(3) *Effect of public disclosure of disciplinary actions on exchange rule enforcement programs.*

The Commission is disturbed by the comments of some exchanges that publication of less significant rule violations would have an adverse impact on their rule enforcement programs. One exchange stated that non-enforcement of its rules might be the most reasonable approach to such a requirement. Another commented that indiscriminate publication in the news media of every disciplinary action no matter how technical or minor the violation could lead to disrespect among exchange members for the actions of exchange disciplinary bodies. These comments are particularly troublesome since some exchanges viewed less significant rule violations as including all violations except those resulting in a suspension, expulsion or denial of access or violations of the magnitude of manipulation or attempted manipulation of a market.

In response to these comments, the Commission emphasizes that the publication requirements in Section 8c should not, and cannot, be read to relieve exchanges of their self-regulatory responsibilities under the Act. Exchanges may not relax self-regulatory programs or allow them to be circumvented by members who wish to avoid publication of disciplinary actions taken against them.

The Rule As Adopted

Regulation § 9.12 provides that whenever an exchange suspends, expels, or otherwise disciplines or denies any person access to the exchange, it must make its findings public. This rule applies to every disciplinary action within the meaning of § 9.12 regardless of whether the action is imposed pursuant to a settlement to which the disciplined person agrees or whether it is otherwise imposed by the exchange in accordance with its disciplinary procedures. Rule 9.12 also applies to all disciplinary penalties imposed for violations of rules of decorum attire or similar rules. It does not apply to warning letters issued pursuant to § 8.07(c), since warning letters issued in accordance with that section are not penalties and do not indicate that a finding of a violation has been made. See 43 FR 41956, 41963 (September 19, 1978).

In making its findings public an exchange must disclose at least the information contained in the notice called for by § 9.11(a)(1)–(4). An exchange is therefore required to make public: (1) The name of the person disciplined or denied access; (2) a statement of each rule found to have been violated or otherwise underlying the exchange's action or, in the event of a settlement, each rule which the exchange has reason to believe was violated; (3) the reason for the exchange's action; and (4) the action taken or penalty imposed.

In specifying the findings and reasons for the disciplinary action the exchange, at a minimum, should indicate the nature of the violation involved, *e.g.*, failure to meet minimum financial requirements or to have obtained a customer's consent to the execution of an offset trade in which the broker takes the other side. Where a person is found to have violated an exchange rule that encompasses several different types of violative conduct, the exchange should specify the particular violation that was committed. Thus, if a rule generally prohibits fictitious trades, it should be clear from the notice whether the disciplined person engaged in an accommodation trade, wash sale or some other type of fictitious trade. Of course, an exchange may also provide additional details, if it chooses, which might include dates, amounts (such as the number of contracts or accounts involved or the amount of undermargining) and the number of times a violation has occurred. Generally, the exchange should be guided by the public interest to be served by releasing this information. Where any serious violations are involved or where a particular market may be affected, an exchange should provide more information than would be required for a routine disciplinary matter. As provided in Section 8c(b) of the Act, as amended, an exchange may not disclose to the public the evidence underlying its findings.

For each disciplinary action or penalty subject to this regulation, the exchange is required to post a notice containing the required information in a conspicuous place on its premises to which the members and the public regularly have access. This notice must be posted as soon as the disciplinary action or penalty becomes effective or within five days after the exchange provides the notice required by § 9.11 to the person against whom the action was taken, whichever occurs first. After the notice has been posted for five consecutive business days it may be removed, but the exchange must maintain and make available for public inspection a record of the information in the notice.

This regulation is adopted pursuant to the Commission's authority in Sections 8a(5) and 8c of the Commodity Exchange Act, 7 U.S.C. 12a(5) and 12c (1976), as amended by the Futures Trading Act of 1978, Pub. L. No. 95–405 sec. 18, 92 Stat. 874–75 (1978). In consideration of the foregoing the Commission hereby adopts 17 CFR 9.12 to read as follows:

§ 9.12 Publication of disciplinary actions and rule violations.

Whenever an exchange suspends, expels, or otherwise disciplines or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by § 9.11(a)(1)–(4) of this chapter. As soon as the disciplinary action becomes effective or within five days after an exchange provides the notice required by § 9.11 to the person against whom the action was taken, whichever occurs first, the exchange shall disclose the required information by posting a notice in a conspicuous place on its premises to which the members and the public regularly have access for a period of five consecutive business days. Thereafter, the exchange shall maintain and make available for public inspection a record of the information contained in the disciplinary notice.

Jane K. Stuckey,

Secretary to the Commission.

June 13, 1979.

[FR Doc. 79-18870 Filed 6-15-79; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1, 2

[Docket No. RM78-16]

Procedure for Submission of Settlement Agreements

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is promulgating a rule which contains procedures for the submission of settlement agreements and Commission treatment of contested and uncontested offers of settlement. The rule defines for the first time the information to be included in offers of settlement and prescribes settlement procedures that enable the Commission to expedite consideration of settlements filed directly with the Commission or

certified by the presiding officers. By streamlining settlement procedures, it is expected that parties to proceedings before the Commission will find the settlement process a more attractive alternative to litigation.

EFFECTIVE DATE: June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Richardson, Federal Energy Regulatory Commission, Office of Opinions and Review, 825 North Capitol Street, N.E., Room 9216–C, Washington, D.C. 20426, (202) 275–4200.

