changed from the 18th to the 10th day after the end of the month.

As indicated, these provisions have been suspended since November 1976 and this action merely extends the suspension for another temporary period. The dairy farmer who opposed the suspension can negotiate an earlier payment date with the handler who receives his milk. However, it would not be appropriate to deny other dairy farmers who prefer to have their payments spaced about 15 days apart the opportunity to receive a partial payment on the 3rd day of the following month. The suggested change in the final payment date from the 18th to the 10th day of the following month cannot be considered in connection with this suspension action, which can apply only to existing provisions for a temporary period. The payment date preferred by the dairy farmer might be appropriate for consideration at a future amendment hearing.

The suspension should be extended for an additional period of 12 months pending a hearing at which proposals to amend the partial payment provisions may be considered. The suspension will enable handlers to continue to accommodate their producers who request that their payments be spaced about 15 days apart.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that the suspension does not require of persons affected substantial or extensive preparation prior to the effective date and notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning the suspension.

Therefore, good cause exists for making this order effective May 1, 1980.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the months of May 1980 through April 1981.

(Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674))

Effective date: May 1, 1980.

Signed at Washington, D.C., on April 1, 1980.

Jerry Hill,

Deputy Assistant Secretary for Marketing and Transportation Services.

[FR Doc. 80–10402 Filed 4–4–80; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 79–SO–43]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Extension of Federal Airway; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was made in a rule published in the **Federal Register** on March 20, 1980, (45 FR 17950). Victor Airway V–290 was extended from Elizabeth City, N.C., to Hatteras Inlet, N.C., via Manteo, N.C. Recently, the Manteo VOR was renamed "Wright Brothers." The nondirectional beacon (NDB), which is collocated with the VOR retains the name "Manteo." This action corrects the error in the description of the V/290.

EFFECTIVE DATE: May 15, 1980.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations Branch (AAT–230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426–8525.

SUPPLEMENTARY INFORMATION: FR Doc. 80–8289 was published on March 20, 1980, which extended V–290 from Elizabeth City, N.C., to Hatteras Inlet, N.C., via Manteo, N.C., to provide a charted route that avoids all military special use airspace, thereby increasing air safety and reducing controller workload. Inadvertently, the name change of the Manteo VOR to "Wright Brothers" was overlooked (the nondirectional beacon (NDB) retains the name of Manteo). This action corrects the description of V–290.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, FR Doc. 80–8289 as published in the **Federal Register** on March 20, 1980, is corrected as follows:

Under § 71.123, in V–290, beginning on line three: "Elizabeth City, N.C. From Manteo NDB via INT Manteo 139° bearing" is deleted and "Elizabeth City, N.C., to Wright Brothers, N.C. From Manteo NDB via INT Manteo 139° bearing" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655 (c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on March 28, 1980.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80–10205 Filed 4–4–80; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1241

Contract Appeals

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule with comments requested.

SUMMARY: NASA proposes to amend the rules of procedure for the adjudication of contract appeals before the NASA Board of Contract Appeals by adding a new subpart 1241.2. 14 CFR Subpart 1241.2 is necessary to implement the practices and procedures required by the Contract Disputes Act of 1978, Pub. L. 95–563, effective March 1, 1979.

As this new subpart relates to rules applicable solely to Agency practice and procedure and substantially adopts the Final Uniform Rules of Procedure for Boards of Contract Appeals published pursuant to Pub. L. 95–563 by the Office of Federal Procurement Policy at 44 FR 34227, *et seq.*, rulemaking and public procedures are unnecessary pursuant to section 563 of Title 5, United States Code. NASA is, nevertheless, inviting public comment and will consider such comments for future revisions. Comments and suggestions are invited and should be addressed to the Chairperson at the address provided below.

EFFECTIVE DATE: April 7, 1980.

ADDRESS: Comments should be sent to Frederick J. Lees, Chairperson, Board of Contract Appeals, Code NC–9, NASA Headquarters, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Frederick J. Lees, 202–755–3481.

SUPPLEMENTARY INFORMATION: These regulations are intended to provide rules and procedures for contract appeals filed pursuant to the Contract Disputes Act of 1978, or, where pursuant to that Act, an appellant elects the option to proceed in accordance with the Act. These rules do not replace or supersede the rules of practice and procedure published in 14 CFR Subpart 1241.1, effective August 26, 1977, (NASA Management Instruction 5154.2) which will continue to be used in appeals involving contracts for which an election under the Act is not available, or is not made.

This new subpart incorporates the Final Uniform Rules of Procedure for Boards of Contract Appeals under the Contract Disputes Act of 1978 issued as final guidelines for adoption by agency Boards of Contract Appeals by the Office of Federal Procurement Policy on June 14, 1979, 44 FR 34227.

14 CFR Part 1241 is amended by adding a new subpart 1241.2 reading as follows:

Subpart 1241.2—General Procedures

Authority: 42 U.S.C. 2473.

Subpart 1241.2—General Procedures

§ 1241.20 Scope.

Subpart 1241.2 prescribes the procedures for the adjudication of appeals before the NASA Board of Contract Appeals (hereinafter referred to as the "Board") which are filed pursuant to the Contract Disputes Act of 1978, Public Law 95-563, or, where pursuant to the Act, an appellant elects the option to proceed in accordance with the Act.

Preface to the rules

§ 1241.21 Jurisdiction of the Board.

The NASA Board of Contract Appeals (referred to herein as the "Board") shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Public Law 95-563, 41 U.S.C. 601-613) relating to contracts made by (a) the National Aeronautics and Space Administration, or (b) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal. The Board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims. In addition, the Board may perform other duties as assigned by the Administrator which are not inconsistent with its statutory duties.

§ 1241.22 Location and organization of the Board.

(a) The Board is located in Washington, D.C., and its mailing address is the Board of Contract Appeals, National Aeronautics and Space Administration, Washington, D.C. 20546. The telephone number of the Board is (202) 755-3481.

(b) The Board consists of a Chairperson, Vice Chairperson, and other members, all of whom are attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. Normally, the appeals are assigned to a panel of at least two members of the Board. If a panel of two members is unable to agree upon a decision, the Chairperson may assign a third member to consider the appeal. The Chairperson is designated as Chief Administrative Judge and the other Board members are designated as Administrative Judges.

§ 1241.23 General guidelines.

(a) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(b) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(c) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(d) *Time, computation and extensions.* (1) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(2) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(3) Requests for extensions of time from either party shall be made in writing and stating good cause therefore.

§ 1241.24 Ex parte communications.

No members of the Board or the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the

Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

Preliminary Procedures

§ 1241.201 Appeals, how taken.

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this section citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to paragraphs (b) or (c) of this section, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under paragraphs (b) or (c) of this section, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

§ 1241.202 Notice of appeal, contents of.

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in § 1241.206 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 1241.203 Docketing of appeals.

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writting shall be given to the appellant with a copy of these rules, and to the contracting officer.

§ 1241.204 Preparation, content, organization, forwarding, and status of appeal file.

