 to End. Since some of the excepted preparations contain amobarbital, pentobarbital or secobarbital, the list of compounds eligible for exception should include those compounds in § 1308.12(e). Therefore, Schedule II depressant containing compounds are eligible for exceptions if the necessary criteria are met.

A complete listing of excepted preparations is contained in paragraph (b) of section 1308.32 of 21 CFR, Part 1300 to End. This Table of Excepted Prescription Drugs covers 223 pages in the 1978 edition of 21 CFR, Part 1300 to End and although necessary, is useful to only a small number of people in comparison to the remainder of 21 CFR, Part 1300 to End. Therefore, it is beneficial to all concerned to

move this table to a separate volume of Title 21.

In an effort to make this table as complete as possible, the Drug Enforcement Administration has a need to know all the excepted products and the companies granted exceptions for these products. For this reason, it is essential that the Drug Enforcement Administration receive applications as outlined in § 1308.31(a) of 21 CFR, Part 1300 to End, for every preparation believed qualified for an exception. No product whose quantitative composition differs from any of the listed preparations can be granted an exception unless an application is submitted and approved by the Administrator of the Drug Enforcement Administration.

Therefore, the Administrator of the Drug Enforcement Administration, under the authority [202(d), 301, 501(b) of the Act (21 U.S.C. 812(d), 821 and 871(b))] vested in him, amends 21 CFR, Part 1308 as follows:

1. Section 1308.31(a) is revised to read as follows:

§ 1308.31 Application for exception of a stimulant or depressant compound.

(a) Any person seeking to have any compound, mixture or preparation containing any depressant or stimulant substance listed in § 1308.12(e), or in § 1308.13(b) or (c), or in 1308.14, or in 1308.15, excepted from the application of all or any part of the Act, pursuant to section 202(d) of the Act (21 U.S.C. 812(d)), may apply to the Administrator, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537, for such exception.

2. In § 1308.32 paragraph designation "(a)" is deleted; paragraph "(b)" is deleted; § 1308.32 reads as follows:

§ 1308.32 Excepted Compounds

Until criteria are adopted by the Administration by which the Administrator may determine whether to except any compound, mixture or preparation containing any depressant or stimulant substance listed in § 1308.12(e), or in 1308.13(b) or (c), or in 1308.14 or in 1308.15 from the application of all or any part of the Act (21 U.S.C. 812(d)), the drugs set forth in the Table of Excepted Prescription Drugs, located in a separate volume of this Title, entitled Chapter II—Drug Enforcement Administration, Table of Excepted Prescription Drugs to Part 1308, have been excepted by the Administrator from application of sections 302 through 305, 307 through 309, 1002 through 1004 of the Act (21 U.S.C. 822, 823, 825, 827-9, 952-4) and §§ 1301.11, 1301.12, 1301.21 through 1301.24, 1301.31, 1301.32 and 1301.71

through 1301.76 of this chapter for administration purposes only. The exception of these drugs by the Administrator should not be construed as an adoption or rejection of the criteria by which these drugs were originally excepted. Any deviation from the quantitative composition of any of the listed drugs shall require a petition for exception in order for that drug to be excepted.

3. The table of Excepted Prescription Drugs appearing at the end of § 1308.32 is transferred to a separate volume of Title 21, entitled Chapter II—Drug Enforcement Administration, Table of Excepted Prescription Drugs to Part 1308.

PETER B. BENSINGER,
Administrator.

[FR Doc. 79-9782 Filed 3-29-79; 8:45 am]

[6820-32-M]

Title 22—Foreign Relations

CHAPTER VI—UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

PART 602—FREEDOM OF INFORMATION POLICY AND PROCEDURES

Conforming Change

AGENCY: U.S. Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: This document amends § 602.15 to conform to the nomenclature used in Title 22, CFR, Chapter V, reflecting the transfer of functions from the United States Information Agency to the International Communication Agency which was legislatively mandated by Reorganization Plan No. 2 of 1977.

EFFECTIVE DATE: March 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Walter L. Baumann, Assistant General Counsel, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451, 202-632-3530.

Section 602.15 of Title 22, CFR, Chapter VI, is revised to read as follows:

§ 602.15 Overseas requests.