Background

On July 24, 1978, the Commission issued a Notice of Proposed Rulemaking on Settlement Agreements, in which the Commission advanced for public comment revised procedures for the submission of offers of settlements.[1] Twenty-eight responses[2] to the Commission's request for written comments were received. The majority of those commenting supported the Commission's proposed rulemaking, and several commentors offered helpful suggestions for clarifying the proposed procedures.

The purpose of the proposed rule is to define in the regulations for the first time information which shall be included in offers of settlement and to prescribe settlement procedures that enable the Commission to expedite consideration of settlements filed directly with the Commission or certified by Presiding Officers, particularly uncontested settlements. By improving our settlement procedures and reducing the length of time presently required for processing settlements of all types, it is our hope that participants in proceedings before the Commission will increasingly seek the benefits of the settlement process to avoid the alternative of costly and often times lengthy litigation before the Commission. The direct costs of regulation are borne most often by the ultimate consumer but indirect or nonquantifiable costs arising from litigation due to uncertainty and delayed managerial decisions or opportunities foregone may be suffered by shareholders as well.

The Commission wishes to emphasize the importance of voluntary settlements to the orderly and expeditious conduct of its business. During the period when responsibility for administering the Natural Gas Act and the Federal Power Act was in the hands of the Federal Power Commission, that agency had a strong policy favoring the disposition of cases through settlements. The FPC and the courts recognized that the Commission could not possibly cope with the flood of business engendered by its jurisdictional statutes if the outcome of a substantial proportion of that business were not the result of voluntary settlements entered into by the parties. *See, Mitchell Energy Corp.* v. *FPC*, 519 F. 2d 36, 40 (5th Cir. 1975); *Texas Eastern Transmission Corp.* v. *FPC*, 306 F. 2d 345, 347 (5th Cir. 1962). We adhere to that view.

Enactment of the Natural Gas Policy Act of 1978, 92 Stat. 3351 (1978), and other portions of the National Energy Act will increase substantially the volume of adjudicative business which this Commission, as successor to the Federal Power Commission, must handle under both the old and the new energy legislation. These developments would seem to make it even more important for those charged with carrying on the Commission's business to do so with a view towards promoting settlements whenever they are in the public interest.

The Commission's Administrative Law Judges have a special responsibility in this respect. Both the Commission's rules of practice and procedure (18 CFR 1.18) and the Administrative Procedure Act (5 U.S.C. 556(c)(6)) authorize Administrative Law Judges to call the parties to a dispute together for the purpose of settlement of the issues.

The Commission is particularly desirous of having its Judges attempt to secure settlements in all cases where settlement is possible and would be in the public interest. The Administrative Law Judges are encouraged to use all of the tools and resources at their command to that end.

Summary of the Rule

The new rule expands upon the present rules regarding settlements by requiring all offers of settlement to be filed with the Secretary and by providing a means of expeditious Commission consideration of contested and uncontested offers of settlement. While clarifying the procedure applicable to offers of settlements, the amended § 1.18(e) does not alter § 1.18(a) of the present rule which gives wide latitude to participates in any proceeding to hold conferences to provide the opportunity for the submission and consideration of offers of settlement. Any party to a proceeding may submit at any time an offer of settlement to all parties, or request a conference for consideration of a settlement offer. the rule does, however, eliminate the current clause in paragraph (e) permitting Submission at any time of offers of settlement to the commission (or to staff counsel for transmittal to the Commission). The new § 1.18(e) also sets forth the information which at a minimum must be submitted by persons filing offers of settlement. An offer of settlement must now include a proposed Commission order accepting the settlement. The new rule also retains the privilege afforded offers of settlement and proposed stipulations not agreed to.

The new portions of § 1.18(e) provide that once a hearing has been ordered until the time the Presiding Officer certifies the record to the Commission, an offer of settlement must be filed with the Secretary of the Commission for transmittal to the Presiding Officer assigned the case, or, if a Presiding Officer has not yet been assigned, to the Office Director responsible for the assignment.[3] Offers of settlement will be filed with the Secretary for transmission to the Commission if a hearing has not been ordered or the case has been certified by the Presiding Officer.

In order to expedite the process after an offer of settlement is filed, the present provisions (§ 2.1) that an offer of settlement be noticed for comment in the **Federal Register** are replaced by new service provisions. Section 1.17(b) of the regulations requires that papers filed with the Commission be served upon persons designated on the official service list. However, in order to strike a balance between the need for expedition and the desirability of giving notice to those persons most likely affected by such an offer, new § 1.18(e)(1)(vi) provides that all offers of settlement filed with the Secretary of the Commission shall be served on all persons who were required by the Commission's rules to be served with the applications or pleadings initiating the proceeding. All persons served shall also be informed at the time of service the date on which comments are due on the offer of settlement. This procedure provides a greater opportunity for those persons who are not parties to the proceeding but who are most likely to be interested in a settlement to be apprised of its terms. They will now receive actual notice rather than constructive **Federal Register** notice of settlement offers.

The due date for comments will no longer be delayed until after notice of

[1] July 28, 1978, 43 FR 32814.

[2] Requests to file comments after the August 31, 1978, deadline are hereby granted.

[3] An Office Director is chosen rather than the Chief Administrative Law Judge because in certain cases the Commission may refer a matter to a Presiding Officer who is not an Administrative Law Judge and who is designated by the General Counsel or, for appeals for rulings of the Office of Hearings and Appeals, Department of Energy, by the Director of the Office of Opinions and Review.

the settlement offer is published in the **Federal Register**. Regardless of whether the settlement is filed for transmittal to the Commission or for transmittal to the Presiding Officer, comments on an offer of settlement must be filed with the Presiding Officer or the Commission, as appropriate, on or before 20 days of the filing of the offer of settlement. Replies are to be filed on or before 30 days after filing of the settlement offer. However, the Presiding Officer or the Commission may provide for a different deadline for comments or reply comments. Failure to file comments will be deemed a waiver of the right to file comments on the offer of settlement (§ 1.18(e)(2)). This time period for comments is shorter than the time which has been permitted previously.