(a) *Duties of Contracting Officer*—Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) the decision from which the appeal is taken;

(2) the contract including specifications and pertinent amendments, plans, and drawings;

(3) all correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in paragraph (a)(2) of this section. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the appellant*—Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) *Organization of appeal file*—Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy documents*—Upon request by either party, the Board may waive the requirements to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file*—Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with § 1241.213 and § 1241.220.

(f) Notwithstanding the foregoing, the filing of the § 1241.204 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

§ 1241.205 Motions.

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

§ 1241.206 Pleadings.

(a) *Appellant*—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government*—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 1241.207 Amendments of pleadings or record.

The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

§ 1241.208 Hearing election.

After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in § 1241.217 through § 1241.225, or whether it elects to submit its case on the record without a hearing, as prescribed in § 1241.211.

§ 1241.209 Prehearing briefs.

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issue are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 1241.208. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

§ 1241.210 Prehearing or presubmission conference.

(a) Whether the case is to be submitted pursuant to § 1241.211 or heard pursuant to § 1241.217 through § 1241.225, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge of the Board for a conference to consider:

(1) simplification, clarification, or severing of the issues;

(2) the possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) agreements and rulings to facilitate discovery;

(4) limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) the possibility of agreement disposing of any or all of the issues in dispute; and

(6) such other matters as may aid in the disposition of the appeal.

(b) The administrative judge of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge and this writing shall thereafter constitute a part of the record.

§ 1241.211 Submission without a hearing.

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to § 1241.213. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with § 1241.223.

§ 1241.212 Optional small claims (expedited) and accelerated procedures.

These procedures are available solely at the election of the appellant.

§ 1241.212-1 Election to utilize small claims (expedited) and accelerated procedures.

(a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in § 1241.212-2 of this Rule. An appellant may elect the accelerated procedure of paragraph (b) of this section rather than the small claims (expedited) procedure for any appeal eligible for the small claims (expedited) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in § 1241.212-3 of this Rule.

(c) The appellant's election of either the small claims (expedited) procedure or the accelerated procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(d) In deciding whether the small claims (expedited) procedure or the accelerated procedure is applicable to a given appeal, the Board shall determine the amount in dispute by adding to the amount claimed by the appellant against the Government the amount claimed by the Government against the appellant. If either party making a claim against the other party does not otherwise state in writing the amount of its claim, the amount claimed by such party shall be the maximum amount which such party represents in writing to the Board that it can reasonably expect to recover against the other.

§ 1241.212-2 The small claims (expedited) procedure.

(a) In cases proceeding under the small claims (expedited) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the small claims (expedited) procedure, if not previously accomplished under § 1241.204, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under § 1241.204 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether either party wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal, and (v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in cases processed under the small claims (expedited) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under § 1241.229.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

§ 1241.212-3 The accelerated procedure.

(a) In cases proceeding under the accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these rules, including § 1241.204, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the accelerated procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in cases processed under the accelerated procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge with the concurrence of the chair or a vice chair or other designated administrative judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single administrative judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under § 1241.229.

§ 1241.212-4 Motions for reconsideration in § 1241.212 cases.

Motions for reconsideration of cases decided under either the small claims (expedited) procedure or the accelerated procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

§ 1241.213 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the documents furnished under § 1241.204 and § 1241.212 to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

§ 1241.214 Discovery—depositions.

(a) *General policy and protective orders*—The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted*—After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions*—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence*—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses*—Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas*—Where appropriate, a party may request the issuance of a subpoena under the provisions of § 1241.221.

§ 1241.215 Interrogatories to parties, admission of facts, and production and inspection of documents.

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days after service; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 30 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 30 days after serivce. Any discovery engaged in under this Rule shall be subject to the provisions of § 1241.214 with respect to general policy and protective orders, and of § 1241.233 with respect to sanctions.

§ 1241.216 Service of papers other than subpoenas.

Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in § 1241.221.

Hearings

§ 1241.217 Where and when held.

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Boad. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, § 1241.212 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

§ 1241.218 Notice of hearings.

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

§ 1241.219 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 1241.211.

§ 1241.220 Hearings: nature, examination of witnesses.

(a) *Nature of hearings*—Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of witnesses*—Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

§ 1241.221 Subpoenas.

(a) *General*—Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chair may issue a subpoena requiring:

(1) testimony as a deposition—the deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(2) testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) production of books and papers—in addition to paragraphs (a) (1) or (2) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation*—Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for subpoenas*—

(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought. In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to quash or modify*—Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the supoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance*—

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service*—

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or refusal to obey a subpoena*—In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

§ 1241.222 Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

§ 1241.223 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge at the conclusion of the hearing.

§ 1241.224 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under § 1241.212–2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be fixed by contract with the reporter.

§ 1241.225 Withdrawal of exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

§ 1241.226 The Appellant.

An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

§ 1241.227 The government.

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time.

Decisions

§ 1241.228 Decisions.

Decisions of the Board will be made in writing and copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in § 1241.213.

Motion for Reconsideration

§ 1241.229 Motion for reconsideration.

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Suspensions; Dismissals and Defaults; Remands

§ 1241.230 Suspensions; dismissal without prejudice.

The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 1241.231 Dismissal or default for failure to prosecute or defend.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to § 1241.233. If good cause is not shown, the Board may take appropriate action.

§ 1241.232 Remand from court.

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

Sanctions

§ 1241.233 Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Effective Date

§ 1241.234 Effective date.

These rules shall apply (a) mandatorily, to all appeals relating to contracts entered into on or after March 1, 1979, and (b) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

Frederick J. Lees,

Chairperson, NASA Board of Contract Appeals.

[FR Doc. 80-10298 Filed 4-4-80; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 46

[Docket No. RM80-9]

Public Utility Filing Requirement and Requirements for Persons Holding Interlocking Positions; Order Issuing Final Regulations

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: This rule implements, in part, section 211 of the Public Utility Regulatory Policies Act of 1978 which created new section 305(c) of the Federal Power Act. Congress authorized the Federal Energy Regulatory Commission to prescribe, in form and manner, a written statement to be filed by any person holding interlocking positions in both a public utility and in any of certain other specified entities. Persons subject to this rule will be required to file such written statement concerning such positions annually. The written statement is due by April 30, 1980.

EFFECTIVE DATE: April 2, 1980.

FOR FURTHER INFORMATION CONTACT: Colette K. Bohatch, Federal Energy Regulatory Commission, Office of the General Counsel, Room 3335, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8608.

April 2, 1980.

I. Introduction

This rule implements, in part, section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA) which amended section 305 of the Federal Power Act (the Act) by adding a new subsection (c). Section 305(c) states two separate requiremtns. One directs any person holding certain executive positions [1] in both a public utility and any one of certain other entities [2] to file with the Commission a written statement regarding such positions. The second requirement directs public utilities to name their twenty largest purchasers who are entities covered by this rule.

The first statutory requirement is set forth in section 305(c)(1) which states that:

> On or before April 30 of each year, any person, (holding certain executive positions with a public utility and any one of a number of other entities identified in section 305(c)(2)) * * * shall file with the Commission, in such form and manner as the Commission shall by rule prescribe, a written statement concerning such positions held by such person.