Pursuant to the general policy outlined in § 602.3, ACDA has made arrangements to provide the International Communication Agency (USICA) with material for dissemination abroad. Requests for information or materials originating in an area served by a USICA office, and which is received at Agency headquarters, will be referred to USICA when appropri-

ate for direct response to the requester. The USICA also from time to time disseminates abroad information on official U.S. positions and arms control and disarmament policy for the Agency.

JAMES C. HACKETT,
Administrative Director.

MARCH 28, 1979.

[FR Doc. 79-10004 Filed 3-29-79; 8:45 am]

[4310-02-M]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAW AND ORDER

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

Listing of Courts of Indian Offenses; Correction

MARCH 23, 1979.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Correction to Final Regulation.

SUMMARY: In FR Doc. 78-30289 appearing at page 49981 in the FEDERAL REGISTER of Thursday, October 26, 1978, the following changes should be made:

1. On page 49982 the amended section of 11.1(a) is corrected to add the following Court of Indian Offenses: (27) Duckwater Shoshone (Nevada)

2. On page 49982 the amended sections of 11.77-11.87H is corrected to read as follows:

"3. The letter "N" is deleted from section numbers 11.76-11.87NH so that these sections will not apply to the Navajo Reservation. 11.76-11.87H [Amended]"

EFFECTIVE DATE: November 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Patrick A. Hayes, Judicial Services Officer, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, Washington, D.C. 20245. Telephone: 202-343-7885.

RICK LAVIS,
*Deputy Assistant Secretary—
Indian Affairs.*

[FR Doc. 79-9661 Filed 3-29-79; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7605]

PART 1—INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Revision of Mileage Test and Dollar Limits for Deduction of Moving Expenses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the revision of the mileage test and dollar limits with respect to the deduction of moving expenses. Changes to the applicable tax law were made by the Tax Reform Act of 1976. The regulations provide the public with the guidance needed to comply with that Act. The regulations directly affect individuals who pay or incur moving expenses.

DATE: The amendments are effective for taxable years beginning after December 31, 1976.

FOR FURTHER INFORMATION CONTACT:

Barbara Bitler Coughlin of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-6618).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 3, 1978, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 217 (b) (3) and (c)(1) of the Internal Revenue Code of 1954 (43 FR 51428). These amendments were proposed to conform the regulations to section 506 (a), (b), and (d) of the Tax Reform Act of 1976 (90 Stat. 1568). No comments were received with respect to the proposed amendments, and no public hearing was requested or held.

MILEAGE TEST

The regulations adopted by this Treasury decision amend paragraphs (a)(3)(i) and (c)(2) of § 1.217-2 to reflect the change in the mileage test with respect to the deduction of

moving expenses. Prior to December 31, 1976, otherwise qualifying moving expenses generally were allowable as a deduction only if the distance from the taxpayer's new principal place of work to the taxpayer's former residence was at least 50 miles greater than the distance from the taxpayer's former principal place of work to the taxpayer's former residence. The regulations provide that, with respect to moving expenses paid or incurred in taxable years beginning after December 31, 1976, the mileage test is changed to 35 miles.

DOLLAR LIMITS

The regulations also amend paragraph (b)(9) of § 1.217-2 to reflect the changes in the dollar limits with respect to the deduction of moving expenses. Prior to December 31, 1976, the amount of the deduction attributable to pre-move househunting costs and temporary meals and lodging expenses was limited to \$1,000. The aggregate of the amount attributable to those two items and to qualified residence sale, purchase, or lease expenses was limited to \$2,500. The regulations increase these limits to \$1,500 and \$3,000, respectively, with respect to commencements of work in taxable years beginning after December 31, 1976.

DRAFTING INFORMATION

The principal author of these regulations is John M. Coulter, Jr., of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

The amendments adopted by this Treasury decision impose no new reporting burdens or recordkeeping requirements. The principal effect of the amendments to the regulations is to conform existing regulations under section 217 of the Code to changes made by the Tax Reform Act of 1976. Evaluation of the effectiveness of these regulations after issuance will be based upon comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, and the public.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the amendments to 26 CFR Part 1 published as a notice of proposed rulemaking in the FEDERAL REGISTER for November 3, 1978 (43 FR 51428), are hereby adopted as proposed.