The revision of the notice procedure is intended to reduce the time now consumed in obtaining comments necessary to determine whether a settlement is contested and to enable earlier review of a settlement for decision. If the comments indicate that a settlement offer is uncontested, or that at least a portion of it is uncontested and severable from the contested part of the settlement, the new rule permits quicker decisionmaking. If the settlement is transmitted to the Presiding Officer, the Officer is to certify the settlement and the filings and submittals and the formal record (if one is compiled) together with a statement that the settlement is uncontested (§ 1.18(e)(3)). the Commission will expedite consideration of uncontested settlements filed with the Secretary of the Commission for transmittal to the Commission or certified by a Presiding Officer.

Under the Commission's present rules, a Presiding Officer may certify a settlement even if the comments indicate that the settlement is contested. However, if the settlement is contested by a party to the proceeding, then the rule permits a Presiding Officer to certify a contested settlement or a contested portion of a settlement only in accordance with certain conditions imposed in order to assure that a sufficiently developed record exists on which a reasoned decision can be based. The Presiding Officer may certify such offer of settlement to the Commission only if the parties concur on a waiver of the initial decision or if no contested issue of material fact exists, if the Presiding Officer determines that the record contains substantial evidence to enable the Commission to reach a decision on the merits of contested issues, and if the parties have had an opportunity to exercise such rights as they may have with respect to the opportunity to present evidence and cross-examine opposing witnesses (§ 1.18(e)(4)(ii)). If these conditions are not present, the Presiding Officer may direct such further procedures as he deems appropriate, including certification of the settlement at a later time if the conditions are then met.

If the Commission staff is the only contesting participant, the Presiding Officer may exercise his discretion to certify the offer of settlement even if the above conditions are not met. In this regard, the Commission wishes to emphasize the importance it places on the role of the Commission staff in representing the public interest in proceedings before the Commission. The staff performs an important public function in developing the records and testing the case presented by the other parties. Where the staff has not had an opportunity to present evidence and to cross-examine the witnesses of other parties, the Commission expects that the Presiding Officer will consider very carefully the basis for certifying an offer of settlement opposed by the staff. In accordance with present procedure, this decision is left to the sound discretion of the Presiding Officer. However, the Commission would expect that in the exercise of this discretion the Presiding Officer will give careful consideration to the need to develop the record as well as the importance of expediting decision-making.

Settlements which are contested in whole or in part and which are filed with the Secretary for transmittal to the Commission may be considered and approved or disapproved if the record contains substantial evidence upon which to base a reasoned decision. If substantial evidence is lacking or the contested portion of the settlement cannot be severed from the remainder of the settlement for decision, the Commission may order proceedings before a Presiding Officer for receiving substantial evidence upon which a decision can reasonably be based or other appropriate procedures. (§ 1.18(e)(4)(i))

Section-by-Section Analysis and Comment Analysis

Section 1.18(e)(1)

This subparagraph is revised to provide new procedures for the filing offers of settlement with the Secretary of the Commission.

The new § 1.18(e) applies to offers of settlement filed on or after June 15, 1979 in any Commission proceeding other than a rulemaking of general applicability or an investigation under Part 1b of the Regulations. An offer of settlement includes any proposal to modify an offer of settlement.

Any participant to a proceeding may submit at any time an offer of settlement to the Secretary of the Commission or request a conference for purposes of discussing settlement. The Secretary will transmit the offer to the Presiding Officer, Office Director, or the Commissioners, as appropriate. A settlement offer must contain the offer itself, an explanatory statement, and references to documentary support for the offer. An offer of settlement shall also include a proposed Commission order accepting the settlement and disavowing any precedential value for the decision. The settlement offer must be served on all participants and on all persons required to be served with the applications or pleadings initiating the proceeding.

Any offer of settlement which is not approved by the Commission is privileged.

Florida Power & Light Company suggests that the Commission allow the party submitting an offer of settlement to include "any explanatory data it deems appropriate" in the offer of settlement. The definition of "offer of settlement" has been modified to include an "explanatory statement."

To avoid the confusion which Florida Power & Light foresees over what must be included in formal offers of settlement as opposed to preliminary offers of settlement prepared only for purposes of negotiation and conferences, the new rule provides for consideration by the Commission only of offers of settlement filed with the Secretary.

Exxon Corporation, Consolidated Edison Corporation, and Southern California Edison Corporation each noted that this section should provide more clearly that, before a hearing has been ordered, offers of settlement should be filed directly with the Commission and subparagraph (1)(ii) has been modified accordingly.

Exxon, Southern California Edison, and Tenneco also request that adjustments to offers of settlement, offers of settlement not agreed to, and accepted settlements be privileged, in the same manner that unaccepted offers of settlement are privileged. The Commission agrees, insofar as the comments refer to offers not approved by the Commission, and has changed the clause (v) to reflect this recommendation. The privilege cannot

be accorded to offers approved by the Commission.

Pennzoil Company, Tenneco Oil Company and Florida Power & Light Company request the Commission to change the word "participant" to "party". The term participant has been used as defined in § 1.1(f)(2) of the regulations, to include the Commission's staff, and to indicate a limited participation in proceedings by persons other than parties. The word "party" does not include staff.