This second statutory requirement is set forth in section 305(c)(2)(F) which states that:

> On or before January 31 of each calendar year, each public utility shall publish a list, pursuant to rules prescribed by the Commission, of (its twenty largest purchasers of electric energy within the meaning of section 305(c)(2)(D)) * * * for purposes of any filing under * * * (section 305(c)(1)).

Proposed regulations concerning both of these statutory requirements were issued by the Commission on November 14, 1979.[3] A five week comment period ended on December 21, 1979. For the purpose of providing the public utilities sufficient time to publish the purchaser lists by January 31, 1980, the Commission decided to implement that statutory requirement as soon as possible, leaving implementation of the requirement concerning the filing of the written statement regarding interlocking positions to a later order.

Accordingly, the Commission issued a final rule on January 11, 1980 in Order No. 67 implementing section 305(c)(2)(F) by directing public utilities to file with the Commission, by January 31, 1980, lists of their largest purchasers.[4] The balance of the regulations relating to the filing requirement for persons holding certain executive positions are being finalized herein.

II. Background

Interlocking positions involving public utilities have been subject to regulation by the Federal Energy Regulatory Commission (Commission) and its predecessor pursuant to section 305 of the Act. Section 305(b) [5] requires that any person desiring to hold the positions of officer and director with a public utility and any one of other specified entities must receive prior authorization from the Commission. Section 305(b) covers interlocking positions between public utilities, and between a public utility and any of the following:

> Any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility, or * * * any company supplying electrical equipment to such public utility.

Section 305(c) [6] imposes a filing requirement upon persons who hold certain executive positions with public utilities and with other entities, including persons who may have been authorized under section 305(b) to hold interlocking positions. Under section 305(c), such person must also file an annual written statement concerning those positions. The entities other than public utilities covered by section 305(c) are the following:

(1) Any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility *(parallel provision in section 305(b));*

(2) Any investment bank, bank holding company, foreign bank or subsidary thereof doing business in the United States, insurance comapny, or any other organization primarily engaged in the business of providing financial services or credit, a mutual savings bank, or a savings and loan association;

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[1] The term "executive positions" as used in these regulations means any partner, appointee, representative, director, chief executive officer, president, vice president, secretary, treasurer, general manager, comptroller, chief purchasing agent, or any position for which a person performs a similar executive duty or function. The term "interlocking positions" is used to refer to executive positions held by a person in both a public utility and one of the other section 305(c) entities.

[2] The term "entities" includes the category of purchasers identified in accordance with Order No. 67, see note 4 and accompanying text, as the largest purchasers of each public utility in terms of kilowatt-hours purchased at retail for each year of a three year period.

[3] 44 FR 66205 (November 19, 1979).

[4] 45 FR 3569 (January 18, 1980). On January 21, and February 4, 1980, notices were issued correcting minor technical errors in § 46.2 (a) and (c) and § 46.3(a). 45 FR 6377; 45 FR 9729.

[5] Section 305(b) has been implemented by Part 45 of the Commission's Regulations.

[6] Section 305(c) is being implemented by this final rule to be included in Part 46 of the Commission's Regulations.

(3) Any company, firm, or organization which produces or supplies electric equipment or coal, natural gas, oil, nuclear fuel, or other fuel, for the use of any public utility *(parallel provision in section 305(b) as to any company supplying electrical equipment to the interlocked utility)*;

(4) Any entity specified as one of a utility's twenty largest retail purchasers pursuant to Order No. 67; and

(5) Any company, firm, or organization which is controlled by any company, firm, or organization listed above.

III. Summary of Comments and Final Rule

A. Comparison with Regulations in Part 45

Forty-three written comments were received by the Commission in this docket. Many of the commenters requested that the Commission reconcile certain differences between the proposed rule concerning reporting of interlooking positions and the existing regulations in Part 45.

One difference between the proposed regulations for Part 46 and those in Part 45 is the definition of "electrical equipment." Part 45 does not define "electrical equipment." Edison Electric Institute (EEI) treated this issue at length and concluded that any definition adopted in Part 46 will alter the scope of the term "electrical equipment" which has been developed through case law construing Part 45.

The Commission has chosen to define "electrical equipment" in Part 46 in order to provide necessary guidance but intends to institute a rulemaking to amend Part 45 to add an appropriate definition for "electrical equipment" for that part. The Commission will at that time request the public to comment on whether such conformity would be in the public interest.

A second difference between Part 45 and Part 46 stems from a difference between sections 305(b) and 305(c) regarding the scope of the term "public utility." Section 305(b) does not explicitly define "public utility," but the applicable definition appearing in section 201(e) of the Act states, in pertinent part:

The term "public utility" when used in this Part (Part II) or in the Part next following means any persons who owns or operates facilities subject to the jurisdiction of the Commission under this Part * * *

Section 305(c), in contrast, explicitly states that, for purposes of that section, "public utility" includes "any company which is part of a holding company system which includes a registered holding company unless no company in such system is an electric utility" but does not otherwise define that term.

A comprehensive definition for "public utility" in Part 46 is crucial for determining which entities are covered and who may have to file a written statement. The final regulations, therefore, define "public utility" in § 46.2(a) [7] as follows:

"Public utility" has the same meaning as in section 201(e) of the Federal Power Act and further includes any company which is part of a holding company system which includes a registered holding company unless no company in such system is an electric utility within the meaning of section 3 of the Federal Power Act. Such term does not include any rural electric cooperative which is regulated by the Rural Electrification Administration of the Department of Agriculture or any other entities covered in section 201(f) of the Federal Power Act.

Certain organizations are excluded from this definition because they have been excluded from the Commission's jurisdiction by statute. Such organizations include political subdivisions of a State, e.g., irrigation districts, drainage districts, and municipalities. Certain electric cooperatives approved by the Rural Electrification Administration (REA) have also been excluded by Commission decision.[8] The REA, which finances these cooperatives, also exercises extensive regulatory authority over their development and operation. In the past the Commission has not exercised jurisdiction over such REA approved cooperatives. We see no reason to change such policy here. In order to make this clear, the Commission has also amended two definitions to explicitly exclude such REA cooperatives, namely, "purchaser" in § 46.2(c), and "entity" in § 46.2(e).

A final difference between Parts 45 and 46 involves the categories of covered executive positions. The executive positions subject to Part 45 are defined for all covered entities as follows:

The positions subject to this part shall include those of any person elected or appointed to perform the duties or functions ordinarily performed by a president, vice president, secretary, treasurer, general manager, comptroller, chief purchasing agent, director or *partner*, or to perform any other similar executive duties or functions, in any corporation within the purview of section 305(b) of the act (emphasis added).

Part 46 uses similar language, excluding the term "partner," to define the executive positions applicable to public utilities but adds the terms "partner, appointee, or representative" to define the positions applicable to all other covered entities. The addition of these terms is supported by the statute. Section 305(c) explicitly uses "partner, appointee, or representative" in describing positions applicable to only certain covered entities while section 305(b) does not use these terms. Therefore, the Commission does not believe conformity of Part 46 to Part 45 in this regard is warranted.

B. General Rule—Definitions

Nature and Degree of Control. In the Notice of Proposed Rulemaking, the Commission requested that the public recommend a quantitative definition for "control" which, as proposed, was defined only by qualitative standards. Most commenters suggested language from various other Federal statutes which define "control."