The Public Service Commission of New York (PSNY), Tenneco, United Gas Company, and the Interstate Natural Gas Association of America (INGAA) [4] request that the Commission delete the sentence requiring the participants submitting the offer of settlement to "state whether the settlement is a package, with no severable parts, or whether any specific issues may be separated from the settlement for separate decision, should the need for a separate decision arise." The commentors believe that this requirement would hamper settlement negotiations, and could create contested issues which might otherwise more easily be settled. The Commission agrees that this could hinder settlement negotiations and accordingly accepts the recommendation to delete this sentence from the rule. However, we encourage those persons filing offers of settlement to decide and determine during negotiations if parts of settlements are severable and advise the Presiding Officer or Commission in order to permit a prompt decision on the uncontested parts of a settlement.

Section 1.18(e)(2)

This subparagraph provides for a date certain for the filing of comments and reply comments. It has been clarified to provide for the filing of comments on the offer of settlement with the Presiding Officer, if the offer of settlement has been filed for transmittal to the Presiding Officer, or with the Commission if the offer of settlement has been filed for transmittal to the Commission.

Exxon Corporation recommends that, rather than publishing a notice with the **Federal Register**, the Commission should allow each participant to comment on the offer of settlement within 10 days of its submission to the Presiding Officer or the Commission. The thrust of this recommendation is adopted. Notice in the **Federal Register** will no longer be required. Participants must submit comments to the Presiding Officer or to the Commission, as appropriate, within 20 days of the filing of the offer of settlement. An additional 10 days is allowed for filing reply comments. A participant's failure to file comments within that period of time will be deemed a waiver of its right to file comments.

Niagara Mohawk Power Corporation recommends that the comment procedure be used only if the settlement is opposed. Comments are necessary in order to determine if the offer of settlement is opposed or unopposed. It is important to note, however, that the participants may present their comments to the Presiding Officer orally, on the record. This procedure may be used in lieu of written comments to the Presiding Officer, and this procedure is encouraged.

Section 1.18(e)(3)

This subparagraph provides that uncontested offers of settlement before the Presiding Officer will be certified to the Commission together with the statement that the settlement is uncontested, any hearing record or pleadings which include support for the settlement offer. It also states that the Commission may approve uncontested offers of settlement upon a finding that the settlement appears to be fair and reasonable and in the public interest.

Florida Power & Light recommends that we change the language "the record, which shall include support for the offer of settlement" to "the evidentiary record as support for the offer of settlement." The company maintains that this change is necessary to insure that hearings are not held after an unopposed offer of settlement is filed. A modified verison of this recommendation is adopted.[5]

Both PSNY and Niagara Mohawk seek clarification of the word "support" when used in reference to unopposed offers of settlement in this subparagraph. Under the rule as modified, certification of an uncontested offer of settlement must include whatever matter in the record or pleadings supports the offer. However, as recommended by PSNY, it is a matter for the Presiding Officer to determine to what extent a compromise requires support in order for the Commission to make an adequate evaluation of the unopposed offer of settlement. The rule is clear, however, that substantial evidence is not required as support for unopposed offers of settlement.

INGAA suggests that the Commission specifically disallow comments to the Commission on an unopposed offer of settlement once that unopposed offer of settlement is certified to the Commission. This is unnecessary, since nothing in the rule allows or can be interpreted to allow the filing of such comments after certification of an unopposed offer of settlement by Presiding Officer. INGAA suggests that a certified offer of settlement should become a final Commission order if no adverse comments are received by the Commission within 35 days of certification. Under the new regulation the Commission plans to expedite unopposed offers of settlement. The Commission should not be bound by the recommended restriction. The Commission reserves its discretion to review each settlement agreement certified to it.[6] The requirement that an offer of settlement include a proposed Commission order will assist the Commission in acting expeditiously on unopposed settlement.

Section 1.18(e)(4)

This subparagraph provides for the handling of contested offers of settlement. Those filed with the Commission may be decided on the merits if the record contains substantial evidence on which to base a reasoned decision. If it does not, or if the contested issues cannot be severed, the Commission will order further procedures to obtain sufficient evidence or other appropriate procedures.

If comments on an offer of settlement were filed with the Presiding Officer who then determines that the offer was contested, the Officer may certify all or part of such offer to the Commission. However, if an offer was contested by any party, it may be certified only if (A) all parties concur on a motion for omission of the initial decision or the Presiding Officer finds that no contested issue of material fact remains; (B) the Presiding Officer determines the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues; and (C) all parties have had an opportunity to avail themselves of such rights as they may have with respect to the opportunity to present evidence and cross-examine

[4] INGAA's comments were supported by Tennessee Gas Pipeline Company, East Tennessee Natural Gas Company, Midwestern Gas Transmission Company, El Paso Natural Gas Company, Northern Natural Gas Company, and Great Lakes Transmission Company. United Gas Company also supports INGAA's comments, but filed its own additional comments.

[5] Tenneco requests that the Presiding Officer be given full discretion to require additional evidence in support of an unopposed offer of settlement. This is permitted by the rule.

[6] For this reason, the Commission provided in this rule that the Presiding Officer merely certify the settlement agreement to the Commission, rather than issue an initial decision approving an unopposed offer of settlement.

opposing witnesses. Severable, uncontested issues may be certified immediately to the Commission for decision.

Northwest Pipeline suggested additional procedures in lieu of those provided in the proposed rule which the Commission believes would add unnecessary and time-consuming steps in the proposed procedure by providing for notice of "partial certification" of a settlement and by disallowing certification of uncontested portions over one participant's objections.

Continental Oil Company recommends that the Commission allow a Presiding Officer to certify an offer of settlement even if one participant refuses to present evidence, to cross-examine other witnesses, or to waive its right to further hearing, if the Presiding Officer decides that there is adequate record evidence to decide the contested issues on the merits. The purpose of the rule is to require that each participant agree to the proposed offer of settlement, seek the appropriate administrative remedies available to him before the Presiding Officer, or waive its right to those remedies. Thus the rule reflects Continental's suggestions. If a party objecting to a settlement declines to pursue his right to present evidence or cross-examine, the party has had an opportunity to exercise his rights and the Presiding Officer may then certify the contested settlement to the Commission. Unless every party does this, one party, who has not voiced an objection to the offer of settlement or pursued its procedural rights before the Presiding Officer, may seek to oppose an offer of settlement before the Commission and delay the decision-making process. It is this situation which the Commission wishes to eliminate by amending the procedures for the submission of settlement agreements.

INGAA and United Gas Company recommend that, in the event that a participant opposes an offer of settlement, the participant present evidence as to the "substantial adverse impact on the public interest that would result if that portion of the settlement objected to is not modified." The Commission rejects this recommendation. This would be inconsistent with statutory requirements, as it places the burden of going forward on the contested issue on the participant contesting the issue. Both the Natural Gas Act and the Federal Power Act provide that a person filing an application for a change in rates, or for a certificate, must bear the burden of coming forward with evidence and proving that the approval of its application is just and reasonable or in the public interest. An offer of settlement does not modify that burden. It is for the offeror, not the offeree, to show that approval of the offer of settlement would conform to statutory requirements. The new rule specifically provides that as long as there is substantial evidence in the record on which a reasoned decision can be made on the contested issues, *and* each of the participants have been afforded due process of law, no further proceedings before the Presiding Officer are necessary, and he may certify the offer of settlement to the Commission.

Section 1.18(e)(5)

This subparagraph reserves to participants their procedural rights in the event that the Commission does to approve an uncontested offer of settlement as it is certified or filed with the Commission. Several parties argue that the word "Substantially" be deleted from this subsection, so that a participant will be deemed to have reserved its rights to a hearing if the Commission imposes any condition upon an offer of settlement. The Commission agrees and has modifed the proposed rule accordingly.

Miscellaneous

Mobil Oil Company and the Missouri Public Utilities Company both suggest procedures for expedited Commission review of certified offers of settlement. The Commission intends to give special and expedited consideration to all offers of settlement, once they are certified or filed with this Commission. *See* § 1.18(e)(3).

Effective Date

Section 553(d)(3) of the Administrative Procedure Act requires publication of a rule in the **Federal Register** not less than 30 days before the effective date of a rule unless good cause exists for an earlier effective date. The Commission finds that good cause exists to waive the effective date provisions of the Administrative Procedure Act. The rule is intended to simplify and expedite the Commission's settlement procedures. Both the Commission and regulated parties have an interest in facilitiating the settlement process so that an expeditious handling of settlements can result. Such expedition will reduce the Commission's caseload and also resolve disputes between parties faster. Accordingly, the Commission rule is effective June 15, 1979 and applies to offers of settlement filed on or after that date. Offers of settlement filed before June 15, 1979 will be considered under the Commission's settlement procedures in effect prior to promulgation of this rule.

(Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; E.O. 12009, 42 FR 46267; Administrative Procedure Act, 5 U.S.C. 551 *et seq.*; Natural Gas Act, 15 U.S.C. 717 *et seq.*; Federal Power Act, 16 U.S.C. 792 *et seq.*; Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350; Public Utilities Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 317.)

In consideration of the foregoing, Parts 1 and 2, Subchapter A, Chapter I of Title 18 of the Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 1—RULES OF PRACTICE AND PROCEDURE

1. Section 1.18 is amended by revising paragraph (e) to read as follows:

§ 1.18 Conferences; offers of settlement.

* * * * *

(e) *Procedures for submission of offers of settlement to Commission*—(1) *General*—(i) *Scope.* This paragraph applies to offers of settlement filed on or after June 15, 1979 in any proceeding before the Commission other than a rulemaking of general applicability or formal or preliminary investigation under Part 1b of this chapter. For purposes of this paragraph, the term "offer of settlement" includes any proposal to modify an offer of settlement.

(ii) *Submission of offer.* Any participant to a proceeding may submit at any time an offer of settlement or request a conference for purposes of discussing settlement. An offer of settlement must be filed with the Secretary of the Commission. The Secretary will transmit such offer to the presiding officer if such offer is filed after a hearing has been ordered and before the time the presiding officer certifies the record to the Commission, except that if a presiding officer has not yet been assigned, such offer shall be transmitted to the Office Director responsible for assignment of the presiding officer. (Such Office Director will assign a presiding officer upon receipt of the offer.) In any other case, the Secretary shall transmit the offer of settlement to the Commission.

(iii) *Contents of offer.* (A) An offer of settlement shall include a document embodying the settlement offer, an explanatory statement, references (including record citations if there is a

record) to all documents, testimony, exhibits which provide support for the offer of settlement, and a list of all schedules, contracts, documents or data relevant to the settlement. An offer of settlement shall also include a proposed order of the Commission accepting the settlement, which order shall include the following provision:

The Commission's approval of this settlement shall not constitute approval of or precedent regarding any principle or issue in this proceeding.