Sullivan & Cromwell, Duke Power Company, Troutman, Sanders, Lockerman & Ashmore, and Central Illinois Light Company referred specifically to the following statutes:

(1) The Investment Company Act of 1940, under which ownership of 25 percent of the voting securities of a company creates a presumption of control;[9]

(2) The Bank Holding Company Act of 1956, under which ownership, control, or power to vote 25 percent of voting securities raises a rebuttable presumption of control, while ownership of 5 percent raises a rebuttable presumption of noncontrol;[10] and

(3) The Public Utility Holding Company Act of 1935, which establishes a presumption of control with ownership of 10 percent of voting stock.[11]

Ohio Edison Company also referred to the 25 percent ownership test of the Investment Company Holding Act of 1940. Dayton Power & Light Company stated, without reference to any statute, that a 10 percent ownership test is indicative of true control. In sharp contrast, Public Service Electric & Gas Company, Newark, New Jersey (Public Service—New Jersey) suggested an 80 percent ownership test based on the

[7] This definition is set forth in Order No. 67, 45 FR 3568, 3569 (January 18, 1980). The phrase "which includes a registered holding company" was inadvertently omitted from this definition and was subsequently added by an errata notice which was issued on February 4, 1980. 45 FR 9729 (February 13, 1980).

[8] *Dairyland Power Cooperative*, 37 FPC 12 (1967); *Salt River Project Agricultural Improvement and Power District* v. *Colorado Ute Electric Assoc.*, 37 FPC 68 (1967), *aff'd sub nom. Salt River Project Agricultural Improvement and Power District* v. *FPC*, 391 F.2d 470 (D.C. Cir. 1968).

[9] 15 U.S.C. 80a-2.

[10] 12 U.S.C. 1841.

[11] 15 U.S.C. 796.

provisions in the Internal Revenue Code for tax-free organizations.[12]

Using percentage of ownership or power to vote securities as the measure of control makes it difficult to set a limit applicable to large corporations as well as small. A control test which not only uses a percentage limit but also a rebuttable presumption provides some degree of certainty for the definition of "control" while incorporating flexibility to meet diverse corporate ownership circumstances.

The Commission has concluded, therefore, that the following test is appropriate for the purposes of section 305(c): Ownership or power to vote, directly or indirectly, 10 percent or more of the voting securities of any entity raises a rebuttable presumption of control. If a company, however, owns or has power to vote less than 10 percent of the voting securities of another company, there is no presumption of non-control. The Commission recognizes that control can exist when ownership of voting securities is less than 10 percent but under this circumstance there must be a demonstration that control does exist.

Parent and Subsidiary Question. Gulf Power Company, Ohio Edison Company, Consolidated Edison Company of New York, Sullivan & Cromwell, Troutman, Sanders, Lockerman & Ashmore, and Central Illinois Light Company recommended deleting the phrase "any parent and subsidiary of any corporation" from the definition of "business entity." They argued that, as proposed, this definition exceeds the scope of section 305(c)(2)(F) which defines as a covered entity "any company, firm or organization which is *controlled by* any company, firm or organization (identified in section 305(c)(2))" (emphasis added). They contended that the phrase "controlled by" does not cover a parent of any company, firm, or organization identified in section 305(c)(2).

Regarding subsidiaries, they further stated that the concept of "controlled by" is already included in § 46.4(f) (Covered entities) of the proposed rule and therefore, as to "subsidiary," the definition of "business entity"[13] is redundant.

The Commission has reviewed the statute in light of these comments and, pursuant to its authority under section 305(c), has concluded that parents of entities described in section 305(c) are not covered but that subsidiaries are. Therefore, the Commission has modified the final rule to exclude parents of these entities from coverage of these regulations. The Commission, however, believes that it has adequate authority under other provisions of the law to ask for the filing of a written statement from parent companies and makes no judgment at this time as to whether or not it should exercise its authority.

Entity. Niagara-Mohawk Power Corporation (Niagara-Mohawk) suggested expanding the exemption for municipalities in the definition of "entity" to include Federal, State and local governmental agencies. Niagara-Mohawk argued that many public agencies authorized by Federal or State law rely for leadership upon community leaders who are appointed to such positions and who serve with little or no compensation from these public agencies. Because these people serve in such positions as a public service to their communities, Niagara-Mohawk contended that there is little likelihood of their exercising harmful influence in such positions and that, in any event, there are other, more appropriate checks on the local level for any possible problems.

The Commission has adopted this suggestion because it believes that the statutory purpose of monitoring certain interlocking positions will not be frustrated by excluding these governmental agencies from the definition of "entity."

Electrical Equipment. The definition of "electrical equipment" was the subject of many comments which collectively suggested that the definition was overly broad and should either be narrowed or deleted altogether. They stated that this definition encompasses equipment which has a variety of industrial and non-industrial uses which do not always serve an electrical purpose and concluded that the definition unjustifiably expands the Commission's jurisdiction by broadening the filing requirements to include companies which do not supply electrical equipment.

Various suggestions were offered for modifying the proposed definition. Southern California Edison Company (Southern California), Potomac Electric Power Company, and Carolina Power & Light Company suggested eliminating the term "component" from the definition. Duke Power Company and Southern California commented further that a supplier of small components may not know how the components are used by its utility customers to determine if the components are "electrical equipment."

Sullivan & Cromwell, Detroit Edison, Southern California, and Central Illinois Light Company recommended adding language to emphasize design, purpose, or function of the equipment. Public Service-New Jersey suggested that "electrical equipment" should be limited to equipment manufactured solely for the use of an electric utility (Consolidated Edison Company of New York suggested the terms "primary" and "directly"; the law firm of Leva, Hawes, Symington, Martin & Oppenhiemer suggested the use of the terms "primary" and "customary"). Alabama Power suggested covering only major electrical equipment traditionally used by utilities and designed for a specific utility customer.

Public Service-New Jersey, Cambridge Electric Light Company, and EEI suggested substituting pertinent categories from the Standard Industrial Classification System developed by the Department of Commerce[14] instead of the categories from the Commission's Uniform System of Accounts which are included as a footnote to the definition.

Further commenting on the breadth of the definition, Public Service-New Jersey and DeBevoise & Liberman argued that the definition was not consistent with portions of the legislative history for section 305(b) and pertinent case law. Reid & Priest and Steel, Hector & Davis discussed narrowing the scope of the definition of "electrical equipment" in view of the statutory purpose of section 305(b) to eliminate the evils of interlocking business relationships.

Lastly, a *de minimis* test was proposed by Steel, Hector & Davis, San Diego Gas & Electric Company, Central Illinois Light Company, and EEI that required a minimum of electrical equipment transactions be completed between the utility and a supplier before such supplier would be covered by the rule.

In view of these suggestions, the Commission has decided to narrow the scope of the definition of "electrical equipment." The revised definition set forth in § 46.2(f) states:

> "Electrical equipment" means any apparatus, device, integral component, or integral part used in an activity which is electrically, electronically, mechanically, or by legal prescription necessary to the process of generation, transmission, or distribution of electric energy.

This revised definition also includes, as a guide only, a footnote reference to various accounts in the Commission's Uniform System of Accounts even though certain items can be found in the

[12] 26 U.S.C. 368.