(B) If it is a rate settlement that is being offered, the offer shall include the proposed settlement or tariff changes in a form suitable for inclusion in the filed rate schedules or tariffs together with a sufficient number of copies to conform with the filing requirements of these regulations.

(vi) *Service.* A copy of the offer of settlement shall be served on all participants listed on the official service list on file with the Secretary of the Commission and on all persons who were required by the Commission's regulations to be served with the applications or pleadings initiating the proceeding. The participant serving the offer of settlement shall notify those persons served of the date comments on the settlement are due.

(v) *Privilege.* Offers of settlement which are not approved by the Commission shall be privileged and shall not be admissible in evidence against any person claiming such privilege.

(2) *Comments.* Comment on an offer of settlement shall be filed with the Commission if the offer was transmitted to the Commission, or with the presiding officer in any other case. Comments may be filed on or before 20 days after the filing of the offer of settlement and reply comments may be filed on or before 30 days after filing of such offer, unless otherwise provided for by the Commission or the presiding officer. Failure to file comments will be deemed a waiver of the right to file comments on the offer of settlement.

(3) *Uncontested offers of settlement.* If comments on an offer were required to be filed with the presiding officer and such officer finds that the offer is uncontested, the presiding officer shall certify to the Commission the offer of settlement, a statement that the offer of settlement is uncontested, and any hearing record or pleadings which include support for the offer of settlement. If comments on an offer of settlement were required to be filed with the Commission, the Commission will determine whether the offer is uncontested. Any uncontested offer of settlement may be approved by the Commission upon a finding that the settlement appears to be fair and reasonable and in the public interest.

(4) *Contested offers of settlement.* (i) If comments on an offer of settlement were required to be filed with the Commission and the Commission determines the offer of settlement is contested in whole or in part, the Commission may reach a decision on the merits of the contested settlement issues if the record contains substantial evidence upon which to base a reasoned decision. If the Commission finds that the record is lacking in substantial evidence or that the contested issues cannot be severed from the offer of settlement, the Commission shall establish procedures before a presiding officer for the purpose of receiving substantial evidence upon which a decision on the contested issues can reasonably be based or take such other action as it determines to be appropriate. When contested issues are severable, the uncontested portions may be severed and decided in accordance with paragraph (e)(3) of this section.

(ii) If comments on an offer of settlement were filed with the presiding officer and such officer determines that the offer was contested in whole or part, such officer may certify all or part of such offer to the Commission; except that an offer contested by a party may be certified only if (A) either (*1*) all parties concur on a motion for omission of the initial decision as provided in § 1.30 of this chapter or (*2*) the Presiding Officer determines that there is no contested issue of material fact; (B) the presiding officer determines the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues; and (C) all parties have had an opportunity to avail themselves of such rights as they may have with respect to the opportunity to present evidence and cross-examine opposing witnesses. When the contested issues are severable, the uncontested portions of the settlement may be certified immediately to the Commission for decision as provided in paragraph (e)(3) of this section.

(5) *Reservation of rights.* The procedural rights of each participant are reserved if the Commission does not accept and approve, or approves subject to condition, the unopposed portion of the offer of settlement.

* * * * *

§ 1.18 [Amended]

2. Section 1.18 is amended in paragraph (f) by adding at the end thereof the following sentence: "Proposed stipulations not agreed to are privileged and shall not be admissible in evidence against any counsel or person claiming such privilege."

§ 1.30 [Amended]

3. Section 1.30(c)(1), is amended in the first sentence thereof by inserting "(except as provided in § 1.18(e)(4))," before "all other parties."

§ 1.30 [Amended]

4. In § 1.30(c)(3), the proviso is amended by inserting "(except as provided in § 1.18(e)(4))" after the word "who".

PART 2—GENERAL POLICY AND INTERPRETATIONS

§ 2.1 [Amended]

5. In § 2.1(a)(1), clauses (i) (C), (D) and (H), and clause (vii)(F) are revoked.

[FR Doc. 79-18924 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

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18 CFR Part 281

[Docket No. RM 79-15]

Implementation of Section 401 of the Natural Gas Policy Act

Cross Reference: For a document on implementation of Section 401 of the Natural Gas Policy Act issued by the Federal Energy Regulatory Commission, see FR Doc. 79-18786 in the Proposed Rules section of this issue.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Parts 404, 422

[Regs. 4 and 22]

Reference Changes to Reflect Transfer and Recodification of Medicare Regulations

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: On September 30, 1977, the regulations for the Medicare program under title XVIII of the Social Security Act, which were contained in 20 CFR Part 405, were redesignated as 42 CFR Part 405 (42 FR 52826). Therefore, we are modifying various references to 20 CFR Part 405 in the Social Security Administration's regulations to refer instead to 42 CFR Part 405.

As these are solely technical amendments which basically correct cross-references to reflect the recent redesignation of the Medicare regulations, we find that Notice of Proposed Rule Making and public comment in issuing these amendments are unnecessary, and good cause exists for waiving these requirements under the Administrative Procedure Act.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Armand Esposito, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–7455.

(Secs. 205(a) and 1102 of the Social Security Act, as amended; 53 Stat. 1362, as amended, 49 Stat. 647, as amended; (42 U.S.C. 405(a) and 1302).)

(Catalog of Federal Domestic Assistance Programs No. 13.802, Social Security—Disability Insurance Benefits; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Special Benefits for Persons Aged 72 and Over; 13.805, Social Security—Survivors Insurance.)

Dated: May 21, 1979.

Stanford G. Ross,

Commissioner of Social Security.

Approved: June 12, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

Parts 404 and 422 of 20 CFR Chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950—)

§ 404.501 [Amended]

1. In § 404.501, paragraph (a)(7) is amended by changing the cross-reference from "(see §§ 405.350–405.351)" to "(see 42 CFR 405.350–405.351)."

§ 404.507 [Amended]

2. Section 404.507 is amended by changing the cross-reference in the first sentence from "(see §§ 404.506 and 405.355)" to "(see § 404.506 and 42 CFR 405.355)".

§ 404.924b [Amended]

3. Section 404.924b is amended by revising the last sentence in paragraphs (a) and (b) to read as follows: "In such hearing, the provisions of this Subpart J, Subpart F of Part 410, and Subpart N of Part 416 of this chapter and Subpart G of 42 CFR Part 405 shall be applied, as appropriate to such other claim."

PART 422—ORGANIZATION AND PROCEDURES

§ 422.130 [Amended]

4. Section 422.130 is amended by revising the last sentence in paragraph (a) to read as follows: "See 42 CFR Part 405, Subpart A, for conditions of entitlement to hospital insurance benefits and 42 CFR Part 405, Subpart B, for information relating to enrollement under the supplementary medical insurance benefits program."

§ 422.201 [Amended]

5. Section 422.201 is amended as follows:

(a) In paragraph (c), the cross references are changed from "§§ 405.720–405.750, §§ 405.1530–405.1570, and § 405.2060 of this chapter" to "42 CFR 405.720–405.750, 405.1530–405.1595, and 405.2060–405.2063";

(b) In paragraph (d), the cross-reference is changed from "see § 405.801 et seq." to "see 42 CFR 405.820–405.860"; and

(c) In paragraph (d) the cross-reference is changed from "see §§ 405.1809 et seq." to "see 42 CFR 405.1809–405.1890".

§ 422.203 [Amended]

6. Section 422.203 is amended as follows:

(a) In paragraph (a)(3), change the first cross-reference from "pursuant to § 405.1530 of this chapter" to "under 42 CFR 405.1531", and change the second cross-reference from "see § 405.1501(c) and (f)" to "see 42 CFR 405.1501(c) and (f)"; and

(b) In paragraph (b)(2), change the cross-references from "in section 405.1502 (b)(2), (c), (d)(2), and (e) (see §§ 404.918, 405.722, 405.1530, 405.1531, 405.2060, 410.631, and 416.1426 of this chapter)" to "in 42 CFR 405.1502(b)(2), (c), (d)(2), and (e) (see §§ 404.918, 410.631, and 416.1426 of this chapter and 42 CFR 405.722, 405.1530, 405.1531, and 405.2060)".

§ 422.205 [Amended]

7. Section 422.205 is amended as follows:

(a) In paragraph (a), the cross-reference "(see § 405.1532 of this chapter)" in the second sentence is changed to "(see 42 CFR 405.1532)" and the cross references following the last sentence are changed from "(For time and place of filing, see §§ 404.946, 405.722, 405.1562, 405.2060, 410.661, and 416.1462 of this chapter.)" to "(For time and place of filing, see §§ 404.946, 410.661, and 416.1462 of this chapter, and 42 CFR 405.724, 405.1562, and 405.2061.)";

(b) In paragraph (b), the cross-references in the first sentence are changed from "in accordance with §§ 404.947, 405.724, 405.2061, 410.662, 416.1463, or 416.1464 of this chapter" to "under §§ 404.947, 410.662, 416.1463, or 416.1464 of this chapter, or 42 CFR 405.724 or 405.2061"; and

(c) In paragraph (d), the cross-reference in this first sentence is changed from "as provided in Subpart O, Part 405 of this chapter in accordance with § 405.1563" to "under 42 CFR 405.1563".

§ 422.210 [Amended]

8. Section 422.210 is amended as follows:

(a) In paragraph (a), the cross-references in the second sentence are changed from "as provided in §§ 404.916e, 405.718d, 410.629e, or 416.1424d of this chapter" to "under §§ 404.916e, 410.629e, or 416.1424d of this chapter or 42 CFR 405.718d". The cross-reference in the sixth sentence is changed from "and § 405.1501(f)" to "and 42 CFR 405.1501(f)"; and

(b) In paragraph (c), the cross references in the third sentence are changed from "as set forth in §§ 404.916d, 405.718c, 410.629d, or 416.1424c of this chapter" to "under §§ 404.916d, 410.629d, or 416.1424c of this chapter or 42 CFR 405.718c".

9. Section 422.410 is amended by adding a new paragraph (k) to read as follows:

§ 422.410 Publications for sale.

* * * * *

(k) Health Care Financing Administration Rulings.

10. In § 422.430, paragraph (a)(3) is revised to read as follows:

§ 422.430 Materials available at district offices and branch offices.

(a) *Materials available for inspection.*

* * *

(3)(i) Social Security Administration regulations under the retirement, survivors, disability, and supplemental security income programs, i.e., Regulation No. 1 (Part 401 of this chapter), Regulations No. 4 (Part 404 of this chapter); Regulations No. 16 (Part 416 of this chapter); and Regulations No. 22 (this Part 422); and the Social Security Administration's regulations under Part B of title IV (Black Lung Benefits) of the Federal Coal Mine Health and Safety Act of 1969, Regulations No. 10 (Part 410 of this chapter); and (ii) Medicare Program regulations issued by the Health Care Financing Administration, 42 CFR Part 405.