[13] The word "business" was deleted from the term "business entity" in accordance with several comments as it is an unnecessary qualification for "entity."

[14] 13 U.S.C. 224.

accounts which are clearly not "electrical equipment" within this definition. For example, a master clock, although electrically operated, is not used in an activity which is "necessary to the process of generation, transmission, or distribution of electric energy." [15] For this reason, the accounts merely serve as a guide.

The Commission believes that the revised definition of "electrical equipment" also eliminates the small component problem raised by Duke Power Company because equipment covered by the rule must be *necessary* to the process of generating, transmitting, or distributing electric energy. "Nuts and bolts" purchased off the shelf are not intended to be covered by the revised definition of "electrical equipment."

To further deal with the concerns regarding the scope of the rule expressed by the commenters, the Commission has defined the term "produces or supplies" in section 305(c)(2)(C) which covers "any company, firm or organization which produces or supplies electrical equipment or coal, natural gas, oil, nuclear fuel, or other fuel, for the use of any public utility." The new definition set forth in § 46.2(g) states that:

"Produces or supplies" means any transaction including a sale, lease, sale-leaseback, consignment, or any other transaction in which an entity provides electrical equipment, coal, natural gas, oil, nuclear fuel, or other fuel to any public utility either directly or through an entity controlled by such entity. [16]

For example, such a transaction not made *directly* between the utility and the supplier or an entity which controls the supplier is not covered by "produces or supplies." Consequently, an entity engaging in such a transaction would not be a covered entity under § 46.5(c) which incorporates the above-quoted language of section 305(c)(2)(C). Of course, under § 46.5(f), if an entity produced electrical equipment, coal, natural gas, oil, nuclear fuel, or other fuel but supplied it through its parent, any interlock between the subsidiary and a public utility supplied by such subsidiary would have to be reported because the parent would be a qualifying entity under § 46.5(c).

[15] Examples of other items in the referenced accounts which do not qualify as "electrical equipment" are fire alarms, atmospheric measuring devices, and batteries.

[16] Note that this definition would bring within the coverage of this rule, a bank which leases nuclear fuel to a public utility. A person holding interlocking positions with such bank and such utility would have to comply with this rule.

With regard to the *de minimis* test, the Commission considered the adoption of such a test. The Commission recognizes, however, that application of a *de minimis* test would be inconsistent with our recent order in *Charles T. Fisher, III*, Docket No. ID-1758 issued October 25, 1979.

In that case, Mr. Fisher applied for an approval to hold interlocking positions with a public utility and with a supplier of electrical equipment pursuant to section 305(b) of the Act. Mr. Fisher argued that because the supplier's sales to the interlocked utility were small, the supplier should not be found to qualify as a supplier of electrical equipment within the meaning of section 305(b). Noting that this section refers merely to sales of electrical equipment without specifying any quantity threshold, the Commission rejected the argument that a *de minimis* test could be applied to determine whether it had the jurisdictional obligation to authorize or reject this kind of interlocking position. However, the Commission did consider the volume of sales in determining whether, on the merits, his application should be approved.

Similarly, we find that section 305(c)(2)(C) contains no minimum quantity threshold for electrical equipment supply. Moreover, section 305(c), unlike section 305(b), bases jurisdiction on the *production or supply* of electrical equipment for the use of any public utility, not simply on sales to the interlocked public utility. Here as in *Fisher*, we require compliance with the statutory requirements and make no exclusion based on the amount of sales.

The suggestion that the Standard Industrial Classification System be substituted for the Uniform System of Accounts must be rejected. There is no compelling reason advanced by the commenters for this substitution, particularly when the latter system was developed by the Commission for use in its daily work. Since the footnote reference to the Commission's accounts system serves as only a guide, there is even less reason to make the suggested substitution.

Appointee and Representative. In the proposed rule, the Commission did not define the statutory terms "appointee" and "representative" but solicited comments on their scope with the intention of incorporating pertinent definitions in the final rule. Many commenters [17] suggested that these terms be limited to cover only persons having the ability to contractually bind or to serve a management function for the subject entity. Many of the commenters recommended excluding attorneys, accountants, and consultants from the scope of the rule. Based upon the issues raised in these comments, the Commission has added the following definitions to the rule in § 46.2 (h) and (i), respectively:

"Appointee" means any person appointed on a temporary or permanent basis to perform any duties or functions as described in § 46.4(a).

"Representative" means any person empowered, through oral or written agreement, to transact business on behalf of an entity and any person who serves as advisor regarding policy or management decisions of the entity. The term does not include attorneys, accountants, architects, or any other persons who render a professional service on a fee basis.

An exclusion has been provided in the definition of "representative" for attorneys, accountants, architects, and other persons who render a professional service on a fee basis. Many commenters suggested that the Commission incorporate an exclusion for such persons who render advice to clients but who do so without having power over policy or management decisions of their clients. Consultants who render their service on a fee basis would also be excluded.

The Commission believes that consultants, particularly if they are former officers or directors of a company, may well be in a position which permits them to continue to influence the decisions of that company. Consultants, from time to time, may direct the policy or managment of a company without being visible policy makers. If they do so and are not paid on a fee basis they would be covered by this rule.

C. General Rule

The word "executive" has been inserted in § 46.4(a) (General rule) preceding the phrase "duties or functions" in accordance with a suggestion by Gulf Power Company. This addition emphasizes the types of functions and the levels of management deserving scrutiny under this rule. When a person is responsible for such executive duties or functions in a public utility and any covered entity, the opportunities to transmit significant information from one company to the other and thus to influence the decisions of another company are increased.

[17] Gulf Power Company, Duke Power Company, Consolidated Edison Company of New York, Cincinnati Gas & Electric Company, Public Service Middle South Utilities, Sullivan & Cromwell, Central Illinois Light Company, Dayton Power & Light Company, EEI, and Alabama Power. Detroit Edison also suggested that each entity refer to its by-laws for a definition of "officer" or "director" eliminating the need for related definitions in the rule.

D. Filing Requirements—Compensation

As proposed, the regulations would have required that a person holding interlocking positions must report the compensation received from the public utility and from the other interlocked entity, if the compensation from either is greater than $10,000. The Commission requested comments regarding the $10,000 limit.

Rochester Gas & Electric Corporation, Baltimore Gas & Electric Company, Central Illinois Light Company, Potomac Electric Power Company, and Florida Power & Light Company questioned, as a threshold matter, whether the Commission has authority to inquire as to compensation that a person filing under the rule receives from any section 305(c) entity or should inquire of such a confidential matter when not explicitly mandated to do so.