* * * * *

§ 422.510 [Amended]

11. Section 422.510, paragraph (a), is amended as follows:

(a) By changing the cross-reference in the parenthetical phrase following the second sentence from "see § 405.102 of this chapter" to "see 42 CFR Part 405, Subpart A"; and

(b) By changing the cross-reference in the parenthetical phrase at the end of paragraph (a) from "see § 405.202 et seq. of this chapter" to "see 42 CFR Part 405, Subpart B".

[FR Doc. 79-18965 Filed 6-15-79; 8:45 am]
BILLING CODE 4110-07-M

DEPARTMENT OF JUSTICE

Federal Prison Industries

28 CFR Part 301

Inmate Accident Compensation; Final Rules

AGENCY: Federal Prison Industries, Justice.

ACTION: Final rules.

SUMMARY: This document contains final rules on the procedures for determining claims for inmate accident compensation of former Federal prison inmates for injuries sustained while working in prison. The rules authorize the Claims Examiner to make the initial determination on a claim for inmate accident compensation. The Claims Examiner now presents the claim to an Inmate Accident Compensation Committee. This practice occasions delays in the decision-making process due to difficulty in establishing a meeting time suitable to the Committee members or due to the difficulty in ensuring a quorum at the meeting. The final rules are intended to provide an earlier response to the claimant without affecting the quality of the review or placing any increased burden or responsibility on the claimant.

DATE: This amendment is effective June 18, 1979.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 910, 320 First Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTAL INFORMATION: By virtue of the authority vested in the Attorney General by 18 U.S.C. 4126 and delegated by the Attorney General at 28 C.F.R. 0.99 to the Board of Directors of Federal Prison Industries, Inc., Part 301 of Chapter III of Title 28, Code of Federal Regulations is hereby amended as set forth below. As this amendment places no increased burden on a claimant but is an amendment of procedures, the provisions of the Administrative Procedures Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

Under current regulations (§ 301.12), the initial determination of a claim for inmate accident compensation is made by an Inmate Accident Compensation Committee. Before a claim is considered by the Committee, a Claims Examiner compiles all available evidence on the claim, reviews and evaluates the evidence, schedules a meeting of the Inmate Accident Compensation Committee, and presents the merits of the claim with a recommended disposition. Experience has shown that in performing these functions, the Claims Examiner becomes thoroughly familiar with the claim and is qualified to make the initial determination on the merits of the claim. Accordingly, § 301.12 is amended to reflect that the Claims Examiner is empowered to make the initial determination on the merits of a claim for inmate accident compensation. In accord with this change, §§ 301.6, 301.13, 301.19(c), and 301.23 are also amended. Section 301.6 is amended to required that an FPI Form 43, an Administrative Form 19 and the findings of the local Board of Inquiry be forwarded to the Claims Examiner, Federal Prison Industries, Washington, D.C. and not to the Office of General Counsel and Review. Section 301.13 is amended by substituting "Claims Examiner" for "Committee" in the first sentence of § 301.13(a) and in the first and second sentences of § 301.13(b). These changes reflect the fact that the Claims Examiner now makes the initial determination. § 301.19(c) is amended by deleting reference to the Associate Commissioner, since the role of the Associate Commissioner, which remains unchanged, is fully set forth in § 301.20. Section 301.23 is amended to read that the "Claims Examiner", as opposed to the Commissioner of Industries, is advised with respect to the need for further medical or hospital treatment, as the Claims Examiner is responsible for authorizing and approving payment for such treatment on behalf of the Corporation. In this section the word "assigned" has been substituted for "employed", to better reflect inmate work status.

The amendments expedite the review process without affecting the quality of the review. A claimant who is dissatisfied with the decision may appeal the decision to the Inmate Accident Compensation Committee and may request a further review by the Associate Commissioner. The amendments allow for an earlier response to the claim as they eliminate the difficulty previously encountered in arranging a meeting-time of the Committee convenient to the members. They also eliminate delays due to a lack of a decision-making quorum at a scheduled meeting.

In consideration of the foregoing, Part 301 of Title 28, Code of Federal Regulations is amended as set forth below. The effective date of these rules is June 18, 1979.

Dated: June 6, 1979.

Norman A. Carlson,
Commissioner, Federal Prison Industries, Inc.

PART 301—INMATE ACCIDENT COMPENSATION

1. By revising § 301.6 to read as follows:

§ 301.6 Report of death.

If a work-related injury results in death, an FPI Form 43, an Administrative Form 19, and the findings of the local Board of Inquiry will be promptly forwarded to the Claims Examiner, Federal Prison Industries, Inc., Washington, D.C. 20534.

2. By revising §§ 301.12 and 301.13 to read as follows:

§ 301.12 Processing of claims.

(a) A claim for inmate accident compensation shall be determined by a Claims Examiner, appointed by the Commissioner, Federal Prison Industries, Inc., under authority delegated to him by the Board of Directors of Federal Prison Industries, pursuant to 28 CFR 0.99. In determining the claim, the Claims Examiner will consider all available evidence. Written notice of the decision, including the reasons therefor, together with information as to the right to appeal the decision, shall be mailed to the claimant at his or her last known address.

(b) Appeal of the decision rendered by the Claims Examiner may be made to the Inmate Accident Compensation Committee (hereinafter referred to as the "Committee") appointed by the Commissioner, Federal Prison Industries, Inc., under authority delegated to him by the Board of Directors of Federal Prison Industries pursuant to 28 CFR 0.99. The Committee shall consist of four members and four alternates, with any combination of