Hy-Vee Food Stores, San Diego Gas & Electric Company, Iowa Southern Utilities Company (EEI concurred in Iowa's comment), Florida Power & Light Company, and Baltimore Gas & Electric Company argued against disclosure of compensation on other grounds; they contended that the Commission should not require such disclosure for any entity which is beyond the traditional regulatory jurisdiction of the Commission. They also alleged that it would be harsh for persons holding executive positions with an entity which is not publicly held or with an entity which is their principal employer to disclose their salaries. The result of such a required disclosure, these commenters stated, would be to discourage some experienced business leaders from accepting executive positions with utilities which could benefit in a positive way from their experience.[18]

In view of these comments, the Commission is persuaded, for the time being, to delete the requirement that interest and compensation be disclosed under this final rule. However, the Commission has the discretion to inquire at a later time about interest and compensation. Although compensation received by the person filing may be significant in appraising the nature of the business relationship between the interlocked entities, the Commission does not believe that this information should be required as part of the routine filing. In the event the Commission finds that certain interlocking positions should be investigated, it may at that time take appropriate steps to obtain disclosure of interest or compensation.

[18] Comments filed by Mr. C. Malcolm Davis discussed the problem of lack of experienced persons willing to serve on the boards of utilities.

In view of the above discussion, the Commission further believes that there is no reason to exclude, as suggested by commenters, privately held entities or entities which are the principal employers of persons holding interlocking positions.

In view of the decision to delete the compensation disclosure requirement the remaining comments regarding the $10,000 floor, specific kinds of compensation, and the nature of the interest in the covered entities need not be addressed.

E. Filing Requirements: Other Information

The proposed rule required that the following information be reported: the name and business address of the person reporting, the duties for the executive positions held, the nature of the business relationship between the public utility and the other interlocked entity, and the nature and an indication of the level of interest in and compensation received from both entities.

Several commenters suggested that the content of the statement as proposed be substantially reduced to require merely identification of the person holding the interlocking positions and the interlocking entities. American Public Power Association, in contrast, suggested that additional information be reported, *i.e.*, specific transactions, if any, between the person filing the statement and the interlocked entities. Cincinnati Gas & Electric Company argued that material business transactions between the entities be disclosed.

In this final rule, the Commission has modified the contents of the written statement. This modification applies not only to the disclosure of the amount of the interest and compensation but also to the disclosure of the nature of any interest in or compensation received from the interlocked entities.

Other changes were made so that the final rule now requires the following information: Name and business address of the person filing; identification of the public utilities and other covered entities involved; and identification of the interlock. In addition, the following information is to be provided if the interlock includes an entity producing or supplying electrical equipment for the use of the interlocked public utility:

(1) The aggregate amount of revenues received by such entity from producing or supplying electrical equipment to the interlocked public utility in the subject calendar year (§ 46.6(d)) in $100,000 increments; and

(2) The nature of the business relationship between the interlocked entities.

By this modification, the Commission decided to focus the filing requirement more directly on the relationship between the interlocked entities rather than on the person holding the interlocking positions.

The Commission believes that it has the discretion under section 305(c) as well as under its general information gathering authorities under the Act to inquire further, as some commenters suggested, regarding the interlocked entities and the person filing the statement. However, the Commission does not choose, at this time, to exercise its discretion to the fullest extent possible.

Regarding the above-mentioned suggestion by American Public Power Association to inquire about transactions between the person holding the interlocking positions and the interlocked entities, the Commission believes this information could be significant in evaluating the nature of the relationship between interlocked entities. Rather than require this information *ab initio*, the Commission has decided to make this inquiry on a case-by-case basis if circumstances surrounding certain interlocked entities indicate that closer scrutiny is needed.

Requiring this information, although of interest, would not be consistent with the objective of the Commission in promulgating these rules; namely, to require only the information necessary to adequately discharge its duties under section 305(c). If information disclosed in the statement indicates that further investigation is necessary, the Commission is free to inquire as to specific transactions between such person and either or both of the interlocked entities. At the outset, however, the Commission is not convinced that this additional inquiry is necessary.

Lastly, the rule has been revised to require the following additional information where pertinent: the docket number and the date the interlocking positions covered under Part 46 were authorized by the Commission under Part 45. This information merely serves as a cross-reference to the section 305(b) authorizations.

V. Effective Date

There is a statutory deadline of April 30, 1980, for compliance with these regulations. The Commission therefore finds good cause under 5 U.S.C. 553(d) to make the rules promulgated in this order effective immediately.

These rules have been promulgated under the Federal Power Act, as amended by PURPA, and, therefore, a right to rehearing exists under section 313 of the Federal Power Act.

(Federal Power Act, as amended, (16 U.S.C. 792–828c); Public Utility Regulatory Policies Act of 1978, (16 U.S.C. 2601–2645); Department of Energy Organization Act, (42 U.S.C. 7101–7352); E.O. 12009, 3 CFR 142 (1978).)

In consideration of the foregoing, the Commission amends Part 46 to Subchapter B, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Part 46 is amended by revising the title to read:

PART 46—PUBLIC UTILITY FILING REQUIREMENTS AND FILING REQUIREMENTS FOR PERSONS HOLDING INTERLOCKING POSITIONS

2. Part 46 is further amended in the table of contents and in the text of the regulations, to read as follows:

Sec.

Authority: Federal Power Act, as amended, (16 U.S.C. 792–828c); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; Department of Energy Organization Act, (42 U.S.C. 7101–7352); E.O. 12009, 3 CFR 142 (1978).

§ 46.1 Purpose.

* * * * *

§ 46.2 Definitions.

For the purpose of this part:

(a) "Public utility" has the same meaning as in section 201(e) of the Federal Power Act and further includes any company which is part of a holding company system which includes a registered holding company unless no company in such system is an electric utility within the meaning of section 3 of the Federal Power Act. Such term does not include any rural electric cooperative which is regulated by the Rural Electrification Administration of the Department of Agriculture or any other entities covered in section 201(f) of the Federal Power Act.

(b) The following terms have the same meaning as in the Public Utility Holding Company Act of 1935:

(1) Holding company system; and

(2) Registered holding company.

(c) "Purchaser" means any individual or corporation within the meaning of section 3 of the Federal Power Act who purchases electric energy from a public utility. Such term does not include the United States or any agency or instrumentality of the United States or any rural electric cooperative which is regulated by the Rural Electrification Administration of the Department of Agriculture.

(d) "Control" and "controlled" mean the possession, directly or indirectly, of the power to direct the management or policies of an entity whether such power is exercised through one or more intermediary companies or pursuant to an agreement, written or oral, and whether such power is established through ownership or voting of securities, or common directors, officers, or stockholders, or voting trusts, holding trusts, or debt holdings, or contract, or any other direct or indirect means. A rebuttable presumption that control exists arises from the ownership or the power to vote, directly or indirectly, ten percent (10%) or more of the voting securities of such entity.

(e) "Entity" means any firm, company, or organization including any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. Such term does not include "municipality" as defined in section 3 of the Federal Power Act and does not include any Federal, State, or local government agencies or any rural electric cooperative which is regulated by the Rural Electrification Administration of the Department of Agriculture.

(f) "Electrical equipment" means any apparatus, device, integral component, or integral part used in an activity which is electrically, electronically, mechanically, or by legal prescription necessary to the process of generation, transmission, or distribution of electric energy.[1]

(g) "Produces or supplies" means any transaction including a sale, lease, sale-leaseback, consignment, or any other transaction in which an entity provides electrical equipment, coal, natural gas, oil, nuclear fuel, or other fuel to any public utility either directly or through an entity controlled by such entity.

(h) "Appointee" means any person appointed on a temporary or permanent basis to perform any duties or functions described in § 46.4(a).

(i) "Representative" means any person empowered, through oral or written agreement, to transact business on behalf of an entity and any person who serves as an advisor regarding policy or management decisions of the entity. The term does not include attorneys, accountants, architects, or any other persons who render a professional service on a fee basis.

§ 46.3 Purchaser list.

* * * * *

§ 46.4 General rule.

A person must file a written statement in accordance with § 46.6 with the Office of Secretary of the Commission if such person:

(a) Serves for a public utility in any of the following positions: A director or a chief executive officer, president, vice president, secretary, treasurer, general manager, comptroller, chief purchasing agent, or any other position in which such person performs similar executive duties or functions for such public utility; and

(b) Serves for any entity described in § 46.5 in any of the positions described in paragraph (a) of this section or is a partner, appointee, or representative of such entity.

§ 46.5 Covered entities.

Entities to which the general rule in § 46.4(b) applies are the following:

(a) Any investment bank, bank holding company, foreign bank or subsidiary thereof doing business in the United States, insurance company, or any other organization primarily engaged in the business of providing financial services or credit, a mutual savings bank, or a savings and loan association;

(b) Any entity which is authorized by law to underwrite or participate in the marketing of securities of a public utility;

[1] Guidance in applying the definition of "electrical equipment" may be obtained by examining the items within the following accounts described in Part 101, Title 18 of the Code of Federal Regulations: Boiler/Reactor plant equipment (Accounts 312 and 322); Engines and engine driven generators (313); Turbogenerator units (314 and 323); Accessory electrical equipment (315, 324, 334 and 345); Miscellaneous power plant equipment (316, 325, 335 and 346); Water wheels, turbines and generators (333); Fuel holders, producers, and accessories (342); Prime movers (343); Generators (344); Station equipment (353 and 362); Poles, towers and fixtures (354, 355 and 364); Overhead conductors and devices (356 and 365); Underground conduit (357 and 366); Underground conductors and devices (358 and 367); Storage battery equipment (363); Line transformers (368); Services (369); Meters (370); Installation on customers' premises (371); Street lighting and signal systems (373); Leased property on customers' premises (372); and Communication equipment (397). Excepted from these accounts are vehicles, structures, foundations, settings, and services.

(c) Any entity which produces or supplies electrical equipment or coal, natural gas, oil, nuclear fuel, or other fuel, for the use of any public utility;

(d) Any entity specified in § 46.3;

(e) Any entity referred to in section 305(b) of the Federal Power Act; and

(f) Any entity which is controlled by any entity referred to in this section.

§ 46.6 Contents of the written statement and procedures for filing.

Each person required to file a written statement under the general rule in § 46.4 shall comply with the following requirements:

(a) Each person shall provide the following information: full name and business address; identification of the public utilities and the covered entities in which such person holds executive positions described in § 46.4; and identification of the interlock described in § 46.4;

(b) If the interlock is between a public utility and an entity described in § 46.5(c), which produces or supplies electrical equipment for use of such public utility, such person shall provide the following information:

(1) The aggregate amount of revenues received by such entity from producing or supplying electrical equipment to such public utility in the calendar year specified in paragraph (d) of this section, rounded up to the nearest $100,000; and

(2) The nature of the business relationship between such public utility and such entity.

(c) If the person is authorized by the Commission to hold the positions of officer or director in accordance with Part 45, such person shall identify the authorization by docket number and shall give the date of authorization.

(d)(1) Each person shall file an original and two copies of such written statement with the Office of Secretary of the Commission on or before April 30 of each year immediately following the calendar year during any portion of which such person held a position described in § 46.4. The original of such statement shall be dated, signed by such person, and verified under oath in accordance with § 131.60 of this chapter. Each copy shall bear the date that appeared on the original; the signature may be stamped or typed on the copy, and the notarial seal may be omitted.

(2) Such statement shall be available to the public during regular business hours through the Commission's Office of Public Information and shall be made publicly available through the principal business offices of the public utility and any entity to which it applies on or before April 30 of the year the statement was filed with the Commission.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 803 and 888

[Docket No. R-80-670]

Sections 8 and 23 Housing Assistance Payments Program—Amendment of Fair Market Rent Schedules, Existing Housing; Correction

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Correction of final rule.

SUMMARY: In FR Doc. R-79-670 appearing at page 59112 in the **Federal Register** of Friday, October 12, 1979, HUD amended, for selected housing market areas, the schedules that set forth the Fair Market Rents for the Section 23 and Section 8 Existing Housing Assistance Payments Programs (pages 59113 through 59150). The amended schedules contained several errors. For twenty-one housing market areas, the proposed Fair Market Rents were republished instead of the revised rents. In thirteen market areas, there were mistakes in the dollar amounts. In certain areas, where HUD revised the rents for 3 and 4 bedroom units based on local comments, the rents for 5 or more bedroom units did not reflect the variation betweeen actual market rents for 4 and 5 or more bedroom units. This occurred because the 5 or more bedroom rents were computed by taking a percentage of the rent for 2 bedroom units which were not changed. These errors, applicable to selected housing market areas, are corrected by revision of Title 24, Part 803, Schedule B, and Part 888, Schedule B, as set forth below.

EFFECTIVE DATE: November 1, 1979, retroactive to March 29, 1979 for annual rent adjustments and PHA administrative fees.

FOR FURTHER INFORMATION CONTACT: Nancy S. Chisholm, Director, Economic and Market Analysis Division, PD&R, HUD, Washington, D.C. 20410, 202-755-4977. This is not a toll-free number.

Accordingly, Title 24, Part 803, Schedule B, and Part 888, Schedule B, are revised as set forth below.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); sec. 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1408); sec. 10(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1410(b)); and sec. 23 of the U.S. Housing Act of 1937 (42 U.S.C. 1421b)

Issued at Washington, D.C., March 28, 1980.

Clyde McHenry,

Acting Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

BILLING CODE 4210-01-M

PART 803—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BOSTON, MASSACHUSETTS AREA OFFICE					
NON SMSA					
NONSMSA PART:YORK STATE:ME	171	193	228	261	288
BUFFALO, NEW YORK AREA OFFICE					
NON SMSA					
COUNTY:ESSEX STATE:NY	153	176	203	232	256
COUNTY:FRANKLIN STATE:NY	135	159	182	202	222
COUNTY:JEFFERSON STATE:NY	142	164	195	211	233
COUNTY:LEWIS STATE:NY	135	159	182	202	222
COUNTY:ST LAWRENCE STATE:NY	144	168	200	222	246
LOUISVILLE, KENTUCKY AREA OFFICE					
SMSA: EVANSVILLE, IN-KY					
COUNTY:HENDERSON STATE:KY	180	200	240	265	295
INDIANAPOLIS, INDIANA AREA OFFICE					
SMSA: EVANSVILLE, IN-KY					
COUNTY:GIBSON STATE:IN	180	200	240	265	295
COUNTY:POSEY STATE:IN	180	200	240	265	295
COUNTY:VANDERBURGH STATE:IN	180	200	240	265	295
COUNTY:WARRICK STATE:IN	180	200	240	265	295
ST. LOUIS, MISSOURI AREA OFFICE					
SMSA: COLUMBIA, MO					
COUNTY: BOONE STATE: MO	160	194	228	262	296
KANSAS CITY, MISSOURI AREA OFFICE					
NON SMSA					
COUNTY:CALDWELL STATE:MO	133	162	190	219	249
COUNTY:DAVIESS STATE:MO	133	162	190	219	249
COUNTY:GRUNDY STATE:MO	133	162	190	219	249
COUNTY:HARRISON STATE:MO	133	162	190	219	249
COUNTY:LINN STATE:MO	133	162	190	219	249
COUNTY:LIVINGSTON STATE:MO	133	162	190	219	249
COUNTY:MERCER STATE:MO	133	162	190	219	249
COUNTY:PUTNAM STATE:MO	133	162	190	219	249
COUNTY:SULLIVAN STATE:MO	133	162	190	219	249

NOTE: FAIR MARKET RENTS (FMR) SHALL BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS; 5-BR = 145 PERCENT OF 2-BR FMR; 6-BR = 165 PERCENT OF 2-BR FMR. LIKEWISE, THE FAIR MARKET RENTS FOR UNIT SIZES LARGER THAN SIX BEDROOMS SHALL BE CALCULATED BY ADDING 20 PERCENTAGE POINTS TO THE PERCENTAGE USED FOR THE NEXT LOWER NUMBER OF BEDROOMS.

PREPARED BY HUD - EMAD (CO), NOVEMBER 15, 1979

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
OMAHA, NEBRASKA AREA OFFICE					
SMSA: SIOUX CITY, IA-NE					
COUNTY:WOODBURY STATE:IA	160	206	255	296	328
NON SMSA					
COUNTY:AUDUBON STATE:IA	137	166	196	225	255
COUNTY:CARROLL STATE:IA	137	166	196	225	255
COUNTY:CRAWFORD STATE:IA	137	166	196	225	255
COUNTY:GREENE STATE:IA	137	166	196	225	255
COUNTY:GUTHRIE STATE:IA	137	166	196	225	255
COUNTY:MARSHALL STATE:IA	142	173	204	234	265
COUNTY:SAC STATE:IA	137	166	196	225	255
COUNTY:STORY STATE:IA	155	179	216	242	265
SMSA: SIOUX CITY, IA-NE					
COUNTY:DAKOTA STATE:NE	160	206	255	296	328
NON SMSA					
COUNTY:ADAMS STATE:NE	130	175	227	286	315
DENVER, COLORADO REGIONAL:AREA OFFICE					
SMSA: FORT COLLINS, CO					
COUNTY:LARIMER STATE:CO	168	204	240	276	312
SMSA: BILLINGS, MT					
COUNTY:YELLOWSTONE STATE:MT	188	229	269	309	350
SMSA: GREAT FALLS, MT					
COUNTY:CASCADE STATE:MT	184	224	263	314	342
SMSA: RAPID CITY,S.D.					
COUNTY:MEADE STATE:SD	170	207	243	279	316
COUNTY:PENNINGTON STATE:SD	170	207	243	279	316
SMSA: SIOUX FALLS, SD					
COUNTY:MINNEHAHA STATE:SD	179	217	256	294	332
HONOLULU, HAWAII AREA OFFICE					
SMSA: HONOLULU, HI					
COUNTY:HONOLULU STATE:HI	275	331	394	464	517
LOS ANGELES, CALIFORNIA AREA OFFICE					
NON SMSA					
COUNTY:IMPERIAL STATE:CA	188	228	296	340	367

NOTE: FAIR MARKET RENTS (FMR) SHALL BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS: 5-BR = 145 PERCENT OF 2-BR FMR; 6-BR = 165 PERCENT OF 2-BR FMR. LIKEWISE, THE FAIR MARKET RENTS FOR UNIT SIZES LARGER THAN SIX BEDROOMS SHALL BE CALCULATED BY ADDING 20 PERCENTAGE POINTS TO THE PERCENTAGE USED FOR THE NEXT LOWER NUMBER OF BEDROOMS.

PREPARED BY HUD - EMAD (CO), NOVEMBER 15, 1979

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

CALCULATION OF FAIR MARKET RENTS FOR FIVE-OR MORE-BEDROOM UNITS, SELECTED FAIR MARKET RENT AREAS. FOR THE FMR AREAS LISTED BELOW, THE FMRs FOR FIVE-OR MORE-BEDROOM UNITS SHALL BE CALCULATED AS FOLLOWS: 5-BR = 115 PERCENT OF 4-BR FMR; 6-BR = 130 PERCENT OF 4-BR. LIKEWISE, THE FMRs FOR UNIT SIZES LARGER THAN SIX BEDROOMS SHALL BE CALCULATED BY ADDING 15 PERCENTAGE POINTS TO THE PERCENTAGES USED FOR THE NEXT LOWER NUMBER OF BEDROOMS.

JACKSON, MISSISSIPPI AREA OFFICE

NON SMSA COUNTY: LOWNDES, MS

LOS ANGELES, CALIFORNIA AREA OFFICE

SMSA: BAKERSFIELD, CA
COUNTY: KERN

SMSA: LOS ANGELES - LONG BEACH, CA
COUNTY: LOS ANGELES

SMSA: RIVERSIDE - SAN BERNARDINO - ONTARIO, CA
COUNTY: RIVERSIDE
COUNTY: BERNARDINO

SMSA: ANAHEIM - SANTA ANA - GARDEN GROVE, CA
COUNTY: ORANGE

SAN FRANCISCO, CALIFORNIA AREA OFFICE

SMSA: MODESTO, CA
COUNTY: STANISLAUS

NON SMSA COUNTY: MERCED, CA

NON SMSA COUNTY: TULARE, CA

NON SMSA COUNTY: PLUMAS, CA

NON SMSA COUNTY: SHASTA, CA

NON SMSA COUNTY: SUTTER, CA

SMSA: SALINAS - SEASIDE MONTEREY, CA
COUNTY: MONTEREY

PREPARED BY HUD - EMAD (CO), NOVEMBER 15, 1979

SAN FRANCISCO, CALIFORNIA AREA OFFICE

SMSA: SAN FRANCISCO - OAKLAND, CA
COUNTY: ALAMEDA
COUNTY: CONTRA COSTA
COUNTY: MARIN
COUNTY: SAN FRANCISCO
COUNTY: MATEO

SMSA: SANTA CRUZ, CA
COUNTY: SANTA CRUZ

SMSA: SANTA ROSA, CA
COUNTY: SONOMA

SMSA: VALLEJO-FAIRFIELD-NAPA, CA
COUNTY: NAPA
COUNTY: SOLANO

PORTLAND, OREGON AREA OFFICE

SMSA: EUGENE-SPRINGFIELD, OR
COUNTY: LANE

NON SMSA COUNTY: YAMHILL, OR

SEATTLE, WASHINGTON AREA OFFICE

NON SMSA COUNTY: COWLITZ, WA

NON SMSA COUNTY: KITSAP, WA

NON SMSA COUNTY: WHATCOM, WA

NON SMSA COUNTY: WHITMAN, WA

PREPARED BY HUD - EMAD (CO), NOVEMBER 15, 1979

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